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

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**Good Practices of implementation of UNCAC by States  
Parties to the United Nations Convention against  
Corruption****Note by the Secretariat****I. Collection of information pursuant to note verbale CU  
2014/50/DTA/CEB**

At the resumed fourth session of the Implementation Review Group, held in Panama City on 26 and 27 November 2013, it was noted that sharing additional information on good practices of UNCAC implementation would be beneficial for States parties (see (CAC/COSP/IRG/2013/10/Add.1). It was suggested that additional detail on good practice examples identified through the Implementation Review Mechanism be made available on a voluntary basis.

Therefore, the Secretariat of the Conference of the States Parties to the United Nations Convention against Corruption, in note verbale CU 2014/50/DTA/CEB, invited Governments to share, on a voluntary basis, more detail on the good practices identified in the Executive Summary of their country's review with other States Parties.

The following States have provided contributions: Algeria, Cuba, El Salvador, Ghana, Jordan, Kuwait, Lao PDR, Panama, Philippines, Russia, Spain and Switzerland. Where contributions were received in a language other than English, translations were carried out and included in this paper.

In order to facilitate discussion among States parties, the text of the contributions will be made available on the UNODC website at a later date both in the original language and in English translation.



## II. Contributions received

### Algeria

The executive summary of the report of the review of Algiers within the framework of the United Nations Convention against Corruption (UNCAC) has highlighted certain good practices with which we can provide the complementary information below.

First, we must not that “good practices” are not understood only as efficient judicial and administrative practices, but also legislative and organizational practices that may allow for a better implementation of the Convention.

#### A. On the subject of criminalization and law enforcement

(1) The provisions to investigate and prosecute high level officials accused of corruption

This observation refers less to a practical experience than to the pertinence in the transposition of the provisions of UNCAC and their effective combination with the provisions in effect related to the criminal procedure.

In effect, Algerian law has, on the one hand, “borrowed” from UNCAC a definition of public officials that covers all the spheres of public life (legislative, administrative, judicial and economic) and, on the other, it has provided particular rules that apply to the universe of public officials, and it includes those that occupy senior positions (Members of Parliament, magistrates, members of the Government, ...).

The immunities enjoyed by the latter (provisional immunity and localization of procedures ...) do not involve an immunity from prosecution when their base responsibility for acts of corruption may be instituted.

(2) A broad application of the legislation on obstruction of justice is applied on the officials in the criminal justice system

Article 236 of the criminal code provides a general infraction that criminalizes the act of using promises, pressure, threats, menaces or votes to induce a third person to make a false statement or deposition during a legal procedure. In addition, Article 44 of Law 06-01 from February 20, 2006 on the prevention and combating of corruption (LPLCC) applies specifically to acts of corruption and considers as an offence the act of resorting to physical force, threats or intimidation, or the offering of undue advantages in order to obtain a false testimony or to prevent a testimony, or to present false evidence in relation to corruption offences.

Article 44 of LPLCC considers as a fault the act of resorting to physical force, threats or intimidation, or the offering of undue advantages in order to interfere with an investigation related to corruption offences. This article applies beyond the requirements of UNCAC, that is to say, not only to agents of justice, but to any person involved in the investigation.

(3) In corruption cases where the proceeds of the crime have been transferred abroad, there is no statute of limitations

This option, which replaces the general regime on the matter of the statute of limitations, is justified by the fact that the transfer of the proceeds of corruption

abroad is politically equivalent to a serious crime. Its imprescriptibility allows outlining the practical difficulties and the procedures related to the transnational nature of the offence (Location of embezzled assets, delays and other difficulties related with mutual legal assistance, extrajudicial considerations...).

#### B. On the matter of international cooperation

(1) Algeria has ratified a large number of bilateral, regional, multilateral and international conventions;

In effect, international legal cooperation constitutes for the competent authorities a strategic priority to the extent that it has allowed, after a few years, to consolidate bilateral relations with a number of foreign countries by completing several legal agreements both on criminal matters and on extradition.

Also, since 1962 Algiers has entered into ninety-one (91) bilateral mutual legal assistance Conventions and two (02) multilateral Conventions, that of the Arab Maghreb Union and that of Riyadh. It also signed the Arab Convention against Corruption in 2010.

There are still twenty-six (26) judicial agreements that have been initialled and must be completed with thirteen (13) countries.

We must also note that since 1999 to date, the Ministry of Justice has completed twenty (20) simplified institutional cooperation agreements (15 of which have been signed, and 5 have been initialled) with many countries. These agreements implement concrete actions to be taken by the courts, means and long terms, among the judicial structures, and which particularly involve the training of magistrates and paralegals, the holding of scientific meetings, the modernization of the sector, and the exchange of experiences by means of meetings between magistrates and other justice officials, the linking of structures and the management of penitentiary facilities.

In addition, in order to enhance cooperation, the Ministry of the Interior and other specialized organs have completed many bilateral agreements on security and the fight against money-laundering, granting mutual assistance in many domains of the fight against crime.

And last, the five-year action programme of the Ministry of Justice includes the continued reinforcement of international, bilateral and multilateral legal cooperation.

This was initiated due to the following reasons:

- To apply the provisions of article 59 UNCAC, which provides that: “States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.”
- To respond to the recommendations of the national authorities in charge of public security,
- To meet the recommendations of the international organisms that encourage States to complete bilateral conventions to fight against crime in all its forms.

- To accurately develop adequate cooperation and extradition procedures for each country,
- To treat practical cases in accordance with bilateral conventions is more affordable than the cooperation system based on international conventions, courtesy or reciprocity,
- International treaties, as well as certain resolutions encourage countries to complete cooperation agreements with each other.

(2) Algeria directly applies the provisions of UNCAC in the absence of national laws.

The principle of the direct application of the provisions of the United Nations Convention against Corruption has been consecrated in a ruling issued by the Court of Sidi M'hamed in Algiers from June 6, 2012, under No. 12/00004, which specifies in one of its paragraphs.

« it appears to the Court, after reviewing presidential order no. 04-128 from April 19, 2004 on the ratification under reserve of the United Nations Convention against Corruption, adopted by the General Assembly of the United Nations in New York on October 31, 2004, along with law No. 06-01 on the prevention and the fight against corruption, that there is no express provision that provides the annulment of the following procedure under such cases, and since the annulment cannot be declared without a text, it dismisses the defines due to the lack of a legal basis... ».

This rationale, which responds to the spirit of the internal legal system, may subsequently become a case of jurisprudence, if confirmed by the higher jurisdictions.

(3) The establishment of liaison magistrates between the main mutual legal assistance parties to facilitate consultation and communication on jurisdictional matters.

“In effect, committed with the reinforcement of bilateral legal assistance, and to tighten institutional cooperation and developing mutual knowledge of the judicial and legal systems, Algiers intends to establish, as it did with France, on both sides, liaison magistrates with other countries.

This magistrate constitutes an institution that facilitation legal and judicial cooperation. He represents an extension of the attributions of central authorities.

The liaison magistrate is under the supervision of the Ministry of Foreign Affairs, and he enjoys, for that reason, the privileges and immunities granted to the diplomatic corps.

His responsibilities include:

- to work for the improvement of the efficiency of judicial and legal bilateral cooperation;
- to facilitate the relations between the Justice Ministers and the judicial authorities of both countries;
- to contribute to the management of mutual legal assistance requests on criminal, civil and commercial matters, as well as extradition requests;

- to facilitate the knowledge of the respective legal systems, and particularly any ongoing reforms;
- to follow the evolution of case law in the receiving country;
- to guarantee the monitoring of the domains concerning the international activities of the Justice Ministry of the receiving state;
- to participate in international legal and judicial cooperation actions concerning both countries;
- to facilitate the exchange of specialized documentation under any format.

In the execution of their mission, liaison magistrates shall be in contact with each other, and with the judicial authorities of the receiving country.

They shall be subject to an obligation of confidentiality and they shall refrain from getting involved in the internal affairs of the receiving country, and shall only get involved in the domains related to legal and judicial cooperation.

## **Cuba**

### Achievements and best practices identified in the Summary Report of the review of implementation of the Convention for Cuba:

- Cuba has a standing policy of updating its legislation against corruption and its international treaties on extradition and mutual legal assistance.
- Regarding the offence of money-laundering, it is stressed that money-laundering is penalized based on the duty to know, rational assumption or inexcusable ignorance.
- Illicit enrichment includes, in the offence, direct enrichment through an intermediary and increasing the property of the officer or third party.
- Interagency coordination is reflected in the existence of a State Control Board, which facilitates the exchange of information on pending cases.
- The will of the Government of Cuba to continuously update its bilateral treaties on extradition and mutual legal assistance is observed.
- Although Cuba does not recognize the Convention as legal basis for extradition, the possibility of requesting extradition based on the principles of reciprocity and dual criminality in the absence of a treaty in force is positively viewed.
- The possibility of using the Convention as the basis for mutual legal assistance is considered a best practice.
- The existence is observed of an organized system structured for processing bilateral requests for legal assistance which permits expediting international cooperation.
- The response times of Cuba in the examples provided by the authorities on the subject of corruption is positively viewed.

- The best practice is noted of spontaneous police cooperation between Cuba and other countries.
- The existence of bilateral agreements which facilitate police cooperation and customs cooperation is positively viewed.
- The participation of Cuba in INTERPOL and IberRed is considered positive.
- The recent incorporation of the country to FATF-GAFISUD is positively viewed.
- Cuba complements its participation in multilateral networks with bilateral institutions, in particular the Central Bank, with its foreign counterparts.

Examples of best practices identified through the Application Review Mechanism:

Since the first official contact with the examiners and officials of the Secretary charged with reviewing our country, Cuba showed discipline in fulfilling the provisions of the review mechanism and the terms granted; willingness to cooperate; interest in working jointly and in a participatory manner and its willingness to receive the visit in the country of the examiners, aspects that immediately proved beneficial for all further development of the process.

The structure, composition and modus operandi of the Working Group in the various stages of the review and the work developed by its members resulted in an integrated exercise which enabled us from the start to manage and increase the search for applicable legislation in the different areas of law, deepen their content and comparative analysis of implementation in relation to the principles of the Convention.

Primary was the work of the experts appointed by Cuba, who performed with responsibility, clarity and quality, collecting the criteria, processing them and analysing them on long and different days of the established working group, which is chaired by the General Comptroller of the Republic, exchanged and discussed until reaching consensus and shaping the responses to the comprehensive self-assessment checklist delivered, which from a general vision led to specifics in correspondence with legal system in effect and the requirements of the international instrument under review, attaching, as inputs, the legal provisions in force that support it, as well as the sentences, case examples and other aspects of concern.

Each group member, from the board or agency that it represents, provided inputs (case examples, statements, statistics, signed agreements, bulletins, analysis of cases and conditions, on the different facts evaluated), demonstration of the practical application of aspects, supported theoretically through the elements of our legal system and extensively illustrated to the examiners.

Thus, the group established transcended and expanded the understanding of the topics discussed. Priority was given not only to the interest of meeting deadlines, terms, guidelines, but also, significantly, that the examination was a reason for continuous improvement developed internally.

In the field of international relations, inputs were provided in the form of examples of cases and different accords signed, from different dates, demonstrating the will of the Cuban Government to increase international cooperation which corresponds to issues relating to the Convention, such as extradition, mutual legal assistance,

transfer of proceedings and letters rogatory sent and requested on offences related to corruption and based on the Convention.

During that period, there was a favourable impact from the exchanges held, the queries and contributions with representatives of Civil Society on issues and aspects contained in the answers to the comprehensive checklist for self-assessment. This interaction contributed to the provision of information and promoted knowledge about the review process and its outcomes.

In this integrative exercise, from the position of examinees upon preparing the self-assessment checklist, the legislative gaps were identified on substantive and procedural matters, the problems and difficulties with transparency and depth, assessing with critical analysis their possible solutions, taking into account the institutional development process undertaken in the country and legislative reform, in line with the process of updating the Cuban economic model; in general, these aspects were expressed in the report filed, and enabled the most effective statements in relation to the principles of the Convention.

It was very useful to have an exchange using all channels of communication and means with the examiners, such as conference calls, video conferencing, emails, among others, with the goal of providing all the elements, legislation and materials that offered the necessary knowledge on work performed, the Cuban reality and its legal system, responding to the comments and clarifications concerned with transparency and professionalism, aware that no one is immune from the scourge of corruption.

Similarly, in a professional, constructive environment of exchange and technical criteria, the visit took place to the country of the examiners and members of the Secretariat, complying with the planned programme. The working group actively participated in the clarifications concerned, as well as in explaining the answers provided with technical elements, judgments and illustrating with examples and other information of interest, attaching new inputs.

On that occasion, a fruitful exchange was developed between examiners and representatives of Cuban Civil Society, also attended by officials and executives of IA Committee on Constitutional and Legal Affairs of the National Assembly of Popular Power (Parliament) and the deans and professors of the schools of Law, Economics, Accounting and Finance, all of the University of Havana. The participants exposed, within their respective spheres, the role played and the participation of workers, students, family and other members of society in the prevention and fight against corruption.

The work done by the examiners and officials of the Secretary charged with reviewing our country was highly useful throughout implementation of the mechanism, marked by professionalism, collaboration and respect, which enabled the useful exchange and transmission of experience, providing expertise and techniques related to the young and new international legal instrument, of great significance regarding a new phenomenon of global reach.

The experiences gained during the review process have provided a valuable opportunity to assess and improve preventive strategies for fighting against corruption and the action plan to implement, in compliance with and following the recommendations made.

The lessons obtained on the implementation mechanism have favoured the exposure and exchange on the subject, with directors and officers of different countries of the area, who have attended the branch courses of the Latin American and Caribbean Organization of Supreme Audit Institutions (OLACEFS) developed in Cuba, on best practices and seeking areas of consensus between countries that allow for generating future regional actions to increase international cooperation in preventing and combating this scourge.

The preparation made in response to the review and its results has allowed us to deepen and expand on these issues and enabled us to continue improving our work internally, as well as in international collaboration and as experts, to assist in the review of other States Parties and exchange and give feedback regarding a universal phenomenon with destructive effects for humanity. This training has also contributed to the preparation of visits in order to verify the application in our country of other related international instruments.

## **El Salvador**

### **I. Supreme Court of Justice**

The issues related to International Mutual Legal Assistance (Chapter IV) should be considered as issues related to the Institution based on the fact that the Constitution of the Republic of El Salvador acknowledges to this Court the competence to decide in the matter of investigative commissions, execution of sentences from/toward abroad and extradition.<sup>1</sup>

Regarding the above, it should be brought to consideration the appraisals performed in the Report presented by the country, who on the pertinent points stated:

1. Relating to Extradition: “El Salvador has reported that there are few cases of extradition in general, and still less still in cases of corruption”; “The Salvadorian authorities indicated that, due to the limited number of extradition cases up to now, jurisprudence is still in evolution and some questions have not been clarified yet.

Since 2013, four cases of passive extradition have been cleared, in response to: 2 requests of the United States of America, 1 request of the Republic of Peru and 1 request of the United States of Mexico.

Despite the fact that in such cases the United Nations Convention against Corruption was not invoked, it is important to stand out that in the petitions made by the United States of America, the United Nations Convention against Transnational Organized Crime (Palermo, 2000)<sup>2</sup> was invoked as a complementary instrument to the existing bilateral Treaty of Extradition, and the Supreme Court of Justice considered in that regard that, if the crimes fall under the scope of

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<sup>1</sup> Art. 182, 3rd attribution, Cn: 3rd. To try the prizes cases and those which are not exclusive of another authority; to organize the course of the supplicatories or investigative commissions that are undertaken in order to carry on procedures out of the State and to order the execution of the ones proceeding from other countries, without notwithstanding the provisions contained in the treaties; and to grant the extradition; *4th.*-To grant, in compliance with the law and when necessary, permission for the execution of sentences pronounced by the foreign courts.

<sup>2</sup> Which also contains the Statement not considering it as Legal Base of Extradition.

application of the said Convention, it may therefore be considered to incorporate them in the listing of crimes.<sup>3</sup>

In that sense, it is possible that a request for a crime that falls under the framework of the implementation of the United Nations Convention against Corruption be considered for extradition, if the said Convention complements a bilateral or multilateral treaty on the matter, as regulated in article 44, paragraph 4, of the Convention.

2. Regarding Mutual Legal Assistance: “The unit of mutual legal assistance of the Supreme Court of Justice managed to solve a problem of pending cases backwardness using a system that gave priority to the older cases.”

As for the requests for mutual legal assistance, the Unit responsible for the Supreme Court of Justice continues with the processing of the -active and passive- requests to obtain the authorization of the Plenary. Due to the growing number of requests in the past 2 years,<sup>4</sup> the current Presidency of the Court has arranged for the authorization of resolutions in each session of the Plenary Court; thus, it appears that in the first quarter of 2014, 167 resolutions related to International Mutual Legal Assistance in penal matter have been authorized.

During 2013, were admitted to this Court 2 requests of active mutual legal assistance in which the United Nations Convention against Corruption was invoked:

- Criminal Supplicatory 118-S-2013  
Request directed to the French authorities to confiscate and to repatriate the funds from bank accounts, ordered by the 3rd Sentencing Court of San Salvador, on grounds of the existence of a condemnatory sentence against a former president of the National Administration of Aqueducts and Sewer Systems (ANDA, Autonomous Public Institution), for the crimes of Embezzlement, Illicit Negotiations and Illicit Associations.
- Criminal Supplicatory 232-S-2013  
Answer by the Public Prosecutor of Guatemala containing proceedings related to the criminal investigation carried on at the General Attorney’s Office of the Republic of El Salvador, on the possible commission of the crimes of Embezzlement and Illicit Negotiations, in construction projects under contract by the Department of Public Works.

During the current year (2014) 2 active requests for mutual legal assistance have been filed in which the provisions of the Convention have been invoked:

- Criminal Supplicatories 15-S-2014 and 18-S-2014

<sup>3</sup> In reference to the criminal supPLICATORIES 53-S-2010 and 35-S-2011, whose petitions were based on the Extradition Treaty passed between the Republic of El Salvador and the United States of America, complemented with the United Nations Convention against Transnational Organized Crime, which concluded with the authorization of the extradition of Salvadorian citizens towards the requiring State.

<sup>4</sup> Admission of requests for International Mutual Legal Assistance in criminal matter: 2011: 69/2012. 123/2013. 241 (according to the Supreme Court of Justice General Secretariat’s record of admittances).

Requests for assistance addressed to the competent authorities of Costa Rica and the United States of America, requiring information and documentation related to the criminal investigation undertaken against a former President of the Republic.

In all cases, the Supreme Court of Justice found applicable the pertinent provisions of the United Nations Convention against Corruption and ordered to proceed with the corresponding procedure.

## II. General Attorney's Office of the Republic

Exercises of good practices carried out by the General Attorney's Office of the Republic with respect to the prosecution on acts of corruption of officials that have benefited from constitutional statute, and where the prescription of those crimes has begun to be counted from the moment they left office:

- Case on the involvement of a former president of a State Bank (2003)

Tried for the crimes of Fraud on the Public Finances, Illicit Negotiations, since it was determined that, in his position of president of the bank, he offered credit to two companies to acquire a sugar cane mill owned by the bank as an extraordinary asset, although those companies didn't have any experience in the sugar cane field, besides the fact that one of the said companies had been created one day before the signing of the contract and the other one had been inactive for 10 years and had never operated in that area, and that even the guarantee that they had to give for the said acquisition was brought in by the president to the said companies.

- Case against the former president of the autonomous agency that distributes water in all the territory of El Salvador (2004)

He was prosecuted for the crimes of Illicit Negotiations, Embezzlement and Illicit Associations. He favoured, in conspiracy with businessmen, and his trusted employees within the autonomous agency, several businesses in the awarding of tenders, from which he obtained benefits in exchange for that favour. In addition to that, and taking advantage of his position as President of the autonomous agency, he came in possession of machinery and other goods that were intended to be utilized in the autonomous agency, for his own benefit.

- Case against a former representative of the Legislative Assembly (2006)

He was prosecuted for Bribe, given the fact that he was granted, in complicity with mayors in different municipalities of the country, tenders of different mayoralties of the country with companies that he supposedly represented jointly with his wife to carry out projects in different parts of those municipalities, which, availing himself of his position as representative and for a percentage of the money that he gave to the mayors, he failed to carry out what he had promised, he only required to be paid in advance the total amount of the money for the cost of the work.

- Case against a former representative of the Central American Parliament (2006)

He was prosecuted for the crimes of Extortion, Illicit Negotiations and lies.

In the awarding of restructuring projects for the town square of the municipality where he acted as the Mayor, he favoured another former representative (Silva). Among others the repaving of streets for a total amount of 250,000 dollars.

- Case against a former president of the Salvadorian Institute of Cooperative Promotion (2006)

She is charged with the crimes of Fraud against the Public Finances, Illicit Negotiations, Peculation and Embezzlement. This former official was prosecuted for charging money for each advising provided by the Institute, and that money was placed in an account of her property, which she used for her own benefit.

- Case against two Sentencing Judges

They are charged with the crime of Perversion of justice, since by means of resolution they favoured a person charged of First Degree Homicide, by changing the qualification to Manslaughter.

The investigation established that a subject took another person's life because he didn't like him and because he did not obey his orders that he was giving him during a party.

This action is typified by our legislation as first degree homicide; nevertheless, the sentence Judges with the intention to favour the said subject, changed the qualification to Manslaughter.

- Case against a Former minister of Health

He was charged with the crimes of guilty embezzlement and Arbitrary Acts, since he neglectfully sentenced that a businessman collected the money from some equipment that were not installed and he ordered the payment of these equipment.

- Case of an examining magistrate (in criminal matter)

Prosecuted for the crime of Perversion of justice, after sentencing in a manner contrary to the law.

- Sentence judges case

Prosecuted for the crime of Perversion of justice after sentencing in a manner contrary to the law.

- Judge of the Labour matter

Prosecuted for the crime of Perversion of justice after sentencing in a manner contrary to the law.

- Justice of the Peace

Prosecuted for the crime of Perversion of justice after sentencing in a manner contrary to the law.

- Three cases against civil judges

They were prosecuted for the crimes of bribe and extortion, they requested money to sentence in favour of a determined person and another one of them required money to grant a position in his court.

## **Ghana**

Good practices identified in the implementation of the United Nations Convention Against Corruption in Ghana:

### 1.0. Introduction

The United Nations Convention Against Corruption (UNCAC) came into force in 2005 providing a comprehensive and unique opportunity for countries to form collective action in the fight against corruption.

Each state party to the UNCAC is to be assessed on how it has implemented the UNCAC since it came into force in 2005. The assessment is to be done by other State parties. Ghana is a State Party to the UNCAC having acceded to or ratified it in December 2007. Ghana is being reviewed by Rwanda and Swaziland.

This document provides update and good practices identified through the review of implementation of the UNCAC and it is submitted to the Conference of State Parties (CoSP) following a request by the Secretariat of CoSP dated 27th February, 2014, referenced: CU 2014/50/DTA/CEB.

### 2.0. Ratification and Overview of the Legal and Institutional Framework

#### 2.1. Ratification of the Convention

Ghana signed the Convention on 9th December 2004 and the Parliament of Ghana adopted a resolution to ratify the Convention on 16th December 2005 in accordance with Article 75 (2)(b) of the Constitution of the Republic of Ghana, 1992 (the Constitution).

Article 75 (2)(b) of the Constitution provides that a treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.

#### 2.2. Legal and Institutional Framework

Ghana's legal system is based on the Constitution, common law, customary law, as well as enactments, rules, regulations and orders made under the authority of the Constitution.

The Constitution, which sought to integrate anti-corruption into national development, forms the legislative foundation for the adoption of further measures to combat corruption. In addition to the Constitution, the main anti-corruption legislation include the Criminal Offences Act, 1960 (Act 29), which proscribes corruption and related offences, whilst the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides for the procedure for investigating and prosecuting corruption offences.

Several other legislations have been enacted to deal with corruption and related offences in the country. They include the Whistleblower Act, 2006 (Act 720), the CHRAJ Act, EOCO Act, Police Service Act, Anti-Money Laundering Act, Mutual Legal Assistance Act and Act 550 Together, they provide the legal framework for corruption investigation, prevention and education.

### 3.0. The Review Mechanism in Ghana

#### 3.1. Update on Review Process

Having put in place the necessary preparatory mechanisms for the review mechanism, the CHRAJ, the SC and other stakeholders provided information and completed the self-assessment checklist. A forum was then organized to validate the information before submission to the Secretariat of the UNCAC.

Ghana organized a country visit in close collaboration with the UNODC and the Reviewers from Rwanda and Swaziland and this took place from 5-8 October 2013. The country visit, which was part of the continuing dialogue between the UNODC, reviewers and Ghana, on the review mechanism, enabled the reviewers to ascertain more information on the implementation of the UNCAC.

Following the visit, the reviewers requested for additional information, which is being provided. It is anticipated that the process will end soon and a report issued.

#### 4.0. Good Practices

Though the review of implementation of the UNCAC is yet to be completed, the review process assisted Ghana to reflect on the measures it has adopted over the years to combat corruption. It has also facilitated positive interaction among stakeholders and the Ghanaian public on the anti-corruption drive.

The review has enabled identification of good practices as well as gaps and challenges in the fight against corruption, which Ghana is pleased to share with other member states.

#### 4.1. Preparations for Review

##### 4.1.1. Adoption of an Inclusive and Participatory Review Process

In preparation for the review, Ghana adopted a participatory review process, which enabled it to provide reliable and timely information. The Commission on Human Rights and Administrative Justice (the Commission) as the focal institution, established a Steering Committee in consultation with major stakeholders to ensure that up-to-date, accurate and timely information on the implementation of the UNCAC was available. The Steering Committee (the Committee) supported and worked with the focal institution to plan and implement the review process in the country.

The key tasks of the Committee included the following:

- Ensuring that the review process receives the needed political will and commitment from all stakeholders and involved key stakeholders in the assessment and consultation process;
- Coordinating an inception stakeholder workshop to develop broad-based support for the process across government and the public;
- Overseeing the work of the Team of Technical /Governmental Experts and ensuring that the review process is open and transparent;
- Making sure that the review process is properly documented for reporting and future references, and

- Aligning the assessment of the implementation of the UNCAC with the assessment of the implementation of the National Anti-Corruption Action Plan (NACAP).

The Committee is composed of representatives from major stakeholders in the country including law enforcement and anti-corruption agencies, Ministries of Foreign Affairs and Regional Integration, Ministry of Justice and Attorney-General's Department, Ministries of Information and the interior, Africa Peer Review Mechanism Secretariat, civil society and the private sector.

The Committee executed the key tasks through regular participation of members in meetings of the Committee, collection of data, making input and reviewing documents in relation to the review process, and leading in the creation of awareness of the general public on the review process. The Committee also drew up a road map for the review in consultation with the UNODC and the experts from the reviewing member states.

Furthermore, the Committee coordinated a series of activities including the following:

- Training of members of the Committee on the Review Process
- Organized a Launch of the Review Process to provide background information about the UNCAC Review process, learn and share information on the UNCAC process and further generate the interest and support of key stakeholders towards Ghana's Review process and beyond.
- Organized several meetings to collect and review information for the completion of the self-assessment checklist through subgroups in the various sections of two chapters the UNCAC under review, and
- Coordinated a country visit and ensured unimpeded access to information by the reviewing experts.

#### 4.1.2. Participation of Civil Society

Ghana has a rich tradition in involving civil society in the fight against corruption. In 2001, it formed an anti-corruption coalition, comprising the Economic and Organised Crime Office (formerly the Serious Fraud Office), civil society organizations, private sector, media and CHRAJ.

On the development of the National Anti-Corruption Action Plan, the Business and Integrity Forum was established, partly, to support the implementation of NACAP.

In accordance with this tradition, civil society formed an integral part of the review process from the outset in Ghana. Civil society was represented in both the Steering Committee. They were also represented in the appointment of Governmental Experts. So that Ghana continued to promote participation of groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the fight against corruption. Indeed, a lot of time and effort were dedicated to creating awareness of the review process with civil society as well as several workshops and seminars on corruption and the review mechanism were organized.

#### 4.2. Robust Legal and Institutional Framework

The following good practices have emerged so far:

- Ghana has a robust anti-corruption legal framework, which has criminalized almost all the acts of corruption and related offences provided for in the UNCAC. Further reforms to the legislative framework will align the country's anti-corruption response to the standards set by the Convention and also deal with corruption decisively. The reforms will also empower the Commission to conduct investigations on its own initiative, widen the definition of corruption to encompass all corruption-related offences provided under both the UNCAC and the African Union Convention on Preventing and Combating Corruption and making decisions of the Commission directly enforceable;
- Ghana has also put in place robust institutions to combat corruption including a unique institution, the Commission on Human Rights and Administrative Justice, which Ghana's Human Rights Institution, Ghana's Ombudsman and Ghana's Anti-Corruption Agency. It is unique because this is the first time in the constitutional history of Ghana that an institutional machinery has emerged as a model combining functions of three distinct institutions. It is also unique in the sense that its independence is guaranteed under the Constitution and its investigative powers cover every public officer from the President to the ordinary person. To further guaranteed the financial independence of the Commission and other independent governance institutions in the country, a "Democracy Fund" will be established to ensure sustainable funding for these institutions;
- Ghana's Whistleblower legislation provides the Commission the power to protect whistleblowers from victimization. When the Commission investigates allegations of victimization against whistleblowers, it makes orders, which have the same effect as a judgment or order of the High Court and is enforceable in the same manner as a judgment or order of the High Court;
- Ghana's efforts at building and sustaining alliances with civil society, the media, the private sector and other stakeholders in combating corruption, demonstrates invaluable contribution that such alliances can make in the fight against corruption;
- Ghana developed a national anti-corruption strategy and plan before the review which, conform, in great detail, to the UNCAC. One objective of the strategy is dedicated to criminalisation and law enforcement: enacting laws to bring Ghana's legal framework in full compliance with the UNCAC; speedy prosecutions and building capacity of prosecutors and investigators, international cooperation, and
- A Forum of Key accountability institutions to deal with coordination problems is in place. This Forum comprises Law enforcement and anti-corruption institutions, Parliament, the Judiciary, Attorney-General and Ministry of Justice and Auditor-General, among others.

#### 4.3. Conducive and Flexible System for International Cooperation

In terms of International Cooperation (Chapter IV), the good practices to include the following:

- a solid legal and institutional framework to implement Chapter 4, including the Mutual Legal Assistance Act, Money-Laundering Act, the Economic and Organised Crime Office and the Financial Intelligence Centre, and
- the legal system allows a Judge in Chambers to exercise the powers conferred on the High Court in order that judgments can be registered in the High Court by an ex-parte motion.

#### 5.0. Conclusion

The foregoing are the modest instances of good practices that the review of the implementation of the United Nations Convention against Corruption have disclosed.

As already mentioned, the review mechanism of Chapters 3 and 4 in Ghana has almost ended and a report would be ready by the end of 2014. It is expected that when the report is prepared and a summary report extracted other good practices may be revealed and Ghana would continue to share them with member states as may be requested.

Ghana also submitted a document on her experiences in implementing articles 5-7 of UNCAC. This will be made available on the website.

### **Jordan<sup>5</sup>**

Since its ratification on the United Nations Convention Against Corruption (UNCAC) in 2005, the Hashemite Kingdom of Jordan has sought to harmonize the requirements of the UNCAC with its legal system within the following three dimensions:

#### Dimension I: Harmonization with National Legislations

Legislation is undoubtedly one of the most important indicators of the determination of the states to combat corruption, promote transparency, and activate accountability and integrity. Unless strengthened by a cover of discreet and accurate legislation, political will alone is not enough.

The experience of the Hashemite Kingdom of Jordan in harmonizing its national legislations with the UNCAC is unique due to its distinct themes and short duration. The legislative reform revolution started in early 2011 when a royal decree was issued to form “Royal Committee to the Constitutional Amendments” to submit suggestions and recommendations on the amendments of the articles of the Constitution of Jordan. The work of the Royal Committee was concluded with suggestion to amend 37 articles of the 131-article constitution, namely one fourth of the constitution. The amendments focused on improving the Constitution of Jordan to parallel the constitutions of the developed countries, promote democracy in Jordan and achieve the well-being of the Jordanian people. The amendments included simulation of the UNCAC requirements on the promotion of transparency, integrity, accountability and anti-corruption, on top of which are the amendments emphasizing the independence of the judiciary. The word “independent” was added after the word “judiciary” in Article 27. Moreover, article 98 was amended so as to

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<sup>5</sup> Information provided by the Jordan Anti-Corruption Commission.

limit the administration of the judiciary and courts and the appointment of the judges to the Judicial Council. These amendments are in line with the requirements of article 11 of the UNCAC in which states parties are encouraged to provide... (*translator's note*: missing text).

The foreign public officials and the officers of public institutions of the state were also included in the provisions of the law of the Anti-Corruption Commission (ACC). Thereupon, any act of corruption committed by them has been criminalized in line with Article 16 of the UNCAC. In addition, the ACC was granted the authority to ask, as an urgent procedure, the court to suspend any contract, agreement, benefit or privilege if evidently shown to have been obtained as a result of an act of corruption according to article 34 of the UNCAC. One of the most important amendments is providing protection for reporting persons, witnesses and experts in corruption cases in accordance with articles 32 and 33 of the UNCAC. The legal amendments also included provisions for the mitigation of punishment in case information was provided before the discovery of the corruption pursuant to the provisions of article 37 of the UNCAC. Under the law amended, public-interest litigation, penalties, penalties and the recovery of the proceeds of corruption were excluded from the statute of limitations which is referred to in article 29 of the UNCAC.

In addition, considered to be one of the most important requirements for the independence of the judiciary in a state is the issuance of the system of financial supervision in 2011, which requires from all the institutions and ministries of the state to establish a unit for financial supervision to audit in advance the financial transactions. This unit is responsible for verifying the accounting entries and financial data, demonstrating the extent of the commitment of the institutions of the state with the financial policies and legislations enforced, and issuing the system of appointment for leadership positions in 2013. The system was recently issued for the purpose of regulating and controlling the appointment procedures for senior leadership positions, and ensuring the appointment through the committees (the ministerial committees for the selection and appointment of leadership position). The system also required an advertisement for the vacant leadership position, an evaluation of the committee for the applicant to ensure its integrity and eligibility for the position, and the use of evaluation criteria such as specialized technical knowledge, experience, degree, administrative and leadership abilities, skills, etc. and converting these into marks. Moreover, substantial amendments focusing on the mechanism of the indictment and trial of ministers was included. The vote percentage for referring the ministers to trial was decreased from the two thirds majority to the majority of the parliament, which is a requirement of the UNCAC which asked the states to take the necessary measures and procedures to balance the immunities accorded to a person for the performance of its function and the possibility of investigating to discover the acts of corruption as referred to article 30 (2) of the UNCAC. Furthermore, the constitutional amendments replaced the Higher Council for the Prosecution of Ministers, which was responsible for prosecuting the ministers, with regular courts. The amendments also suggested the obligation to the suspension of the minister in case an indictment decision was issued by the public prosecution, all in line with the requirements of article 30 of the UNCAC.

In 2011, the need to reconsider the law of the ACC was raised. The actual practice of the duties of ACC and the international claims for the requirements of the

UNCAC showed the need to bridge the legislative gaps which is required by the nature of the investigation to uncover the suspicions of corruption and refer the perpetrators to fair trials. The output coming from the legal committees constituted by the ACC and the results of the review Jordan was subject to in 2011 revealed a necessity to introduce substantial amendments to the law of the ACC. This was resulted in the issuance of the Law of 2012 as amended which granted the ACC some legal powers to cooperate in providing and asking for international legal assistance in case the conditions of the provision thereof were satisfied through the formal channels, which in turn is in harmony with the provisions of article 46 of the UNCAC. Moreover, the Board of the ACC was given the power to contribute in the recovery of delivery the proceeds of the acts of corruption to its respective owners, either inside the Kingdom or overseas. The ACC was also given the power to assign any specialized entity to undertake the financial and administrative audit for any agency under its competence. (translator's note: missing text) UNCAC because following such procedures will provide integrity and transparency in holding public offices.

The requirements of harmonizing the national legislation with the international conventions require a great amount of study, search and time. It cannot be said that Jordan is done with the process because of its complexity and the variety of the themes related thereto. There is a bunch of bills under consideration by the legislative institutions which took rounds of debate and study, but no consensus on its final version has yet been reached, amongst which is the bill amending the law ensuring the right to access to information, which is considered the tool that facilitates and protects the right of citizens to control the different state bodies, and the law of illicit enrichment, which is still in a manoeuvre inside the parliament and which is going to, if approved, to replace the law of financial disclosure. The importance of this law stems from its development of the mechanisms of dealing with financial declaration, and from giving the judiciary undertaking the receipt of declarations the powers to examine and audit the declarations before closing and keeping them. In addition, it would also be granted the power to demand any clarification, data or information from the person submitting the declaration. The amendment also granted the ACC the power to ask for a copy of the declaration to take note thereof in case it was related to a corruption case it investigates.

In addition to the afore-mentioned, and for the purpose of completing the requirements of harmonizing the national legislations with the requirements of the UNCAC, a bill amended to the law of the ACC was prepared in 2013, which is still under study, including the following:

- Considering money-laundering and illicit enrichment acts of corruption
- Criminalizing some non-criminalized acts under current Jordanian legislations such as trading in influence referred to in article 18 of the UNCAC and bribery in the private sector referred to in article 21 of the UNCAC. The project also included reference to the conflict of interests if the person failed to declare that.
- Expanding the powers of the ACC through investigating all the persons including those whose legislations require considering specific procedures when investigating them

- Granting the ACC the powers of taking note of the bank accounts and transferring at local and foreign banks and of the financial declaration, article 40 of the UNCAC on bank secrecy
- Severely punishing those who refrain from reporting corruption and doubling the punishment if the person refrained is a public officer

Still, there is a need to perform amendments on other legislations for the purpose of harmonizing them with the UNCAC. The coordination and work on the preparation of these legislations is ongoing for proceeding with the procedures of issuing such laws as the law of extradition of 1927 in order to harmonize with the requirements of article 44 of the UNCAC. There is also a need to issue a national legislation regulating the mechanism of dealing with requests for mutual legal assistance (letters rogatory) and defining the conditions and mechanisms of the determination thereof (article 46 and after of the UNCAC). In addition, there is a need to issue a legislation regulating the mechanism of managing the property seized or frozen and demonstrating the aspects of disposal in case the property is confiscated (article 31 of the UNCAC). Furthermore, there is a need to issue other legislations harmonizing with the provisions of the UNCAC and relates to monitored extradition for the purposes of investigating corruption, uncovering the identity of those involved in the commission thereof, and transfer the criminal proceedings and other aspects of the common investigation set forth in article 47 and after of the UNCAC.

In addition to the afore-mentioned, and in implementation of the recommendations of the review report and the notes of the experts reviewing, the Hashemite Kingdom of Jordan informed the Secretary General of the United Nations of the central authority concerned with receiving requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities and limiting the matter to the Jordanian Ministry of Justice in execution of article 46 (13) of the UNCAC.

As a result of the output of the review the Hashemite Kingdom of Jordan has been through, it informed the UN secretary General to consider the bilateral conventions and national legislations to be the base on which it is relied on when dealing with the requests of extradition in accordance with the requirements of article 44 (6) of the UNCAC.

#### Dimension 2: National Policies and Strategies

The Hashemite Kingdom of Jordan considers the anti-corruption legal legislations alone are not enough to address this scourge, especially that corruption is a C\complex and interrelated crime. It is also hidden and has beneficiaries who seek to defend it. Addressing corruption requires providing strategically drive efforts based on concerted action and the activation of the integrative role of different state agencies backed by a strong political and social will that can address corruption. Therefore, Jordan took the initiative by adopting national anti-corruption strategies. The first strategy covered the period of 2008-2012. With the expiration of its period, a new national anti-corruption strategy of 2013-2017 focused during the preparation on a group of documents and reports, an important one of which is the Review Report of Jordan's compliance with the UNCAC.

The national strategy of 2013-2017 focused on the implementation of a group of dimensions, the most important of which is promoting the capacity of the ACC,

raising the efficiency of the investigative procedures in corruption cases and prosecuting the perpetrators, in addition to strengthening international legislation in anti-corruption, developing national legislations in line with the international anti-corruption standards and requirements and ensuring the efficiency of its implementation. This in turn harmonizes with the requirements of the UNCAC which requires the States Parties to harmonize its legislations and their requirements of the UNCAC with the necessity of adopting policies and strategies that contribute to the reduction of the acts of corruption, punish the perpetrators thereof, paying attention to international cooperation to ensure no impunity and reducing the provision of safe shelters to the proceeds of corruption.

### Dimension 3: Technical Assistance and Capacity Building

The Hashemite Kingdom of Jordan understands the importance of openness to the world and benefitting from the technical experiences of different states in all fields related to anticorruption. In this sense, Jordan has sought to host many international and regional conferences and workshops that focus on the importance of international cooperation such as the conference on The INTERPOL Points of Contact and the Star Initiative on informal exchange of information. Workshops have also been conducted with the OECD focusing on combating bribery and promoting integrity in the private sector. Another workshop was conducted with the UNODC on the integrity of the judiciary. A series of training workshops with the French government and the US Department of Justice focusing on the concepts of international cooperation and the requirements of submitting the requests of mutual legal assistance was also held.

In addition to all this, a twinning project with Finland was executed with support from the EU for the purposes of supporting the efforts of Jordan in anti-corruption. Through the execution of the project, the focus was capacity building and raising the efficiency of investigation and prosecution of the corruption cases with paying due attention to international cooperation.

In preparation for the second round of review which will encompass Chapter II “Preventive measures” and Chapter V “Asset Recovery”, it started forming a national team from different state agencies and ministries including civil society organizations, supervisory institutions and media. In cooperation with the UNDP, a training course for the national team has been conducted, in which the team was trained on filling the self-assessment report and requirement. The team was divided into four groups as follows:

Group 1: Review items on providing effective, coordinated anti-corruption policies and bodies (articles 5 and 6 of the UNCAC)

Group 2: Review items on public office (articles 7, 8, 2 (e) of chapter II of the UNCAC)

Group 3: Review items on public procurement and the role of public and private sectors (articles 9 (1), 3, 12 (1) and 2, except article 2 (e) and 3 of chapter II of the UNCAC)

Group 4: Review items on public access to information and promoting the participation of the society (articles 10, 13, 9 (2) of chapter II of the UNCAC)

In addition to the afore-mentioned, the Hashemite Kingdom of Jordan has participated in the review of Iraq. Currently, it is working with Honduras on the review of Bahrain.

## **Kuwait<sup>6</sup>**

The Kuwait Anti-Corruption Authority would like to share with you a set of legislative provisions, measures, procedures, and national policies that represent good practices recently adopted by the State of Kuwait following the end of the first stage of the review it had undergone. These include the following:

### FIRST: REVIEW OF NEW LEGISLATION AND FACTS ON GOOD PRACTICES RELATING TO CHAPTER 3 (LAW ENFORCEMENT) OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC):

(1) Regulations of the banking sector focusing on detection, criminalization, and prevention of money-laundering:

It should be mentioned in this regard that the State of Kuwait enacted last year Law No. 106 of 2013 on Money Laundering and Terrorist Financing, which replaces Law No. 35 of 2002 on Money Laundering. The new law includes many provisions on additional mechanisms and measures to detect and criminalize money-laundering. In this respect, Article 2 of the new law stipulates:

*“Any person shall be deemed to have committed a money-laundering offence if he intentionally carries out the following acts while knowing that the assets in question are proceeds of crime:*

- a- Transfers, transports, or replaces such assets with the purpose of concealing or disguising the illegal source of those assets, or helps a person involved in committing the predicate offence from which such assets result to escape the legal consequences of such act;*
- b- Conceals or disguises the true nature of such assets or their origin or location, the way in which they are disposed of, their movement, ownership, or rights pertaining to them;*
- c- Acquires, keeps, or uses such assets.*

*A legal person shall be held responsible for any offence provided for in this Article if the offence is committed in their name or on their behalf.*

*The punishment of the perpetrator of the predicate offence shall not preclude his punishment for any other money-laundering offence.*

*When establishing that assets are proceeds of crime, it is not necessary that any person shall have been convicted for committing the predicate offence.”*

In this context, Articles 4, 5, 6, 8, 9, 10, 11, and 12 of the new money-laundering law successively identified the mechanisms and measure that financial institutions and banks should take to detect money-laundering operations.

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<sup>6</sup> Information provided by The Chairman of the Kuwait Anti-Corruption Authority.

For the purposes of implementing the new Law on Money laundering and Terrorist Financing, the Finance Minister issued Ministerial Resolution No. 37 of 2013 on Enforcement Decree of the above law, which provides for a number of mechanisms and detailed procedures to implement the rules provided for in the above law on the procedures that financial institutions and banks must take to detect money-laundering crimes.

Since the offences of money-laundering are linked with corruption offences, Article 22 of Decree-Law No. 24 of 2012 establishing the Kuwait Anti-Corruption Authority provides that money-laundering offences are considered as corruption offences.

(2) Broad provisions to suspend or dismiss public agents suspected or accused of committing offences punishable under UNCAC, with severe consequences in case of conviction:

The Decree-law establishing the Kuwait Anti-Corruption Authority (24/2012) included provisions that broaden the scope of persons targeted by this Decree-law, as it concerns all State officials and employees without any immunity, exception, or any other considerations. Article 2 of this Decree-law stipulates:

*“The provisions of the Decree-law apply to the following categories:*

- 1. The president and vice-presidents of the Council of Ministers, ministers and persons holding an office equivalent to that of a minister;*
- 2. The Speaker, Deputy Speaker, and members of the National Assembly;*
- 3. The Chairman and members of the Supreme Judicial Council, judges, members of the Public Prosecution, the Chairman and members of the Fatwa and Legislation Department, the Director General and members of the Public Department of Investigations at the Interior Ministry, the Legal Department at the Municipality of Kuwait, jurors, experts, liquidators, judicial guards, and creditor lawyers;*
- 4. The chairman, deputy chairman, and members of the Municipal Council;*
- 5. The chairman and members of councils, bodies, and committees established, and whose members are appointed, by decree;*
- 6. Leaders, whatever the name of their positions, who hold high positions, attorneys, assistant attorneys, heads of departments and persons holding equivalent supervisory positions identified by the Enforcement Decree, whether military or civilian, in ministries, government departments, public bodies and institutions, and bodies with attached or independent budgets.*
- 7. The chairman, attorneys, and employees of the Court of Auditors;*
- 8. The members of the board of directors, general managers and their deputies and assistants, heads of departments and persons holding equivalent positions in companies in whose capital the State or a public institution has a stake of more than twenty-five percent (25 per cent); and*
- 9. The members of boards of directors of cooperative associations and sports bodies.”*

For the purpose of protecting whistleblowers, the provisions of the above mentioned decree determined the frameworks and dimensions of such protection, which means that the whistleblowers is protected from the time he makes a declaration. The protection includes his spouse and family members and all close associates in case of need (Article 39), and his personal protection: his identity and whereabouts are not disclosed; he is provided with a personal guard or a new residence if need be; he enjoys administrative and professional protection: no administrative measure is taken against him by ensuring the continuity of his professional salary, rights, and benefits throughout the period determined by the Authority; he enjoys legal protection: he shall not incur any criminal, civil, or disciplinary action as long as the declaration he makes is in line with the condition set out in Article 37 of this Law (Article 40).

The Kuwait Anti-Corruption Authority will soon complete the drafting of the Enforcement Decree for Decree-law No. 24/2012 establishing it. The Authority sought to include in this Enforcement Decree procedures that provide material, moral, and administrative means and guarantees and legal protection to ensure that the whistleblower can make declarations and enjoy the necessary protection and security and those of his family so that during the protection period, no measures can be taken against him in the sphere of his work that would affect his legal or administrative status, reduce or deprive him of his rights, or undermine his standing or reputation, or any other negative measures or procedures in connection with his role in fighting corruption. And if such decision or measure is taken, it would be null and void from the date it is taken and all its effects shall be cancelled. All the above applies when the whistleblower believes in good faith that the facts he reports are true and he has serious evidence that justify such facts. In this case, whistleblowers shall not incur any criminal, civil, or disciplinary action whatever the result of such whistleblowing.

Review of the efforts of the State of Kuwait in facing the challenges of enforcing Chapter 3 of the Convention:

(1) Continuing the progress towards developing and implementing a comprehensive anti-corruption strategy, including the setting up of an integrity committee or a similar anti-corruption body:

The State of Kuwait issued in 2012 Decree-law No. 24 of 2012 whose Article 3 provides for the establishment of the Kuwait Anti-Corruption Authority so that it can fulfil its missions and mandate in an entirely independent and neutral way. This Decree-law also includes provisions on financial disclosure.

The enactment of the Decree-law establishing the Authority is part of the endeavours of the State of Kuwait to fulfil its international commitments resulting from its ratification of UNCAC and demonstrates its desire to comply with all the requirements of the review of implementation of the Convention domestically.

Furthermore, the Authority is, under Article 5 of Decree-law establishing it, the national party responsible for developing a comprehensive national integrity and anti-corruption strategy. It is also responsible for developing mechanisms, plans, and programmes to enforce such strategy and follow up its implementation with the parties concerned. As part of the implementation of the said Article 5, the Authority set up a working group and entrusted it with the task of developing a comprehensive national integrity and anti-corruption strategy and proposing mechanisms, plans,

and programmes to implement it, a general anti-corruption policy in cooperation with relevant parties, and plans and programmes to enforce it.

In accordance with the provisions of the Decree-law above, the Kuwait Anti-Corruption Authority sought the consultative services provided by international institutions such as the World Bank in particular for developing regulations and rules of mechanisms and programmes to promote transparency, integrity, and the fight against corruption. Indeed, the World Bank provided its views in this respect including the identification of five lines of work, which started in October 2013 and are expected to end within nine months. These lines include: the Strategy, which will be developed by the Kuwait Anti-Corruption Authority with the help of the World Bank and which includes the development of a comprehensive plan for combating and preventing corruption.

Therefore, the development of the national anti-corruption strategy is expected to be completed in the next few months. Then, this strategy will start to be implemented domestically in coordination with the relevant national stakeholders.

(2) Adoption of a legislation that makes active bribery of foreign public agents a criminal offence, and consideration of a legislation that would make passive bribery of foreign public agents a criminal offence:

It should be mentioned that Decree-law 24/2012 conferred to the Authority a specific set of missions and competences that grant it a broad national mandate so that it can achieve its goals in the fight against corruption, the promotion of transparency and enshrining the values of integrity. Among these missions and competences is to examine legislations and legal instruments relating to the fight against corruption in a periodic way; to propose amendments to make them compliant with international conventions and agreements ratified or acceded to by Kuwait; to develop measures to prevent corruption, update anti-corruption mechanisms and means in coordination with all government bodies.

The Kuwait Anti-Corruption Authority is still a fledgling body that strives first to complete the building of its organizational, administrative, technical, supervisory, and strategic structures as a preliminary step to undertaking its above mentioned missions and legal attributions in an effective way. As part of these tasks, the Authority is expected to consider, develop, and complete the legislative frameworks that make it possible to implement all the provisions of UNCAC domestically in the State of Kuwait.

(3) Considering the need to adopt legislation that makes illicit enrichment a criminal offence:

Article 22 of Decree-law establishing the Kuwait Anti-Corruption Authority No. 24/2012 considers bribery, influence peddling, and illicit enrichment as corruption offences.

Article 33 of the same Decree-law provides that the Authority has the power in case of suspicion of illicit enrichment to request in a confidential way individuals and government or private parties inside or outside Kuwait to provide the data, clarifications and documents it deems necessary. This same article allows the Authority, upon the request of investigation committees, to request the authorization of the president of the first instance court or his substitute to obtain account information on persons under investigation from banks and financial institutions if

there is sufficient evidence of unjustified increase in his assets that raises suspicions of illicit enrichment.

The Kuwait Anti-Corruption Authority will soon complete the drafting of the Enforcement Decree referred to above, which will include a set of detailed procedural provisions relating to the offence of illicit enrichment to make it a criminal offence as provided for in Article 22 of Decree-Law mentioned above.

(4) Considering appropriate measures to provide protection for persons who reported, in good faith and on reasonable grounds, crimes provided for in UNCAC to relevant authorities.

In order to provide protection for whistleblowers, several provisions of the Decree-law establishing the Kuwait Anti-Corruption Authority determined the framework and dimension of such protection, including: ensuring that the whistleblower is protected from the time he reports facts, with the protection extending to his spouse, family members, and all close associates in case of need (Article 39); the whistleblower also enjoys personal protection: his identity or whereabouts are not disclosed, he is provided with a personal guard or a new residence if need be; he enjoys administrative and professional protection: administrative measures cannot be taken against him; he continues to receive his professional salary, rights, and benefits throughout the period determined by the Authority; he enjoys legal protection: he is protected from criminal, civil, or disciplinary action when the reporting is in line with the conditions set out in Article 37 of this Law (Article 40).

It is worth mentioning that the Kuwait Anti-Corruption Authority will soon complete the drafting of the Enforcement Decree for Decree-law No. 24/2012 establishing it. The Authority sought to include in this Enforcement Decree the procedures for reporting corruption facts in an easy way and to keep the identity of the whistleblower confidential in addition to providing material, moral, administrative means and guarantees and legal protection likely to ensure that the whistleblower can make declarations in a way that ensures his protection and security and those of his family.

SECOND: REVIEW OF NEW LEGISLATION AND FACTS ON GOOD PRACTICES RELEVANT TO CHAPTER 4 (INTERNATIONAL COOPERATION) OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION:

(1) The bilateral conventions recently ratified by Kuwait on the extradition of offenders and mutual legal assistance provide a comprehensive framework for cooperation in keeping with UNCAC:

The Kuwait Anti-Corruption Authority asserts that the State of Kuwait has accepted to consider the provisions on the extradition of offenders enumerated in UNCAC as a basis for cooperation on extradition with other states. In this regard, Article 1 (b) of Law No. 47 of 2006, on the ratification of the said Convention, emphasizes this fact.

Bilaterally, the Authority indicates that the Government of the State of Kuwait is bound with many brotherly and friendly countries by bilateral mutual assistance conventions both in legal and judicial areas on the extradition of offenders whose provisions fulfil the requirements of bilateral cooperation on the extradition of offenders in compliance with the provisions of UNCAC that criminalize corruption acts, and the rules and procedures of the extradition of offenders.

There is no doubt that the State of Kuwait – represented by the Kuwait Anti-Corruption Authority – is keen to make all bilateral agreements signed with other states on the extradition of offenders compliant with the provisions on the extradition of offenders set out in UNCAC.

(2) Kuwait adopts has adopted a flexible and broad approach with regard to dual criminality and the procedures for extraditing wanted persons.

(3) Kuwait offers speedy assistance to countries that request assistance in terms of extradition of wanted persons and mutual legal assistance through international networks such as INTERPOL.

In this regard, emphasizing its efforts to strengthen procedures of extradition of offenders, the State of Kuwait entrusted the Kuwait Anti-Corruption Authority (Article 5 of the Decree-law establishing it) with the tasks of promoting the principle of cooperation and participation with other countries and regional and international organizations in anti-corruption areas, coordination and cooperation with Gulf, Arab, and other countries and organizations related to the fight against corruption, participation in programmes aiming to prevent corruption, representing Kuwait in conferences and international events relating to the fight against corruption, developing data bases and information systems, exchanging information with the parties and organizations dealing with corruption issues within and outside Kuwait in accordance with applicable legislation.

Review of the efforts of the State of Kuwait in confronting the challenges of implementing Chapter 4 of the Convention

(1) Continuing the review of current bilateral conventions on the extradition of wanted persons and bilateral legal assistance agreements concluded by Kuwait before ratifying UNCAC to ensure compliance with the requirements and standards of the Convention.

Article 4 of the Decree-law establishing the Kuwait Anti-Corruption Authority No. 24/2012 provides that the Authority is responsible for implementing the provisions of UNCAC ratified under the terms of Law No. 47 of 2006, while Article 5 of the same Decree-law provides that the Authority is responsible for considering legislation and legal instruments relating to the fight against corruption periodically and proposing amendments to make them compliant with international agreements and conventions on the prevention of corruption ratified or acceded to by Kuwait, adopting measures to prevent corruption, and updating anti-corruption mechanisms in coordination with all government bodies.

(2) Continuing efforts to develop a comprehensive national legal framework on the extradition of offenders and mutual legal assistance conventions and promoting international cooperation frameworks on law enforcement.

The Permanent Committee for reviewing and developing legislation at the Justice Ministry of the State of Kuwait had previously completed the drafting of a bill on legal and judicial cooperation on criminal matters. This bill is being reviewed by the relevant national authorities, which will consider the procedures that its enactment would require.

The said bill includes a set of provisions on the frameworks and mechanisms for dealing with requests of legal and judicial assistance addressed to the relevant

authorities in the State of Kuwait, and requests addressed by the authorities of the State of Kuwait to foreign judicial authorities. This bill also includes provisions on detailed procedures on the extradition of individuals from the State of Kuwait to a foreign country and vice versa, as well as provisions and measures on the return and recovery of assets linked to criminal acts, procedures and situations of controlled delivery, and the procedures for transferring convicts from a foreign country.

In conclusion, the Kuwait Anti-Corruption Authority would like to recall that, as mentioned above, an Enforcement Decree will be issued in the next few weeks on the details, organization, procedures, and provisions of Decree-law No. 24/2012 establishing the Kuwait Anti-Corruption Authority, the provisions on financial disclosure to contribute to the implementation of the provisions of the said Decree-law in procedural terms to strengthen national efforts aiming to combat and prevent corruption and to promote national and international cooperation in this area.

### **Lao PDR<sup>7</sup>**

I, on behalf of the Government Inspection and Anti-Corruption Authority of Lao PDR, feel privileged and pleased to have opportunity to share information on good practice in UNCAC implementation would be beneficial to States Parties.

Lao PDR is located in the South East Asia, has an area of 236,800 km<sup>2</sup>, and population of over 6.5 million people. Lao is a landlocked country and share borders with five countries such as: Socialist Republic of Vietnam, People's Republic of China, the Union of Myanmar, Kingdom of Cambodia and Kingdom of Thailand.

Corruption became and is becoming harmful to the stability and security of each country. It is a problem that countries and international organizations fight strongly together against corruption. Lao P.D.R is in particular experiencing the harm of corruption occurring at different levels and in many areas of activity such as in public management, in investment on infrastructure construction, use of governmental fund-properties, collecting tax and duties to public treasury, abuse function and position by public officers-civil servants, accepting and giving bribes, etc.. Such behaviours could not fully ensure the quality of various investment projects. It becomes an obstacle for development missions of the country, affects negatively the public governance and administration, as well as obstructs and slows the growth of our Lao People's Democracy Republic regime. Due to danger of the said corruption, the government of Lao P.D.R puts importance and is very attentive to obstruct and fight against corruption in both domestic and International Forum.

In the International Forum, Lao P.D.R has been actively implementing the United Nations Convention against Corruption (UNCAC) such as: the Lao PDR signed the Convention on 10 December 2003, the National Assembly of Lao PDR ratified on 25 September 2009. To further implement the convention, in 2010 the Government Inspection and Anti-Corruption Authority has participates in the "Review Mechanism" and issued an agreement to establish the Experts and Secretariats of its own. Under the agreement, the Government Inspection and Anti-Corruption Authority of Lao PDR have worked closely with relevant internal government

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<sup>7</sup> Information provided by the Vice President of the Government Inspection and Anti-Corruption Authority of Lao PDR.

bodies and UNODC Secretariat in Vienna, Austria. In 2012, Lao PDR in cooperation with Experts of Montenegro have undertaken review on assessment report of Croatia on the implementation of the UNCAC, which had seen positive results. Afterwards, The Lao PDR has been signed as a State under review, created country review report on the implementation of the UNCAC and reviewed by Mongolia and Luxembourg. Having implemented, we were able to submit the country review report to the Mongolia and Luxembourg of Experts by June 2012. Later, the foreign experts have asked the Lao experts team to continue studying and improving its country review report again.

On 29 October, 2012 to 02 November, 2012 Lao PDR invited expert's team from Mongolia and Luxembourg and UNODC Secretariat in Vienna to pay a working visit and monitor the country review report of the implementation of the convention. Duration visiting Lao PDR, they had met with relevant agencies of Laos to find the reality condition of the Law enforcement as well as the coordination between relevant sectors. Then, the foreign and Lao expert's team has work together to create an Executive Summary on country review report of the Lao PDR and therefore can say that we have achieved the creation of country review report. To date, we have disseminated the results of country review report by making know both good point and weak point in the implementation of the UNCAC in order that relevant sector can continue addressing limitations of laws, management mechanisms and measures that not be consistent, restrict to be addressed in the future.

Upon implementation review mechanism, we have gained some crucial outcomes as follow:

1. Lao PDR has seen serious impacts of corruption that occurred in the globe; forms and anti-corruption methods of United Nations, particularly the creation of UNCAC and implement the convention by using "Review Mechanism".
2. The implantation of review mechanism has provided opportunities for States Parties to share best practices in the prevention and countering corruption.
3. By implementing the review mechanism, we have contributed significantly in the upgrading of knowledge and capability of Lao official in regarding with combating corruption.
4. By contributing actively in the implementation review mechanism, the role of the Government Inspection and Anti-Corruption Authority of Lao PDR has been heightened in the International forum.
5. Of all achievement we have gained in recent past was partly because we have received a close assistance from UNODC, in Vienna, regional organizations and agencies working in the Lao PDR.

#### Future Plan

1. Conduct research; identify shortcomings found in the Executive Summary of Laos country review report in the implementation of UNCAC in order that relevant agencies can study and implementation further.
2. Continue the implementation review (inspection) the draft blueprint for country review report on implementation UNCAC of Gabon.

All the above points are the dissemination of outcomes in the creation country review report on implementation UCAC of Lao PDR.

## **Panama**

In Panama a wide range of crimes of corruption have been successfully investigated and sanctioned; in some cases special investigative techniques were used, such as covert operations controlled deliveries of money.

### **DISCUSSION:**

Offences related to the issue of corruption include:

- Crimes of Embezzlement
- Crimes of Corruption
- Crimes of Graft and Extortion
- Crime of Illicit Enrichment
- Crime of Trading in Influence

We can also reference significant cases where techniques related to covert operations have been used, for example:

- Report filed by an agent of the D.I.J. assigned to the customs department at the Port of Balboa. The principal offence concerned offers a private individual (truck driver) made to the official to persuade him to allow him to pass wood from a tree known as “cocobolo.” In this case a covert operation was carried out, after the official and the private individual had agreed to hand over the money at a restaurant near the port, resulting in the apprehension of an individual giving the reporting officer the money agreed upon.
- Report filed by a foreign citizen against officials of the National Environmental Authority (Spanish acronym ANAM), who claimed that the public officials in question had requested money in exchange for filing a legal proceeding that had been initiated based on criminal charges brought against him. In this case, a covert operation was also carried out, involving a controlled delivery of marked money and the public officials implicated in the crime were apprehended in the vicinity of a restaurant near the ANAM’s offices. In this case a conviction has been secured.
- Likewise, a report was filed regarding the alleged commission of a crime of trading in influence, in which the person reporting claimed that certain persons had offered to help her transfer her son, who was incarcerated at the La Joya prison to the El Renacer Correctional Facility, informing her that they had the knowledge and influence to secure the transfer, and that in exchange she was to pay them a certain sum of money. Consequently, a covert monitoring operation was implemented, leading to the apprehension of two persons implicated in the offences reported.

Documented records have been made based on the reporting of these cases, which can be used in preparing for the hearing.

Large amounts of stolen assets and proceeds of crime have been recovered

DISCUSSION:

Notwithstanding, the most relevant case, involving a proceeding which remains under investigation, for the crime of Money Laundering, concerns the Criminal Seizure of B/. 7, 487,486.68 related to an official of the State of Israel who committed crimes against government in his home country and opened accounts in a local bank. It is noteworthy that the money was seized because the official in question used the national banking system to commit this crime, leading to the request for criminal seizure.

Likewise, we can report that in the period from January through December 2013, a cost to government agencies in the amount of: B/.27,968,231.68 due to crimes committed against government was determined, divided by Prosecutor's Offices as follows:

1. First Anticorruption Prosecutor's Office = B/. 2,557,954.76
2. Second Anticorruption Prosecutor's Office = B/. 5,942,660.59
3. Third Anticorruption Prosecutor's Office = B/. 4,172,998.21
4. Fourth Anticorruption Prosecutor's Office = B/. 7,808,526.05
5. Ninth Anticorruption Prosecutor's Office = B/. 16,875.39

The agencies that absorbed financial losses were:

1. PAN
2. IFARHU
3. NATIONAL LOTTERY FOR CHARITY
4. NATIONAL CLEANING AUTHORITY
5. SOCIAL SECURITY FUND
6. MITRADEL
7. CUSTOMS
8. UNIVERSITY OF PANAMA
9. AMPYME
10. FIRST LADY'S OFFICE
11. MUNICIPALITY OF PANAMA
12. MEDUCA
13. MINISTRY OF HEALTH
14. NATIONAL BANK OF PANAMA
15. ADMINISTRATIVE COURT OF PUBLIC CONTRACTS
16. TRAFFIC AND GROUND TRANSPORT AUTHORITY

Criminal liability extends to those who abet the illicit enrichment of a public official

## AMENDMENT:

The article containing the above provision is Article 258 of the Penal Code, which stipulates that a public official who conceals, alters, removes, or destroys evidence or proof of crimes related to money-laundering, or assists in the flight of a person apprehended, detained, or sentenced, or receives money or any other benefit for the purpose of favouring or prejudicing any of the parties in the proceedings will be sanctioned with a penalty of three to six years' imprisonment.

The Financial Analysis Unit has signed a large number of agreements with other foreign jurisdictions, and has shown a favourable disposition to spontaneously provide information to other jurisdictions when necessary

## AMENDMENT:

The FAU has subscribed Memoranda of Understanding with its counterparts in other countries.

A list of memoranda of understanding signed to date can be found at the following website

[www.uaf.gob.pa/Memorando-de-Entendimientos](http://www.uaf.gob.pa/Memorando-de-Entendimientos)

The Attorney General's Office provides training for public officials of different institutions, to promote knowledge of the consequences of crimes of corruption.

## AMENDMENT:

Officials in the following agencies have received training:

- Customs Service
- National Migration Service
- Ministry Office of the Presidency

In the year 2013 training courses were given in crimes against government to newly appointed offices of the Ministry Herrera and Los Santos Provinces.

Today the Public Ministry operates the school of the Public Ministry, an agency created by Resolution No. 37 of April 18, 2013, coordinated by the Attorney General's Office; the creation of this school makes the Public Ministry a centre for integral promotion of its own officials and officials of Public Ministries in the Central American region, which will develop innovative training programmes in accordance with international standards.

We also emphasize that the Attorney General's Office has promoted training for officials of the Anticorruption Prosecutor's Offices listed in the following table:

TRAINING FOR OFFICIALS OF ANTICORRUPTION PROSECUTOR'S OFFICES	
SEMINARS	34
OFFICIALS	48

DESCRIPTION OF SEMINARS:

1. REFRESHER COURSE ON CONTENTIOUS-ADMINISTRATIVE LAW
2. SEMINAR ON CIVIL AFFAIRS
3. INTERNATIONAL DAY AGAINST CORRUPTION, DECEMBER 10, 2012, PANAMA
4. HUMAN RIGHTS AND PROTECTIVE MECHANISMS
5. NATIONAL ATTORNEYS' CONGRESS
6. THEORY OF CRIME IN PANAMA
7. BASIC COURSE IN ORAL LITIGATING TECHNIQUES MAY 7-11, 2012 ABA ROLI, PANAMA
8. JUDICIAL ETHICS JE
9. SPA ULAT ROUND TABLE
10. INITIAL COURSE FOR SA OPERATORS JUNE 13-24, DELIA DE CASTRO
11. ALTERNATIVE DISPUTE RESOLUTION METHODS JUNE 11-12, PANAMA
12. CONVENTIONALITY AND ITS APPLICATION TO DEFENDANTS' VICTIMS' RIGHTS, MARCH 15-16, 2012
13. REPLICA SPA 23-24 CONSORTIUM
14. TRAINING TRAINERS, UP
15. INDUCTION DAY
16. 16TH CONSTITUTIONAL LAW DAY
17. TRAINING TRAINERS, CONSORTIUM
18. 16TH CONSTITUTIONAL LAW DAY
19. VIDEOCONFERENCE "COURT CASES ON TRAFFIC IN PERSONS," AUGUST 9, EJ
20. CYBERCRIME, AUGUST 19, PANAMA
21. LITIGATION IN COURT, ABA ROLI, JANUARY 23-25, 2013, PANAMA
22. DRAFTING REPORTS, EJ
23. WORKSHOP ON MONEY LAUNDERING, MARCH 26-28, 2012 REFCO UNODC
24. EXPERT EVIDENCE, ABA ROLI, JANUARY 23-25, 2013, PANAMA
25. VICTIM PROTECTION, [FEBRUARY] 27 - MARCH 2, 2012 CONSULTANCY
26. TELECONFERENCE, LEGAL ADOPTION FOR PURPOSES OF TRAFFIC IN PERSONS

27. 3RD CONGRESS ON LEGAL MEDICINE AND FORENSIC SCIENCE  
OCTOBER 10-12, 2012, IMELCF PANAMA
28. DOGMATIC ANALYSIS OF GUILT
29. EMERGENCY CALLS ON EXPLOSIVE DEVICES, PN
30. ICITAP COURSE, JULY 2-15, 2012, PANAMA
31. TALK BY DR. ALEJANDRO APONTE, FEBRUARY 2, 2013, LLANOS DE  
CURUND
32. DIPLOMA COURSE ON PREVENTION OF MONEY LAUNDERING AND  
FUNDING OF TERRORISM IN THE BANKING INDUSTRY, JUNE 4-21,  
2012, EJ
33. CYBERCRIME, AUGUST 19, PANAMA
34. TRAINING TRAINERS, CONSORTIUM
35. HUMAN RIGHTS AND PROTECTIVE MECHANISMS

Specialized training is provided for officials of the Prosecutor's Office for Financial Matters, which could be replicated in other institutions.

DISCUSSION:

- *Prosecutor's Office for Financial Matters and UNESCPA reach academic agreement* [www.fiscaliadecuentas.gob.pa/node/183](http://www.fiscaliadecuentas.gob.pa/node/183)

The Prosecutor for Financial Matters, Andres Sue Gonzalez, and the president of the Specialized University for Authorized Public Accountants (Spanish acronym UNESCPA), Yolanda Oglive, held a coordinating meeting to discuss criteria for the potential signing of an academic agreement between the two institutions.

To date, three of the agency's officials have benefited from the scholarship plans offered, which provides for a 40 per cent subsidy to be provided by the Prosecutor's Office for Financial Matters and another 60 per cent by UNESCPA. Under an agreement to be signed between the two institutions, future academic activities will be implemented with the aim of strengthening human resources.

- *Officials of the Prosecutor's Office receive degrees*  
[www.fiscaliadecuentas.gob.pa/node/230](http://www.fiscaliadecuentas.gob.pa/node/230)

As part of the agreement between the Specialized University for Authorized Public Accountants (Spanish acronym UNESCPA) and the Prosecutor's Office for Financial Matters, six officials of that institution received master's and postgraduate degrees.

Amparo Matos, Maricarmen Sanchez, Rosa Pimentel, Maribel Tunon, Virna Paniza, and Oldemar Guerra finished their studies in forensic auditing, internal auditing, and finance, respectively.

Participants in the ceremony held at the ATLAPA Convention Center included Prosecutor for Financial Matters Andres Sue Gonzalez, and it was part of the scholarship programme, focused primarily on strengthening the officials' expertise in their respective fields.

- *Officials of the Prosecutor's Office took part in a virtual diploma course*

Posted at: [www.fiscaliadecuentas.gob.pa/node/150](http://www.fiscaliadecuentas.gob.pa/node/150)

Officials Zemilka Solis, Alma Fontanez, and Andres Ayu Prado, of the Prosecutor's Office for Financial Matters, took part in a Virtual Diploma Course on Drafting and Evaluation of Legal Documents in Public Management, organized by the Prosecutor's Office for Administration and sanctioned by the University of Panama.

Participants in the course, offered from February 12 through May 28, included 63 attorneys from 20 government institutions, including officials from the municipalities of Penonome, Capira, San Miguelito, and Panama.

The Prosecutor's Office for Financial Matters was distinguished with honorary awards and for its institutional proposals, with a noteworthy intervention by Ayu Prado, in the place of highest honour on the programme for the event.

Participants in the ceremony included Prosecutor for Administration, Oscar Ceville; Deputy Prosecutor Dimas Guevara, on behalf of the Federal Attorney General; Janeth Camargo, for the Vice-Presidency for Extended Learning of the University of Panama; the Mayor of Capira, Ivan Sauri; and Mario Mulino, on behalf of the Ministry of Labour and Work Development.

- *Prosecutor's Office for Financial Matters offers training*

Posted: [www.fiscaliadecuentas.gob.pa/node/152](http://www.fiscaliadecuentas.gob.pa/node/152)

As part of the training and development plan implemented by the Institutional Office of Human Resources of the Ministry of Economy and Finance (MEF), a seminar was conducted on Law 67 and the functions of the Prosecutor's Office for Financial Matters.

This training, intended for directors, managers, and administrative personnel of the agency in charge of public finances, was supervised by Yelenis Ortiz, secretary of Investigation of Financial Damages, who explained specific topics related to the norm governing Jurisdiction in Financial Matters.

Ortiz gave attendees explanations of the institution's functions and mechanisms used under the law when investigating cases of possible financial damages, based on the report on compensation issued by the Comptrollership General of the Republic.

Ortiz also responded to questions on matters related to provisional measures, the powers of the Prosecutor's Office, and the difference between criminal and financial investigations.

"In relation to payment agreements, Law 67 stipulates, among its articles, that the process of accountability may conclude with an agreement between the Prosecutor for Financial Matters and the person investigated, on the condition that the full value of the financial damages caused be restored, Ortiz emphasized.

- *Other seminars are listed at:*

[www.fiscaliadecuentas.gob.pa/mejoramiento\\_continuo](http://www.fiscaliadecuentas.gob.pa/mejoramiento_continuo)

The Financial Analysis Unit provides annual training for agencies obliged to report suspicious transactions, to improve the quality of reporting of such transactions

## DISCUSSION:

- *Expert Workshop – Cross-Border Transportation of Cash*  
www.uaf.gob.pa/Noticias

With the participation of 14 member states of the South American Financial Action Group (Spanish acronym GAFISUD), including airport customs agents, officials from Financial Intelligence Units (FIUs), and police officers, among others, the event for Experts in Cross-Border Transportation of Cash was held in Lima, Peru, from November 13 through 15, 2013.

The Attorney General's Office publishes statistics monthly

## DISCUSSION:

The Anticorruption Prosecutor's Offices report monthly to the department of statistics on the listing of cases on file in their offices

The Public Ministry's website has a link to statistics, among which can be found statistics related to the Anticorruption Prosecutor's Offices

www.ministeriopublico.gob.pa/minpub/estadisticas/fiscaliasanticorruption.aspx

The National Authority for Transparency and Access to Information (former National Council on Transparency) publishes statistics.

In the section on transparency, under statistics:

www.antai.gob.pa/Transparencia.html

The National Authority for Transparency and Access to Information has been created

## DISCUSSION:

THE NATIONAL AUTHORITY FOR TRANSPARENCY AND ACCESS TO INFORMATION (SPANISH ACRONYM ANTAI).

The National Authority for Transparency (Spanish acronym ANTAI) was created by Law 33 of April 25, 2013, replacing the National Council on Transparency against Corruption, as a public, decentralized government institution, which will act with full functional, administrative, and legal autonomy and with an independent budget, in performing its functions, without receiving orders from any authority, government body, or person.

MISSION – Promote policies on transparency and access to information in public management, as a component that helps in preventing corruption, with the aim of developing an efficient and effective model of quality management and accountability that encourages citizen involvement.

VISION – Be the national entity that guarantees transparency and access to information in public management, implementing controls to prevent corruption in Panama through observance of the principles of government and good governance.

GENERAL OBJECTIVE – Ensure the observance of the rights consecrated in the Panamanian Constitution in the area of constitutional rights to petition and access to information, and the rights established in international and national conventions, agreements, treaties, and programmes in the area of prevention of corruption and

through the insertion and implementation of new policies on prevention in public management at the government level on its own initiative or in response to national or international proposals.

SPECIFIC OBJECTIVES:

- Coordinate and supervise the application, observance, and implementation of provisions, agreements, and commitments adopted in national and international conventions, treaties, agreements, programmes, and any other national or international [instruments] in the areas under its jurisdiction.
- Act as a guiding body on matters of right to petition and access to public information, protection of personal information, transparency, ethics, and prevention of corruption at the government level.
- Promote transparent, efficient, and effective public management in institutions.
- Coordinate responsible citizen involvement in government management.
- Help to ensure that Public Management is conducted under a framework of legality and integrity with due protection for the rights of citizens.
- Exercise oversight and act as guiding authority on the observance of the Law on Transparency, and all national and international conventions, agreements, commitments, provisions, treaties, programmes, and any other [instruments] on matters of prevention of corruption that fall under its jurisdiction.
- Promulgate and implement policies on prevention of corruption.
- Evaluate, approve, or reject new proposals related to matters of prevention of corruption that fall under its jurisdiction.
- Recommend and demand compliance with valid legal provisions or obligations by all institutions, with which it must maintain harmonious collaboration, to achieve its ends in its sphere of competence.
- Seek to ensure respect for the constitutional and legal order as the foundation of harmonious coexistence.
- Comprehensively address the problem of corruption.
- Recognize transparency as an instrument to expedite citizen access to public information, which must be of high quality, reliable, and sufficiently relevant to satisfy the petitioner's general interests.
- Emphasize that the citizens are the legitimate beneficiaries of government.
- Recognize horizontal accountability as the source of dispersion of power.
- Recognize that inefficiency and corruption in government affect primarily the most vulnerable groups in society.
- Recognize that proximity and good communication between government and citizens or users favour realistic and pertinent government action.
- Recognize that achieving the common good contributes to the consolidation of a national ethical culture.

- Ensure that national development strategies create general benefits for the Nation, in a comprehensive and inclusive manner.
- Support the Inter-Institutional Network for Public Ethics coordinated by the Prosecutor's Office for Administration.

#### POWERS AND ATTRIBUTES OF THE AUTHORITY.

1. Coordinate actions for oversight and enforcement of conventions, treaties, programmes, agreements, and any other international or national agreement against corruption and in favour of transparency by which the Republic of Panama is bound or to which it is party.
2. Lead meetings and evaluations that develop mechanisms for application of international conventions and treaties in the areas of corruption, transparency, open government, access to information, and other initiatives related to prevention of corruption.
3. Conduct studies and investigations to incorporate international standards on right of petition, right of access to public information, transparency, ethics, prevention of corruption, and other preventive measures in the domestic legal system.
4. Propose policies on transparency and actions against corruption to organs of the State.
5. Develop, promote, and implement mechanisms to prevent, detect, and eradicate corrupt practices in the civil service.
6. Oversee the observance of legal provisions of the Law on Transparency, the Code of Ethics, open government, access to information, and other initiatives related to prevention established in conventions, treaties, programmes, agreements, and any other international or national agreement against corruption and in favour of government transparency.
7. Issue statistics, reports, evaluations, and information to the public periodically for all institutions relating to the observance of the Law on Transparency, the Code of Ethics, open government, access to information, and other initiatives related to prevention established in conventions, treaties, programmes, agreements, and any other international or national agreement against corruption and in favour of government transparency.
8. Coordinate the functions of an outreach unit in each state institution for attention, monitoring, and compliance in its sphere of competence.
9. Promote transparency, ethics, citizen involvement, and publication of information and guarantee the right of access to information.
10. Examine, *ex officio*, in response to public or anonymous reporting, administrative actions in the agencies of the Central Government, autonomous or semi-autonomous institutions, municipalities, communal and local governments, and public and mixed companies, to identify the commission of acts or omissions that can be considered acts of corruption, such as public officials without specific assigned functions, price overruns in purchasing and provision of goods or services, duplicity of functions, excess in bureaucratic procedures, and other forms of conduct, without limitation, which affect the proper performance of public service

and cause unnecessary expenses in public finances, with the obligation, should the case arise, to report such acts or omissions to the competent authorities.

11. Coordinate and assist interested parties with requests for access to public information when an institution has not responded on the information sought.
12. Assess fines as applicable under the terms of this law.
13. Issue general orders through resolutions and opinions to establish directives for compliance in areas under its jurisdiction.
14. Establish relations and execute cooperation agreements with all institutions on matters of transparency, ethics, open government, access to information, combating corruption, and any other initiative on prevention of corruption.
15. Propose, through the institutions or public officials mentioned in Article 165 of the Constitution or through established mechanisms, norms, amendments, instructions, and other normative advances in areas under its jurisdiction.
16. Engage, directly or through third parties, in activities for training of public officials in the areas of transparency, ethics, access to information, citizen involvement, combating corruption, and related matters.
17. Ensure proper confidentiality and protection of data and information in the possession of the State which, under the Constitution and the Law on Transparency is classified as confidential information, information with restricted access, and personal data.
18. Evaluate compliance in projects and programmes presented by institutions in areas relating to transparency and prevention of corruption, as well as the provisions, agreements, and commitments adopted in conventions, treaties, agreements, programmes, and any other national and international [instruments] in the areas under its jurisdiction.
19. Execute the acts and contracts necessary to perform its functions.
20. Reinforce teaching of ethical, civic, and moral values through periodic campaigns in partnership with unions, civic clubs, and civil society.
21. Promote in all institutions the development of educational programmes or projects to promote civic spirit, the values and principles of peaceful coexistence, and respect for the public interest.
22. Prevent the harmful effects of corruption and rally public and private support to combat it.
23. Implement a system to motivate the practice of transparency and punish corruption.
24. Attend to claims, complaints, and circumstances that compromise the right of petition, the right of access to public information, transparency, ethics, and combating corruption, and promote actions before the competent institution to remedy conditions that prevent persons from fully exercising their rights.
25. Contribute, advise, and instruct institutions on compliance in matters of access to public information, transparency, and related issues.

26. Advise the Executive Organ on the establishment of public anticorruption policies that guarantee efficient, effective, and transparent public management.
27. Examine the actions of public institutions and advise them and the private sector on administrative practices that may facilitate acts of corruption and the need for public support in combating them.
28. Receive reports, recommendations, observations, and suggestions submitted by citizens or civil society and attend to them and promote them with the entities involved in implementing them.
29. Request that public entities design programmes to combat and control corruption and verify fulfilment of those objectives.
30. Instruct other government entities, when deemed necessary, temporarily assign personnel specialized in the areas of auditing, accounting, engineering, legislation, or any other to conduct the analyses it indicates.
31. Issue resolutions making known the results and decisions it adopts in performing its functions.
32. Exercise oversight and act as guiding authority on observance of the Law on Transparency, and all agreements, conventions, resolutions, commitments, provisions, treaties, programmes, and any other national and international [instruments] in matters of prevention of corruption that fall under its jurisdiction.
33. Request responses from institutions on requests for access to information opportunely.
34. Recommend that the heads of institutions recognize the merits of public officials who distinguish themselves for their dedication to service and efficiency in performing their functions.
35. Execute the other powers and attributes indicated in this law.

## **Phillipines<sup>8</sup>**

### Incentives and Rewards System under Republic Act 6713, otherwise known as the “Code of Conduct and Ethical Standards for Public Officials and Employees”

The Civil Service Commission (CSC), as the central human resource institution is mandated by the Philippine Constitution “to adopt measures to promote morale, efficiency, integrity, responsiveness and courtesy in the civil service” as well as “to strengthen the merit and rewards system.

To support its mandate, the CSC administers a yearly, nationwide Search for Outstanding Public Officials and Employees under its Honour Awards Program (HAP) which recognizes government officials and employees who have displayed consistent outstanding work performance and ethical behaviour;

There are three (3) award categories given under the HAP: the Presidential Lingkod Bayan Award, the Outstanding Public Officials and Employees or the Dangal ng Bayan Award, and the Civil Service Commission Pagasa Award.

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<sup>8</sup> Contribution provided by the Office of the Ombudsman.

Among the three (3) categories, the Outstanding Public Officials and Employees or the Dangal ng Bayan Award recognizes government officials and employees for their exemplary conduct and behaviour. This award is conferred to an individual for performance of extraordinary act or public service and consistent demonstration of exemplary ethical behaviour on the basis of his/her observance of the eight norms of behaviour provided under Republic Act No. 6713, otherwise known as the “*Code of Conduct and Ethical Standards for Public Officials and Employees*”:

1. Commitment to Public Interest
2. Professionalism
3. Justness and Sincerity
4. Political Neutrality
5. Responsiveness to the Public
6. Nationalism and Patriotism
7. Commitment to Democracy
8. Simple Living.

Section 6, paragraph 3 of Republic Act No. 6713 provides that incentives and rewards for the Outstanding Public Officials and Employees or the Dangal ng Bayan awardees may take the form of bonuses, citations, directorships in government-owned and controlled corporations, local and foreign scholarship grants, paid vacations, and the like. They shall likewise be automatically promoted to the next higher position suitable to their qualifications with commensurate salary. In case there is no next higher position or it is not vacant, said position shall be included in the budget of the office in the next General Appropriations Act;

As provided under Section 6 paragraph 3 of Republic Act 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, Outstanding Public Officials and Employees or Dangal ng Bayan awardees are entitled to the following rewards and incentives:

1. Trophy
2. Cash Reward of P200,000.00

Additional rewards and incentives include:

1. Automatic promotion to the next higher position with commensurate salary suitable to their qualifications
2. Scholarship grant to the awardee or one qualified beneficiary (bachelor, master or doctoral degree). Qualified beneficiary refers to the legitimate spouse or one legitimate child, in the order stated, if the awardee is married. If the awardee is a Muslim, qualified beneficiary would refer to the first legitimate spouse or their child and in the order stated. If awardee is single, qualified beneficiary refers to one sibling, if any.
3. Free annual executive check-up (lifetime benefit, for living individual awardees)

4. Paid vacation (Non-commutable/non-cumulative 5-day Special Leave Privilege within the year award was granted)
5. Review of qualifications for possible recommendation for Directorship position in GOCCs, if there are available vacancies

During the 2013 Search for Outstanding Public Officials and Employees Awards Rites in Malacañan Palace on October 24, 2013, eleven (11) government employees received the Outstanding Public Officials and Employees or Dangal ng Bayan award for their exemplary conduct and ethical behaviour, as follows:

[omissis]

## **Russia<sup>9</sup>**

### Chapter III “Criminalization and law enforcement”

Successful results and practice types:

Monitoring experts have determined the following good practices:

1. A new legislative approach to the offences of bribery and commercial bribery, when the fine is a multiple of the amount of the bribery or commercial bribery;

Practice: In 2013, the first instance courts of the Russian Federation reviewed 11,272 criminal cases on corruption against 12,346 individuals (9,818 cases in 2012). Thus, the number of the reviewed criminal cases increased by 14.8 per cent if compared to last year.

10,866 people were criminally convicted in 10,009 criminal cases (8,595 criminal convictions in 2012). In percentage terms, courts brought in the verdict of guilty in about 88.8 per cent of all cases reviewed (87.5 per cent in 2012).

Criminal cases of bribery (Articles 290, 291, 291.1 of the Criminal Code of the Russian Federation) accounted for over a half (55 per cent) of all analysed criminal cases. 38.9 per cent of the accused were convicted of active bribing, 14.9 per cent of the accused were convicted of passive bribing, and 1.3 per cent of the accused were convicted of mediation in bribery. 2.6 per cent of the accused were found guilty of commercial bribery (Article 204 of the Criminal Code of the Russian Federation).

The main types of punishment imposed on those convicted of corruption crimes have still been imprisonment and fines.

As a primary punishment, a fine was applied to 53.9 per cent (51.5 per cent) of the convicted; real imprisonment was applied to 11.1 per cent (10.5 per cent) of the convicted, and suspended custodial restraint was applied to 31.2 per cent (6 per cent) of the convicted.

A fine was applied to half of all those convicted of corruption crimes. Primarily, this is because Articles 204, 290, 291 and 291.1 of the Criminal Code of the Russian Federation envisage punishment in the form of a fine that is a multiple of the amount of the bribery or commercial bribery, and the courts execute the articles of

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<sup>9</sup> Information provided by the General Prosecutor’s Office of the Russian Federation.

the Criminal Law on general sentencing principles (in particular, Article 60 of the Criminal Code of the Russian Federation).

For example, on December 20, 2013 the Kurgan City Court convicted Mr. B, First Deputy Governor of Kurgan Region, for committing a crime under Paragraph B, Part 5, Article 290 of the Criminal Code of the Russian Federation. In 2008, Mr. B took a bribe, which was a snowmobile of the estimate cost of 307 thousand Russian Rubles, for promoting a commercial organization to get the right to use the hunting grounds in the territory of the region. The perpetrator was sentenced to a fine of 21,498,900 Russian Rubles, and he was debarred from holding public and municipal offices for 3 years.

Another example: on June 24, 2013 the Central District Court of Chelyabinsk convicted Mr. T under Part 3, Article 30, and Paragraph t, Part 4, Article 291 of the Criminal Code of the Russian Federation, and he was sentenced to a fine equal to the amount of the bribe multiplied by 60 (60 million Russian Rubles), and he was debarred from holding positions related to functioning as a public officer for 3 years. In addition, when passing the sentence, the court confiscated 75,000 Russian Rubles for the benefit of the state in accordance with Part 3, Article 104.1 of the Criminal Code of the Russian Federation.

2. The Working Group on the joint anti-corruption effort of the representatives of the business community and government authorities and the Working Group on cooperation with the civil society on the anti-corruption matters were established based on the decision of the Presidium of the Council of the President of the Russian Federation for Combating Corruption in October 2011;

Practice: The Anti-Corruption Charter of the Russian Business and its implementation roadmap that were signed in September 2012 at the Sochi-2012 International Investment Forum have been continuously promoted.

The Anti-Corruption Charter Joint Implementation Committee operates for successful roadmap implementation; the Committee includes the representatives of all business associations of the leading “Four”, who have initiated the Charter: the Russian Union of Industrialists and Entrepreneurs (RSPP), the Chamber of Commerce and Industry of the Russian Federation, the Business Russia All-Russian Public Organization (“Delovaya Rossiya”), the Support of Russia All-Russian Public Organization of Small and Medium Entrepreneurship (“Opora Rossii”). Each business association (the Charter initiators) has adopted its internal documents on the Charter implementation, and each of the associations notifies the Russian Union of Industrialists and Entrepreneurs (RSPP), which maintains the consolidated registry, about new Charter members quarterly; this is done for information and institutional provision of bringing the associations’ members into the Charter. At the same time, each of the four above-mentioned business associations reviews the documents of the sectoral and regional business associations, organizations and companies that have stated their accession to the Charter. The main decision-making criterion of the business associations to include the committed companies into the consolidated registry is the willingness of the companies or their practical implementations of anti-corruption practices. The concept and structure of the Charter’s website has been developed, and a pilot website has been launched (<http://against-corruption.ru>) in accordance with the Charter Implementation High Priority Activity Plan.

In addition, Decision #34 of the Presidium of the Council of the President of the Russian Federation for Combating Corruption dated September 25, 2012 endorsed the Concept of cooperation between federal and local governments, and civil society institutions in the field of combating corruption until 2014.

Federal Law #32-FZ dated April 04, 2005 “On the Public Chamber of the Russian Federation” sets the goals and objectives of the organization, which aims to ensure that socially important public interests of the citizens of the Russian Federation, of public associations, of federal and local governments are coordinated to address the most important issues of economic and social development, national security, protection of the rights and freedoms of the citizens of the Russian Federation, of the constitutional system of the Russian Federation, and of the democratic principles of development of the civil society in the Russian Federation.

The Institute of Legislation and Comparative Law at the Government of the Russian Federation operates as an interdisciplinary centre to coordinate scientific, educational and methodical support to anti-corruption activities according to Decision #22 of the Presidium of the Council of the President of the Russian Federation for Combating Corruption dated February 16, 2011.

At the Presidium of the Council of the President of the Russian Federation for Combating Corruption, the Ministry of Economic Development of the Russian Federation organizes provisions for the activities of the Working Group on the question of joint participation of the representatives of the business community and state bodies in combating corruption.

In addition, the Ministry of Economic Development of the Russian Federation cooperates with the Business Against Corruption Public Procedures Center that has been established at the initiative of the Business Russia NGO (“Delovaya Rossia”); the main task of the Center is to protect businesses from raiding and corruption pressure, and to assist in solving the corporate disputes instigated by the raiding and corruption schemes. Now, the Center monitors 238 claims of the entrepreneurs; in 203 cases out of the 238, the claims refer to the entrepreneurs who are criminally liable under Part 4, Article 159 of the Criminal Code of the Russian Federation (fraud).

3. In August 2012, the General Prosecutor’s Office of the Russian Federation issued its instruction “On improving the liability of the legal persons on whose behalf or for the benefit of which corruption offences have been committed.”

Practice: In 2012, pursuant to Subparagraph A, Paragraph 8 of the National Anti-Corruption Plan for 2012-2013 approved by Decree #297 of the President of the Russian Federation dated March 13, 2012, the General Prosecutor’s Office of the Russian Federation implemented the measures targeted to improve law enforcement of the civil and administrative legislation of the Russian Federation that established liability of the legal persons on whose behalf or for the benefit of which corruption offences had been committed.

In 2013, prosecutorial practice proved that those measures improved law enforcement of the requirements set in Article 14 of Federal Law #273-FZ dated December 25, 2008 “On combating corruption”; the article makes legal entities liable for such corruption offences.

Article 19.28 of the Administrative Offences Code of the Russian Federation sets legal consequences for unlawful remunerations made on behalf of a legal entity. Only prosecutors may institute proceedings on such offences. Considerable fiscal sanctions set in Article 19.28 of the Administrative Offences Code of the Russian Federation deter from committing an offence. Therefore, possible negative consequences have a serious preventive potential for the legal entity if a corruption crime is committed on its behalf or for its benefit.

In order to develop common practices for the prosecutors accusing legal entities according to Article 19.28 of the Administrative Offences Code of the Russian Federation, the General Prosecutor's Office of the Russian Federation issued its Instruction #288/86 dated August 20, 2012 "On improving liability of the legal persons on whose behalf or for the benefit of which corruption offences are committed" (hereinafter, "Instruction").

Practically always the grounds for the prosecutor to commence administrative proceedings under Article 19.28 of the Administrative Offences Code of the Russian Federation are the case files of the criminal cases opened under Articles 204, 290, 291, 291.1 of the Criminal Code of the Russian Federation if the crimes have been committed on behalf of such legal entities or for their benefit. In this regard, the Instruction has advised all prosecutors to primarily focus on organization of the efforts targeted to coordinate the activities of the law enforcement agencies to combat crime in the field. This work has resulted in the trend towards the increase in the number of criminal cases brought under Articles 204, 290, 291, 291.1 of the Criminal Code of the Russian Federation based on the facts of the crimes committed on behalf of legal entities or for their benefit.

The most striking application examples of this practice have been posted on the official website of the General Prosecutor's Office of the Russian Federation:

- a. So, the Magistrate Court of Taishet Town (Irkutsk Region) issued an order to institute administrative proceedings against TigraN OOO, Krasnoyarsk-based timber trade commercial organization, under Part 1, Article 19.28 of the Administrative Offences Code of the Russian Federation (unlawful remuneration on behalf of the legal entity).

The grounds to institute administrative proceedings against the company were the illegal activities of its official representative in July 2013 when he proposed an illegal cash remuneration to the assistant transport prosecutor (who was auditing the company's timber receiving and dispatching unit) for stopping the audit, neglecting the found violations, and non-instituting administrative proceedings against the company.

The officer of the Prosecutor's Office reported that to his management immediately. The representative of the commercial company was arrested the next day when he was giving a 20,000 Russian Ruble bribe to the officer of the Prosecutor's Office. Later, the court found the company's representative guilty of the offence under Part 3, Article 291 of the Criminal Code of the Russian Federation (bribing an officer) and sentenced the person to a fine.

Having reviewed the case files of the administrative offence case commenced by the Taishet Transport Prosecutor's Office, the Magistrate Court sentenced TigraN OOO as a legal entity and set the administrative penalty: a 1 million Russian Ruble fine.

- b. In the course of checking, the Krasnoyarsk Transport Prosecutor's Office found out that Mr. T, Director of Siberia Trade Industrial Holding OOO, serving the interests of the company had numerously handed over cash remuneration of at least 1.2 million Russian Rubles to Mr. E, Deputy Chief of the Transportation Service of the Krasnoyarsk Traffic Management Directorate, for providing railway freight cars to the company in a preferred manner from the organization's inventory fleet.

Based on the result of the audit, the transport prosecutor opened 7 administrative offence cases against Siberia Trade Industrial Holding OOO under Part 1, Article 19.28 of the Administrative Offences Code of the Russian Federation (unlawful remuneration on behalf of the legal entity).

Previously, the Soviet District Court of Krasnoyarsk had convicted Mr. T for commercial bribery (Part 1, Article 204 of the Criminal Code of the Russian Federation) and sentenced him to a 3.8 million Russian Ruble fine to be paid to the state. Mr. E was convicted under Part 3, Article 204 of the Criminal Code of the Russian Federation and sentenced to a 3 year suspended imprisonment and a 300 thousand Russian Ruble fine.

The Magistrate Court of the Central District of Krasnoyarsk found the legal entity guilty of committing the specified offences and the entity was fined for 7 million Russian Rubles.

- c. The Prosecutor's Office of the Nizhegorodski District of Nizhny Novgorod City checked whether the legislative requirements on combating corruption were met. It was found that Mr. G, founder of Krona OOO, offered a 1.2 million Russian Ruble bribe to the law enforcement officer to terminate the company's audit in 2012.

The Nizhny Novgorod Regional Court found Mr. G guilty of committing a crime under Article 30, Parts 3 and 4 of Article 291 of the Criminal Code of the Russian Federation (attempted bribery) and fined him for 84 million Russian Rubles in October 2012.

In addition, based on the identified fact, the Prosecutor's Office of the district commenced administrative offence proceedings against Krona OOO under Part 2, Article 19.28 of the Administrative Offences Code of the Russian Federation (unlawful remuneration on behalf of the legal entity) in April 2013.

According to the verdict of the Magistrate Judge of Court Precinct #6 of Nizhegorodski District, the legal entity was found guilty of the offence and fined for 20 million Russian Rubles, and in addition 1 million Russian Rubles were confiscated by the state.

A number of other positive practices are also available to the general public on the official website of the General Prosecutor's Office of the Russian Federation.

#### Chapter IV "International cooperation"

The monitoring experts have concluded that the Russian Federation has established a considerable basis for international cooperation. The following examples can be identified as those of special value to improve the international cooperation mechanisms:

1. Russia participates in regional agreements on various kinds of international cooperation as well as in multilateral treaties on combating corruption, money-laundering and organized crime, since these documents also contain provisions on international cooperation in combating crimes.

Practice: In February 2012, the Russian Federation joined the Convention on combating bribery of foreign public officials in international business transactions of 1997 within the framework of the Organization for Economic Cooperation and Development (OECD); the Convention entered into force in Russia on April 17, 2012.

To ensure the Russian Federation executes its Convention obligations, President of the Russian Federation issued his Decree dated February 13, 2012, which defined the government bodies of the Russian Federation responsible for enforcing the Convention.

The Russian Federation signed the Agreement on the establishment of the Interstate Anti-Corruption Council (hereinafter, "Mezhgossovet") on October 25, 2013; the Agreement had been developed under the auspices of the Commonwealth of Independent States.

According to the Agreement, Mezhgossovet is the body of branch cooperation of the Commonwealth of Independent States (CIS), and its purpose is to ensure organizing and coordinating of corruption combating and to monitor whether the member states implement the Agreement obligations in the field of combating corruption and develop constructive cooperation with international organizations and their agencies.

The main activities of Mezhgossovet include, in particular, development of proposals to improve the legal framework for cooperation in the field of corruption combating and to ensure execution of the anti-corruption documents adopted in the CIS.

2. The General Prosecutor's Office of the Russian Federation develops its bilateral interdepartmental cooperation agreements signed with the competent agencies of foreign countries and implements 13 cooperation programmes for 2011-2012 and 2012-2013 on specific issues, including those relating to combating corruption; some of the programmes have already been implemented.

Practice: A number of international activities on combating corruption, confiscation and reimbursement of the criminal proceeds have been held under the bilateral interdepartmental agreements for 2011-2013 envisaging participation of the representatives of the General Prosecutor's Office of the Russian Federation.

In particular, under the cooperation programmes between the General Prosecutor's Office of the Russian Federation and:

The General State Prosecutor's Office of Montenegro for 2010-2011, a panel discussion was held: "Topical issues related to returning corruption assets and the establishment of the national points of contact" (Podgorica (Montenegro), March 15-16, 2011);

The General Prosecutor's Office of the Republic of Armenia for 2010-2011, a workshop was held: "Cooperation of prosecutors' offices in the field of

identification, seizure, separation and confiscation of the criminal proceeds; studying the practices of the prosecutors' offices on implementation of the United Nations Convention against corruption, and implementation of the GRECO recommendations" (Yerevan (Armenia), December 4-6, 2011);

The Supreme People's Prosecutor's Office of the People's Republic of China for 2010-2012, panel discussions were held: "Coordination activities of the Prosecutor's Office in combating transnational organized crime, illicit trafficking of arms, drugs, psychotropic substances and precursors, terrorism and corruption" (Moscow (Russia), May 19-20, 2011), and "Strengthening of cooperation in collecting evidences, capturing and extraditing of criminals, tracing and returning of capital, and other aspects of transboundary crime investigations" (Jilin (China), October 22-23, 2012);

The Supreme Prosecutor's Office of the Republic of Korea for 2011-2012, a seminar was held: "Activities of the prosecution bodies in combating corruption" (Seoul (Korea), April 16-17, 2012);

The General Prosecutor's Office of the Republic of Cuba for 2012-2013, the workshops were held: "Activities of the prosecution authorities of Russia and Cuba in combating corruption" (Moscow (Russia), May 25, 2012), and "Issues of extradition and legal assistance in criminal cases, including seizure, confiscation and return of the assets derived from corruption" (Havana (Cuba), October 2, 2012);

The General Prosecutor's Office of the Kingdom of Sweden for 2012-2013, a workshop was held: "Issues of extradition (including persons accused of terrorist crimes) and legal assistance in criminal cases, including tracing financial transactions and returning assets and property obtained through crimes from overseas" (Stockholm (Sweden), December 3-4, 2012);

The Ministry of Justice of Finland for 2012-2013, the meeting of the representatives of the General Prosecutor's Office of the Russian Federation and the Ministry of Justice of Finland was organized: "Some aspects of criminal legal assistance: executing requests for confiscation and return of assets, application of video conferencing, the effects of the simplified visa regime on providing legal assistance in criminal cases" (Lappeenranta (Finland), December 11-12, 2012);

The General Prosecutor's Office of the Republic of Armenia for 2012-2013, the meeting of the prosecutors of Russia and Armenia was organized to exchange experiences in combating corruption, to discuss practices, results and efficiency of the practice forms, and to share the practices of the prosecution departments in preventing corruption and other offences (Moscow (Russia), April 11, 2013);

The Prosecutor's Office of the Supreme Court of Greece held a workshop under the 2013-2014 agenda: "Topical issues of cooperation in the field of extradition and legal assistance in criminal matters. Returning the assets obtained by criminal means and illegally trafficked abroad" (Athens (Greece), October 15-18, 2013);

The Prosecutor's Office of the Republic of Croatia held a workshop under the 2013-2014 agenda: "Combating crime activities of the Prosecutors' Offices of the Russian Federation and the Republic of Croatia" (Zagreb (Croatia), October 16-18, 2013).

A scientific and practical workshop was organized to implement the Plan of joint activities between the General Prosecutor's Office of the Russian Federation and the

General Prosecutor's Office of the Republic of Belarus in 2013: "The key focuses of the state anti-corruption policy" (Minsk (Belarus), March 26, 2013).

The following events are planned to be organized in 2014 together with the corresponding competent authorities of a number of countries within the framework of implementation of the cooperation programmes:

Panel discussion: "Topical issues related to returning corruption assets and the establishment of the national points of contact on combating corruption" (Nicosia (Cyprus), April 27-29, CY) — The 2013-2015 programme of cooperation between the General Prosecutor's Office of the Russian Federation and the Legal Service of the Republic of Cyprus;

Workshop: "Sharing experiences in combating corruption crimes, discussing practices, their results and efficiency" (Moscow (Russia), May 19-21, CY) — The 2014-2015 programme of cooperation between the General Prosecutor's Office of the Russian Federation and the Supreme People's Prosecution Office of the People's Republic of China;

Panel discussion: "Combating corruption activities of the prosecutor's office" (Bucharest (Romania), October CY) — The 2014-2015 programme of cooperation between the General Prosecutor's Office of the Russian Federation and the Prosecutor's Office at the Supreme Cassation Court of Romania;

Panel discussion: "Procuracy supervision over criminal procedural and investigative activities on corruption crime cases" (Athens (Greece), December CY) — The 2013-2014 programme of cooperation between the General Prosecutor's Office of the Russian Federation and the Prosecutor's Office of the Supreme Court of Greece.

## **Spain**<sup>10</sup>

### REPORT ON THE GOOD PRACTICES INCLUDED IN THE SUMMARY OF EXAM OF SPAIN IN THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION:

Spain is a party to a number of treaties and bilateral and multinational agreements. The great majority of the international cooperation cases are based on bilateral treaties, and in the absence of a treaty, the principle of reciprocity applies. The ratified international instruments are part of the national legislation and are of direct application.

In extradition matter, all crimes are subject to extradition if they comply with the requirements of double incrimination and if they have a minimum sanction of a year of imprisonment. The extradition is not subject to the existence of a treaty, with exception of the delivery procedures based on the European order of detention and delivery in relation to the Member States of the EU. A concept of simplified extradition applies, which operates with the consent of the extradited and allows for the omission of the trial phase. Spain does not extradite its citizens except when international treaties apply in which the extradition of nationals is provided for, based on the principle of reciprocity. Spain does an extensive use of the legal

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<sup>10</sup> Contribution provided by the Ministry of Justice.

mutual assistance body of the EU -Eurojust - and of the European Judicial Network, as well as of the Ibero-American Legal Assistance Network (IberRed). It is usual that Spanish judges request additional information to avoid the refusal of any requests of extradition or delivery.

When mutual legal assistance is provided, the Spanish and foreign authorities utilize, generally, the dispositions of any bilateral treaty that exists among the parties, and the same applies to the spontaneous exchange of information; the conditions are usually the same as those provided for in the European Convention on Mutual Assistance in Criminal Matters of 1959 and its additional protocols. In the absence of a treaty, mutual legal assistance is provided based on the principle of reciprocity; in which case, the request should be sent through a diplomatic channel.

The transfer of a person to another State with the purposes of identification, testimony or another proceeding, remains subject to their consent, and at any moment they can have a change of mind and be opposed to the transfer, which is carried out at the expense of the enforcing authorities (the police, through their cooperation and international assistance unit).

The central authority appointed in Spain is the Department of Justice (General assistant Directorship of International Legal Cooperation). In case of an emergency, the requests of mutual legal assistance and communications of the case can be sent to Spain through the International Organization of Criminal Police (INTERPOL), provided that the requests are sent also through the official channels to the central authorities. As a guideline, the requests of legal assistance can be presented directly to the central authority, without needing to utilize the diplomatic channel, even though, exceptionally, some bilateral treaties require that the transmission be carried out through the diplomatic channel.

When the formal analysis of the request with regard to the identification of the authority of execution is concluded, it is presented before the responsible judge or respectively before the foreign central authority. All the subsequent communications have to be presented through the central authority. Spain resorts to Eurojust, to the European Judicial Network and to IberRed to accelerate the process in an informal manner; the request should be subsequently formalized through the central authority. Eurojust is requested to coordinate the execution in complex cases with the participation of various Member States of the EU or of countries that have cooperation agreements with the latter. The networks are frequently used to exchange, in an informal way in other languages, information that will be subsequently formalized through a request of mutual legal assistance.

With regard to the remission of criminal actions, Spain has subscribed a number of treaties, and among them the European Convention on the Transfer of Proceedings in Criminal Matters of 1972. Nevertheless, not all the European States have ratified this Convention, so that Spain has included in an additional way the transfer of penal procedures in its bilateral agreements of mutual legal assistance, especially with non-European countries.

In matter of corruption, Spain considers specifically the United Nations Convention against Corruption as the base for international cooperation with regard to the crimes collected in the latter, and has ratified, besides, a number of agreements and bilateral and international covenants.

The Spanish authorities, in enforcing the law, cooperate internationally with their counterparts through Eurojust and informal networks (RJE, CARIN, IberRed). The Commission for Money Laundering Prevention and Monetary Infractions exchanges information with regard to certain types of transactions and consumers with the foreign money-laundering prevention authorities. There is also the possibility to establish and to utilize joint investigation teams within the EU. These teams are comprised of officials of two or more Member States of the European Union. The negotiation of the agreement for the creation of a joint investigation team corresponds to the responsible investigating agency. Spain has concluded bilateral agreements on joint investigation teams with Morocco, for example, and the legal prosecution rules vary depending on if the joint investigation teams act inside or outside of the Spanish territory.

In the environment of international cooperation, special investigation techniques based on the principle of reciprocity are used.

## **Switzerland<sup>11</sup>**

### Article 20 Illicit Enrichment:

Swiss law contains provisions allowing, under certain conditions, the reversal of the burden of proof regarding the lawful origin of goods acquired by a criminal organization, which can lead to confiscation (however Switzerland does not criminalize illicit enrichment as such). The Federal law of 1st October 2010 on the Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (Restitution of Illicit Assets Act, RIAA) also recognizes a similar principle. This law allows, without a criminal conviction of the politically exposed person or his associates, the confiscation of assets of illicit origin. Under certain conditions, the illicit origin of assets is assumed.

### Abstract Country review report ad 88-93:

Article 260 third of the Swiss Criminal Code establishes the partial reversal of the burden of proof in the context of assets belonging to a person who has participated in or supported a criminal organization. As per article 72 of the Criminal Code, these assets are presumed, until proven otherwise, as being at the disposal of the organization and are therefore subject to confiscation. The prosecuting authority must still prove that the defendant's prior conduct is punishable (membership in or support for the criminal organization).

The Federal law of 1st October 2010 on the Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (Restitution of Illicit Assets Act, RIAA) also recognizes a similar principle. This law allows, without a criminal conviction of the politically exposed person or his associates, the confiscation of assets of illicit origin. Under certain conditions, the illicit origin of assets is assumed.

Switzerland reported that, like other European countries, it does not have the legal concept of illicit enrichment and does not criminalize the sole increase in wealth

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<sup>11</sup> Contribution provided by the Federal Department of Foreign Affairs.

that a public official cannot justify, which would require the reversal of the burden of proof. The cited legal provisions are:

#### Criminal Code

##### Art. 72 - Forfeiture of the assets of a criminal organization

The court shall order the forfeiture of all assets that are subject to the power of disposal of a criminal organization. In the case of the assets of a person who participates in or supports a criminal organization (Art. 260-third), it is presumed that the assets are subject to the power of disposal of the organization until the contrary is proven.

##### Art. 260-third - Criminal organization:

1. Any person who participates in an organization, the structure and personal composition of which is kept secret and which pursues the objective of committing crimes of violence or securing a financial gain by criminal means, or any person who supports such an organization in its criminal activities, shall be liable to a custodial sentence not exceeding five years or to a monetary penalty.
2. The court shall have the discretion to mitigate the penalty imposed (Art. 48a) if the offender makes an effort to foil the criminal activities of the organization.
3. The foregoing penalties also apply to any person who commits the offence outside Switzerland provided the organization carries out or intends to carry out its criminal activities wholly or partly in Switzerland. article 3 paragraph 2 applies.

#### Law of Recovery of Illicit Assets

##### Art. 6 - Presumption of illegality

1. The assets of illicit origin is presumed if the following conditions are met:
  - a. the wealth of the person who has disposal over the assets has been subject to an excessive increase in relation to the exercise of the public service of the politically exposed person;
  - b. the degree of corruption of the State of origin of the politically exposed person in question was known to be high during his time in public office.
2. The presumption is rebutted if the legality of the acquisition of the assets is demonstrated on the balance of probabilities.

Given the non-mandatory nature of this provision and the measures taken by Switzerland,

Switzerland shall be considered in compliance with article 20 of the Convention.

Article 23 Money Laundering: Means of the offence of laundering the proceeds of crime and effectiveness of legislation.

The fact that the laundering of the proceeds of crime is criminalized not only when the alleged offender knew but also when he or she ought to have known that the assets laundered were the proceeds of crime should be noted as good practice. Also,

the large number of prosecutions and convictions reported for the laundering of the proceeds of crime (over 1,000 convictions between 2003 and 2009) demonstrates the effectiveness of Swiss law in that regard. Similarly, the criminalization of self-laundering may also be noted as good practice.

Abstract Country review report ad 103ss:

Switzerland reported that it was one of the first countries to introduce the offence of money-laundering into its criminal law in the sense of an offence of obstructing the administration of justice. The nature of the offence does not include all behaviours formally covered by the Convention, but the concept of obstruction covers the various acts under the Convention.

The relevant legal provision is article 305-second of the Criminal Code.

Art. 305 - Money-laundering:

1. Any person who carries out an act that is aimed at obstructing the identification of the origin, the tracing or the confiscation of assets which he knows or ought to believe originate from a felony, shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.
2. In serious cases, the penalty shall be a custodial sentence not exceeding five years or a monetary penalty. A custodial sentence shall be combined with a monetary penalty not exceeding 500 daily penalty units.

A serious case is constituted, in particular, where the offender:

- a. acts as a member of a criminal organization;
  - b. acts as a member of a group that has been formed for the purpose of the continued conduct of money-laundering activities
  - c. achieves a large turnover or substantial profit through commercial money-laundering.
3. The offender shall also be liable to the foregoing penalties where the main offence was committed abroad, provided such an offence is also liable to prosecution at the place of commission.

Switzerland explained that the concept of obstruction of article 305-second of the Criminal Code covers all acts listed in section 23 subsection 1 paragraph a and paragraph b, subparagraph i, that is the conversion and transfer (Article 23 paragraph a, subparagraph i), concealment and disguise (Article 23, paragraph a, subparagraph ii) and the acquisition, possession or use of property (Article 23, paragraph b, subparagraph i). Switzerland also reported that there have been several court cases related to laundering of proceeds of crime. Article 305-second par. 2 let. a refers to the concept of criminal organization within the meaning of art. 260-third of the Criminal Code, cited above (paragraph 92), where the notion is defined.

With regard to the acts referred to in letter ii of subparagraph b of paragraph 1, Switzerland stated that these are punishable under the general provisions of Swiss law on participation, attempt (Art. 22 and 23 of the Criminal Code), instigation (article 24 of the Criminal Code) and complicity (Article 25 of the Criminal Code), which apply without exception to money-laundering offences. These provisions are listed below in the section devoted to the review of article 27 of the Convention.

Statistical data on the overall number of cases under article 305-second of the Criminal Code was provided: Number of convictions (enforceable judgments) for money-laundering (art. 305 bis of the Criminal Code) per year: 2003 2004 2005 2006 2007 2008 2009 Total 149 142 139 148 159 191 184 1112.

*Source:* Swiss Federal Statistical Office, taken from the website of the Office on 30 January 2012

It is noted that the system that Switzerland uses for data collection produces statistics by article of the law. Therefore, it is not possible to provide statistics by paragraph or element of the law or predicate offence.

Although the Convention against Corruption provides for four offences of laundering of proceeds of crime, the notion of obstruction to the identification of the origin, the tracing or the confiscation of assets adopted in Switzerland and its application by the courts covers satisfactorily all cases. During the country visit, the examples given by Swiss officials convinced the reviewers that the Swiss approach adequately punishes money-laundering. The only reservation concerns the criminalization of possession of property by a holder who knows, when he or she receives them, that it results from an offence, but this seems rather hypothetical, as acts of concealment would occur sooner or later.

It is noted that Swiss law criminalizes the acts covered not only when the perpetrator knows that the assets in question are the proceeds of crimes, but also when he or she ought to have known the same, thus going beyond the requirements of the Convention concerning the mens rea.

It is also noted that Swiss tribunals have rendered a significant number of convictions in cases of laundering proceeds of crime. This important jurisprudence allowed not only to define the concept of obstruction, but also shows the efficiency of the provisions in force. Switzerland is in compliance with this provision.

With regard to the implementation of subparagraphs a and b of paragraph 2, Switzerland stated that in line with article 305-second of the Criminal Code, an act may only be punishable under the provisions on money-laundering if the assets in question are the proceeds of a felony, i.e. an offence punishable by imprisonment for more than 3 years (article 10 par. 2 of the Criminal Code distinguishes felonies and misdemeanours depending on the severity of the sanction for the offence provided for in the law). Switzerland noted that in Swiss law, there are hundreds of offences falling within that definition. Switzerland added that, all acts that the Convention requires States Parties to criminalize, and which form the core of the Convention, are punished as felonies under Swiss law and may therefore constitute a predicate offence to money-laundering. These include article 15 on bribery of national public officials; article 16 on bribery of foreign public officials and officials of public international organizations; article 17 on embezzlement, misappropriation and other diversion of property by a public official; and article 25 on obstruction of justice).

With regard to subparagraph c, Switzerland noted that under article 305-second of the Criminal Code, the offender is also punishable where the predicate offence was committed abroad, if the offence is also punishable in the State where it was committed.

With respect to article 23 par. 2 (d) Switzerland expressed its intention to furnish through the official channel to the Secretary-General of the United Nations a copy of its laws that give effect to article 23 of the Convention.

In addition, Switzerland stated that its domestic system does not contain fundamental principles such as those referred to in paragraph e of subsection 2. Under Swiss law, the perpetrator of the offence may be also convicted for money-laundering.

Swiss law punishes the laundering of proceeds of crime only where the predicate offence is considered a felony under Swiss law, i.e. if it is liable to imprisonment of more than 3 years.

Although the majority of the offences established in accordance with the Convention are felonies, there are some exceptions, in particular some attenuated variants of bribery of national public officials, established by articles 322-fifth and 322-sixth of the Criminal Code, which criminalize the acceptance or granting of an undue advantage in view of acts which are not contrary to the duties of the official concerned. These offences are punishable with imprisonment for up to three years, and thus are not considered “felonies”. Accordingly, the laundering of proceeds of these offences does not seem to be criminalized in Swiss law. In this regard, Switzerland stated that all the acts that the Convention obliges States to establish as a criminal offence (and which constitute the core of the Convention, i.e. articles 15, 16, 17 et 25) are felonies under Swiss law, and may constitute a predicate offence to money-laundering (in particular articles 15 and 16), and that consequently Switzerland is fully in line with the spirit of the relevant provisions of the Convention that recommend to States to apply paragraph 1 of article 23 to the widest range of predicate offences.

It is observed that the solution adopted in Swiss law to criminalize self-laundering seems appropriate, since money-laundering is a criminal conduct which is often complex and distinct from the predicate offence. The fact that Swiss law criminalizes laundering of proceeds of crime also when the perpetrator ought to have known that the assets in question are the proceeds of crimes, thus going beyond going beyond the requirements of the Convention concerning the mens rea, must be noted as a good practice.

The significant number of prosecutions and convictions in Switzerland in cases of laundering proceeds of crime (over 1000 convictions from 2003 through 2009), demonstrates the efficiency of Swiss legislation on the matter and should be regarded as a success.

The criminalization of self-laundering shall also be noted as a good practice.

Ad article 31 Freezing, seizure and confiscation: Measures to facilitate the confiscation and return of assets.

The confiscation of the assets of an individual without the need for a conviction is recognized in Swiss law. Moreover, the system set up by Switzerland for freezing assets diverted by politically exposed persons has resulted in considerable success as regards the seizure, confiscation and return of the proceeds of crime. The restitution of very large amounts during the last 15 years must be identified both as a success and as a good practice in the implementation of the provisions of article 31, but also in the area of mutual legal assistance in view of asset recovery.

Abstract Country review report ad 182ss:

With regard to the implementation of the provisions of article 31 of the Convention, Switzerland referred to articles 69 to 72 of the Swiss Criminal Code, articles 263ff, 376ff and 173 paragraph 2 of the Code of Criminal Procedure. More specifically, articles 263ff of the Code of Criminal procedure permit, with a view to subsequent confiscation, the seizure of items (article 69 of the Criminal Code) and the seizure of assets that are the result of an offence or which were intended to persuade or reward the offender (article 70 paragraph 1 of the Criminal Code). Moreover, the possibilities for confiscation and seizure are particularly extensive when assets are in the hands of criminal organizations. In this case, the court may, under article 72 of the Criminal Code, order the confiscation of all the assets over which a criminal organization has power of disposal. Assets belonging to a person who has participated in or supported a criminal organization are presumed, until proven otherwise, to be controlled by the organization. As per articles 376ff of the Code of Criminal Procedure, the court may also under certain conditions order confiscation independent of criminal proceedings.

Switzerland also reported that in Swiss law the court may also under certain conditions order confiscation independent of criminal proceedings, and referred to article 376 of the Code of Criminal Procedure, which provides that “independent confiscation proceedings are introduced when the confiscation of objects or assets of a particular person has to be decided independently of criminal proceedings”. Moreover, article 377 of the Code of Criminal Procedure provides that “the objects or assets that are likely to be confiscated in independent proceedings are sequestered”. The legal basis for confiscation, where no specific person is punishable, lies in articles 69 and 70 of the Criminal Code. Such confiscation can also take place pursuant to articles 376 ff of the Criminal Procedure Code.

Moreover, Switzerland provided the following information on the amount confiscated of proceeds of crime derived from offences established in accordance with the Convention: Between 2008 and June 2011, the amounts of SF 108,261,312 and USD 32,000,000 were confiscated in connection with international corruption offences, in particular money-laundering arising from a predicate corruption offence, whereas SF 50,000 were confiscated in connection with domestic corruption. In addition, Switzerland confiscated SF 18,800,000 in 2007 and 2008 in the context of the “Oil for Food” affair.

Switzerland noted that it was very active in the restitution of the illicit assets of politically exposed persons (PEPs). Switzerland stressed that if, despite all caution, illicit assets diverted by politically exposed persons to the prejudice of their State arrive in Switzerland, these must be identified and returned to their home country. This restitution mechanism is an important pillar of Swiss policy to combat funds of criminal origin. Switzerland reported that it had returned some SF 1.7 billion over the last 15 years, which is more than any other financial centre of comparable size. Some of these cases have generated enormous media interest because of the reputation of the persons concerned and the significant amounts involved, which was in the millions. Examples include:

- the Montesinos case, Peru, 2002
- the Marcos case, Philippines, 2003

- the Abacha case, Nigeria, 2005
- the Angola funds case, 2005
- the Kazakhstan funds case, 2007
- the Salinas case, Mexico, 2008

Switzerland noted that some cases were particularly complex to resolve. Among these are those of Mobutu's assets (Democratic Republic of Congo / DRC) and Duvalier's assets (Haiti). In Mobutu's case, Switzerland reported having worked for 12 years to return frozen money to the DRC. This effort has not been successful partly due to lack of cooperation by the State in question. It is in these circumstances that the Federal Criminal Court decided on 14 July 2009 to not respond to a complaint. Pursuant to the Federal Council decision of 30 April 2009, the measure taken to freeze the assets was discontinued.

In the second case, the funds of the former dictator Jean-Claude Duvalier, amounting to some SF 6 million, were once again frozen by a Federal Council decision of 03 February 2010. This freezing has prevented the return to the funds to the Duvalier family following the decision of 12 January 2010 of the Federal Court that ended mutual assistance in criminal matters between Haiti and Switzerland. Freezing continued until the entry into force of the law on the restitution of assets of illicit origin (RIAA). This law, approved by Parliament during its autumn session in 2010, came into force on 1 February 2011. Since the coming into force of this law, the Duvalier funds have been automatically blocked on the basis of article 14 RIAA. Confiscation proceedings were opened by the Confederation before the Federal Administrative Court in April 2011, following the Federal Council's decision to mandate the Federal Department of Finance (FDF) to open confiscation proceedings over Duvalier's assets frozen in Switzerland. Once confiscated, the funds can be returned to Haiti in order to improve the lives of the people of the State in question. The RIAA is an illustration of the policy that had led Switzerland for over 20 years to avoid serving as a refuge for the money stolen by PEPs.

The assets returned by Switzerland to a number of states can be taken as both a success and as signs of good practice. Furthermore, art. 260-third of the Swiss Penal Code and the Federal law of 1st October 2010 on the Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means, with their partial reversal of the burden of proof in respect of assets, are deserving of international study.

Ad article 39 Cooperation with private sector: The extent and quality of cooperation and coordination between public authorities and the private sector.

Abstract Country review report ad 252ss: Switzerland stressed that, in recent years, corruption seen as predicate offences for money-laundering - and the dirty money linked to corruption have become important topics of public debate in the country, in the media as in the political arena. In addition to its legal arsenal which seeks both deterrence and effective law enforcement, Switzerland has made considerable efforts, especially in the development of effective central structures and closer cooperation with private organizations, including financial intermediaries. In the financial sector, a system of cooperation, which has its legal basis in the Law Against Money Laundering (LBA), exists between law enforcement and financial intermediaries. Thus article 9 LBA makes it mandatory for the financial intermediary who knows or presumes, on the basis of reasonable suspicion that

assets involved in a transaction or business relationship derive from a money-laundering operation or another crime such as corruption, to immediately inform the Money Laundering Reporting Office (MROS). In addition to the requirement to report his or her suspicions, the intermediary must immediately block the funds entrusted to it pursuant to article 10 LBA. The obligation to report complements the right of financial intermediaries to report to MROS concerning assets of suspicious origin (article 305-third paragraph 2 of the Criminal Code).

When the Money Laundering Reporting Office receives a report of suspicions, it analyses the report and decides whether to refer it to law enforcement authorities in accordance with article 23 paragraph 4 of the LBA. During this analysis, MROS is in close contact with the financial intermediary that made the report. The latter is also formally informed of the decisions taken by the MROS regarding the matter in question. During the country visit, the representatives of the MROS informed the reviewing experts that the rate of reports of suspicions that are eventually transmitted from the MROS to the criminal authorities ranges from 85 per cent to 95 per cent, which demonstrates the quality of the reports submitted to the MROS. It was also noted that the MROS has access to a database of press articles from around the world which it consults, among other sources of information, when analysing the reports of suspicion.

The criminal authority appraised will then take charge of the file it has been consigned and will inform, according to the rules of procedure governing its activity, the financial intermediary of the outcome of the report. Financial intermediaries maintain not only an indirect relationship, but also a direct relationship with law enforcement.

If the offence of corruption was seen as a predicate offence to money-laundering, MROS will then be notified pursuant to article 29a paragraphs 1 and 2 of the LBA which provide for the transmission of any criminal decision made pursuant to articles 260-third paragraph 1, 260-fifth paragraph 1, 305-second and 305-third paragraph 1 of the Criminal Code.

According to article 8 of the LBA, financial intermediaries are required to ensure that their staff receives adequate training to enable them to detect any violation of the LBA in the broadest sense. Thus, in order to raise awareness of financial intermediaries on the issue of corruption, MROS is actively involved in organizing training courses for financial intermediaries, during which the issue of corruption is discussed.

Similarly, MROS draws up annual statistics on the development of the fight against money-laundering, which includes an analysis (typology) of predicate offences, including corruption.

In addition, the frequent media reports in recent years of cases of international corruption have also contributed to a significant extent to private sector awareness of the prohibition on corruption abroad. This aspect was also noted in the MROS annual report of 2010 which stated the importance of the media as a trigger for suspicious activity reports. In 2010, 378 cases of reporting were triggered on the basis of information published by the media, against 219 in 2009, representing an increase of 159 cases.

The applicable legal provisions are the Federal law on combating money-laundering and terrorist financing in the financial sector, the Ordinance of the Federal Financial Market Supervisory Authority on the prevention of money-laundering and terrorist financing and the Swiss Criminal Code.

During the events of the Arab spring (early 2011), the Swiss Federal Council adopted emergency orders on the basis of article 184 paragraph 3 of the Federal Constitution, which provides for the adoption of orders for a limited period of time where this is required to safeguard the interest of the country. To assist banks in implementing these measures, the MROS issued a memorandum explaining its practice in this area. This approach has been welcomed by financial intermediaries. Switzerland has also organized various seminars and conferences in this area. MROS is always open to collaboration with financial intermediaries and other partners of the private sector.

The latter include the following (private) entities:

- Annual Bankers Forum (in Zurich and Geneva - in collaboration with the Swiss Bankers Association)
- Academic studies and conferences on the phenomenon and combating of money-laundering in Switzerland
- Annual Conferences of Swiss self-regulatory organizations
- Conferences organized by the associations of Compliance Officers of banks and other financial intermediaries.

It has been observed that there is close cooperation between financial institutions and the authorities responsible for investigations and prosecutions, including MROS which, although having no coercive powers, processes reports received before transmitting them to the law enforcement authorities. Switzerland is in compliance with this provision.

The extent and the quality of cooperation between public authorities and the private sector shall be noted as a good practice.

Switzerland reported that in the public sector, the Federal Council designated in 2003 the Federal Audit Office (FAO) as the official channel for those wishing to alert the authorities to irregularities. This channel is not limited to persons employed in the federal administration, but extends to any person who becomes aware of irregularities in the activities of the Confederation. Switzerland further stated that encouragement to report is promoted by a legislative amendment of 1 January 2011: section 22a of the Personnel Law (LPers). The introduction of this new provision will also enable a new awareness campaign on a large scale. The law mentioned above, introducing an obligation to report against federal employees, also includes a component for strengthening the protection of persons reporting suspected violations or irregularities. On the one hand, an employer will be obliged to propose to an employee dismissed as a result of whistle-blowing his or her reinstatement to the position he or she held previously, or if this is not possible, to offer him or her another job that can reasonably be required of him or her. On the other hand, according to the new article 22a paragraph 5 of the LPers, no person shall suffer professional disadvantage for having, in good faith, denounced a reported violation or irregularity or for testifying as a witness. In addition, practical initiatives,

including reporting suspicions anonymously, have already been implemented by federal agencies, such as the “whistle-blowing” hotline of the Federal Audit Office and “Armasuisse”, and the online mailbox for employees of the Federal Roads Office (FEDRO), who are already subject to a reporting requirement, the coordination office for whistleblowers, since October 2008, at the Federal Office of Police (Fedpol).

Switzerland added that while most cantons already have a reporting requirement, following a letter dated 20 August 2008 sent to all cantonal governments and inviting them to consider the adoption of measures regarding the obligation to report suspicions of corruption and protection of whistleblowers, to date the federal invitation has led to initiatives in at least five of them.

The same applies to the private sector. The Federal Council put up for consultation on 5 December 2008 a draft revision of the Code of Obligations for “Protection in case of reporting of wrongdoing by the worker.” The draft proposed to regulate the conditions of reporting as part of the provisions governing the employment contract. It also described being given notice owing to lawful reporting as abusive. The Federal Council took note of the results of the consultation on 16 December 2009. It decided to submit the issue of the sanction for improper or unfair dismissal to special scrutiny, particularly to ensure sufficiently effective protection in case of reporting. To this effect, it made a new draft the subject of consultation on 1 October 2010, entitled “Partial revision of the Code of Obligations (penalty for improper or unfair discharge)”. The draft proposes to increase from six to twelve months [salary] the maximum penalty for improper or unfair discharge. The draft is now being discussed at the Parliament. Switzerland reported that, in the public sector, the Audit Office annually receives a number of communications, of which about a dozen are high quality and allow a real improvement in financial supervision, even the opening of a criminal investigation. This figure falls short of the numbers observed in the private sector.

During the country visit, Swiss officials informed the reviewers of specific cases of awareness raising, aiming at drawing the attention of the public to the need of reporting to authorities acts of corruption. Switzerland applies adequately the measures contained in the non-mandatory provision under review.

Article 48 Law enforcement cooperation, Subparagraph 1 (d): Provision of technical assistance in law enforcement.

Switzerland has made experts available for the provision of technical assistance abroad. Switzerland has sent experts to assist developing countries in improving investigations and in better formulating requests for mutual legal assistance.

Abstract Country review report ad 459-461:

The Swiss authorities also informed the reviewers that Switzerland has made experts available for the provision of technical assistance abroad. Switzerland has sent experts to assist developing countries in improving investigations.

Switzerland is in compliance with article 48(1) (e) of the Convention.

The initiative of Switzerland in providing technical assistance to other countries in the improvement of investigations and in the better formulation of requests for mutual legal assistance is an example of good practice.