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## **Implementation Review Group**

### **Fifth session**

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Agenda item 2

### **Review of implementation of the United Nations Convention against Corruption**

## **Executive summary: Nigeria**

### **Note by the Secretariat**

The present conference room paper is made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the fourth year of the first review cycle.



## II. Executive summary

### Nigeria

#### 1. Introduction: Overview of the legal and institutional framework of Nigeria in the context of implementation of the United Nations Convention against Corruption

Nigeria signed the Convention on 9 December 2003 and ratified it on 24 October 2004. Nigeria deposited its instrument of ratification with the Secretary-General of the United Nations on 14 December 2004.

According to Section 12(3) of the Constitution, Acts of the National Assembly, duly passed in the implementation of a treaty, rank equally with other Acts of the National Assembly and form an integral part of Nigeria's domestic law. The Convention is yet to be domesticated in Nigeria.

The implementing legislation includes the Corrupt Practices and Other Related Offences (ICPC) Act 2000, Economic and Financial Crimes Commission (Establishment) (EFCC) Act 2004, Money Laundering (Prohibition) Act 2011 (as amended) (MLPA), Code of Conduct Bureau and Tribunal Act 1991 (CCBTA), Criminal Code and Criminal Procedure Law (CPL) (applicable in Southern Nigeria), Penal Code and Criminal Procedure Code (applicable in Northern Nigeria), Evidence Act 2011, as well as the Extradition Act 1990 and Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act 1998 (MLA Act).

At both the Federal and State levels, there are three distinct arms of government — the Executive, the Legislature and the Judiciary. Legislating on issues related to a treaty is exclusive to the National Assembly, with the qualification that a bill passed by the National Assembly concerning a treaty requires ratification by a majority of State Houses of Assembly of the Federation. The Supreme Court is the highest court of the land and directly below it is the Court of Appeal followed by the Federal and State High Courts. These are followed by Magistrate Courts, the Sharia and Customary Courts.

Nigeria is party to the African Union Convention for Preventing and Combating Corruption and the ECOWAS Protocol against Corruption, as well as the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA).

Dedicated authorities to fight corruption include the ICPC, EFCC, Code of Conduct Bureau (CCB) and police, as well as the Director of Public Prosecution (DPP), the Attorney-General, the Financial Intelligence Unit (NFIU), the courts and other specialized law enforcement agencies.

The adoption of a national strategy against corruption is pending in Nigeria, and the reviewers welcome the adoption of the strategy in furtherance of anti-corruption measures.

## 2. Chapter III: Criminalization and law enforcement

### 2.1. Observations on the implementation of the articles under review

#### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

Nigeria has criminalized active and passive bribery principally in Sections 8 to 10 of the ICPC Act and in the Criminal Code. Section 9, ICPC Act covers active bribery of public officers and any other persons, whilst Sections 8 and 10 cover passive bribery by any persons; third party beneficiaries, including legal persons, are covered (Section 2). Section 53 creates a presumption of guilty mind.

The definition of public officer in the ICPC Act includes persons employed or engaged in any capacity in the public service of the Federation, State or Local Government, public corporations, private companies floated by any government or agency, as well as judicial officers, appointed or elected officials and members of parliament. Judges and magistrates are considered public officers under both the ICPC Act and Criminal Code.

Sections 8 to 10, 17(1) and 404(1) of the Criminal Code could partially be applied to cover bribery involving foreign public officials and other persons, although there are some limitations. One case was cited which resulted in acquittal on the grounds of diplomatic immunity.

Nigeria has not comprehensively criminalized trading in influence but adopted relevant measures in Sections 17, 19, 21 and 22, ICPC Act.

Nigeria has partially criminalized bribery in the private sector through the application of Sections 8 and to some extent 9 and 17, ICPC Act. There have been no prosecutions of private sector bribery.

Statistics on prosecutions and investigations, including forfeited or confiscated assets, are not centrally coordinated. The reviewers note that there is lack of comprehensive statistics and disaggregated data on corruption-related and money-laundering investigations, prosecutions and convictions due to a lack of effective coordination mechanisms. It is therefore difficult to determine how many corruption and money-laundering cases have been investigated and prosecuted.

#### *Money-laundering, concealment (arts. 23 and 24)*

Nigeria has criminalized money-laundering under Sections 17 and 18, EFCC Act, Sections 15 and 16, MLPA Act, and Section 24, ICPC Act in a manner largely consistent with the Convention. Measures are also found in the Advance Fee Fraud and Other Fraud Related Offences Act 2006. Money-laundering applies to both natural and legal persons, and proof of knowledge can be derived from objective factual circumstances. Nigeria has adopted an all-crimes approach to predicate offences that covers money-laundering by any person or body corporate within or outside Nigeria (Section 15, MLPA). There are no obstacles to pursuing self-laundering. Seventeen money-laundering convictions were reported from 2010 to 2013. Money-laundering linked to corruption and involving public officials underlies most of the reported cases. Concealment is addressed in Section 17, MLPA Act and Section 24, ICPC Act.

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

Provisions on embezzlement and misappropriation of public funds are found mainly in the Criminal Code and Penal Code, which cover theft, dishonest misappropriation and criminal breach of trust.

The abuse of functions is addressed mainly in Section 19, ICPC Act and in Sections 104 and 404, Criminal Code, although not all third party interests are covered. 353 cases of abuse of office were investigated by CCB from 2007 to 2013.

Section 44(2), ICPC Act establishes a rebuttable presumption of illicit enrichment under powers to obtain information by the ICPC Chairman. The failure to declare assets is also an offence under CCBTA. Eighty-nine cases of illicit enrichment and breach of code of conduct were investigated by CCB from 2007 to 2013, some of which resulted in prosecutions.

Measures in the Criminal Code (Section 390 and Chapter 40) address theft and frauds by trustees and officers of companies and corporations, which cover the majority of cases of embezzlement in the private sector.

*Obstruction of justice (art. 25)*

Sections 126 and 133, Criminal Code cover wrongful interference with or influencing witnesses in judicial proceedings. Various provisions address the obstruction of official duties by justice or law enforcement officials, notably in the Criminal Code, MLPA, ICPC Act and EFCC Act. There continue to be physical attacks, threats and intimidation of investigators, prosecutors, heads of agencies and judges, as well as reported acts of bribery.

*Liability of legal persons (art. 26)*

Nigeria has established the criminal liability of legal persons (e.g., MLPA, ICPC Act, Criminal Code, Interpretation Act) and relevant cases were cited, including cases where both natural and legal persons were charged. Sentences have included the winding up of corporate entities (Section 19(2) MLPA) and forfeiture of assets. General penalties under the ICPC Act (Section 68), namely a fine up to ten thousand naira or imprisonment up to two years or both, are considered to be low. A legislative amendment to enhance the penalties against legal persons had previously been introduced but failed.

*Participation and attempt (art. 27)*

All relevant forms of participation are covered in the Criminal Code, ICPC Act and EFCC Act, although no case examples were cited.

Criminal attempts are punishable under Section 26, ICPC Act, Section 18(b), MLPA and Section 4, Criminal Code. Preparatory acts in furtherance of offences under the ICPC Act are covered (Section 26(1)(b)).

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

Nigeria has adopted penalties that generally take into account the gravity of offences. Some offences carry the possibility of a fine instead of, or in addition to,

imprisonment (e.g., Section 16, EFCC Act and Section 17, MLPA, both on retention of criminal proceeds). Some obstruction of justice-related measures under the ICPC Act are punishable by one year's imprisonment or less. While fixed-term sentences for offences generally exist under the ICPC Act, some offences under the EFCC Act do not carry minimum sentences. The Nigerian courts have discretion to impose penalties within the prescribed maximum and minimum limits, and there are no sentencing guidelines. Within the legislative framework, the courts lay down sentencing principles by case law, considering the circumstances and gravity of the offence, its prevalence, the offender and his conduct, and the interests of society and victims.

Section 308, Constitution provides near absolute immunity for certain categories of public officials, which effectively prevents their prosecution, arrest and imprisonment while in office, notably the President, Vice-President, state Governors and Deputy Governors. Section 52, ICPC Act provides for the appointment of independent counsel to conduct investigations of corruption in respect of those categories of public officers, although the provision is rarely applied. Public officials covered by immunity can be investigated while in office (*Gani Fawehinmi v. IGP*). However the consent of the Attorney-General is required to institute proceedings for official corruption against judicial officers (Section 98C, Criminal Code). Functional immunities of ICPC, EFCC and police officers are provided for in their respective laws. The legal framework has presented impediments in the case of sitting governors due to the need for impeachment or removal from office.

Sections 174 and 211 (for states' Attorneys General) of the Constitution gives the Attorney-General powers to prosecute, take over or discontinue criminal proceedings and enjoin him to exercise this discretion judiciously, with due regard to the public interest, the interest of justice and the need to prevent abuse of legal process (*State v. Ilori*). He is not subject to control in the exercise of his Constitutional powers, except for the possibility of removal and public opinion. ICPC and EFCC prosecute cases without reference to the Attorney-General under their establishment statutes. Plea bargains are negotiated directly by the agencies subject to varying levels of judicial scrutiny. Section 14(2), EFCC Act allows the EFCC to settle charges without entering a conviction based on the payment of compensation by a defendant, considering factors like restitution of assets, the level of participation in the crime, public interest, magnitude of the offence and cooperation. The Bill on the Administration of Justice would provide greater oversight of plea bargains and out-of-court settlements.

Nigeria has established conditions on release pending trial designed to ensure the presence of defendants (Sections 118-143, CPL; *Bamaiyi v. State*).

Parole is not part of the Nigerian criminal jurisprudence. However, the Constitution establishes a prerogative of mercy by the President (Section 175(1)(a)).

Interdiction, suspension, reassignment and removal of accused public officers is possible in "serious cases", including bribery, corruption, embezzlement and misappropriation, under the Public Service Rules. Relevant cases were cited.

The Constitution provides for the disqualification of convicted persons and those found to have contravened the Code of Conduct from the offices of President, Vice-President, Governors and the National Assembly. Contraventions of CCBTA provide for disqualification from holding any public office for up to ten years.

Nigerian Prison Service Standing Orders provide a general rehabilitation policy (Section 103). The reintegration of prisoners would be more comprehensively addressed in the Administration of Criminal Justice Bill.

Nigeria has adopted limited provisions to protect informants and information. Prosecutorial discretion can be exercised to take into account the cooperation of accused persons, including through plea bargaining, and cooperation could serve as a mitigating factor at sentencing.

*Protection of witnesses and reporting persons (arts. 32 and 33)*

Nigeria has not adopted measures for the protection of witnesses, experts and victims, including their physical protection and related evidentiary rules, or relocation agreements with other States. A Witness Protection Bill, 2012 is pending before the National Assembly that would address these matters.

Nigeria has not established whistle-blower protection measures, although some relevant provisions are contained in the Witness Protection Bill.

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

Nigerian law provides for the confiscation of properties which represent proceeds and instrumentalities of illegal acts and property of corresponding value. A conviction is not required under the ICPC Act (Sections 47 and 48). The law also extends to assets or properties held in foreign countries, acquired through criminal activity. Instrumentalities intended for use in offences are covered under the EFCC Act (Section 25), but not the ICPC Act. Provisions exist for the identification, tracing, freezing and seizure of criminal proceeds and instrumentalities (Sections 36-41, 44, 46 and 49-50, ICPC Act and Sections 6(d), 26 and 34, EFCC Act). Nigeria has adopted measures providing that an offender demonstrate the lawful origin of alleged proceeds.

The ICPC Act gives broad discretion to an ICPC officer to place seized property under the custody of “such person or authority and at such place” as he may determine, whilst the EFCC Act deals with the disposal but not management of seized property. The pending Proceeds of Crime Bill would more comprehensively regulate the administration of assets. While the Nigerian legislation on forfeiture takes into account third party interests, it does not set out modalities relating to freezing having regard to the rights of third persons who may have grievances. Case examples and statistics on confiscated assets were provided.

The ICPC and EFCC obtain bank and financial records by issuing orders pursuant to their enabling laws. There appear to be no legal limitations related to bank secrecy.

*Statute of limitations; criminal record (arts. 29 and 41)*

Criminal and corruption-related cases are not statute barred in Nigeria.

Evidence of previous foreign convictions is admissible (Sections 248 and 249, Evidence Act).

*Jurisdiction (art. 42)*

Jurisdiction is based on the territoriality principle, as regulated in Section 12(2) of the Criminal Code, Sections 66(1) and 61(3), ICPC Act; Section 19, EFCC Act; Sections 15(2) and 20, MLPA, and under general principles of common law.

The ICPC Act applies in relation to citizens of Nigeria and permanent residents, has effect outside and within Nigeria, and when an offence is committed outside Nigeria by any citizen or permanent resident (Section 66).

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

The cancellation or rescission of contracts based on corruption is possible under common law principles.

Nigeria has not established measures to address the compensation of persons or entities who have suffered damages, although related provisions are contained in the Administration of Criminal Justice Bill.

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

Section 3, ICPC Act provides for the independence of the ICPC and security of tenure to the Chairman and its members (e.g., Section 3(10) and (14)). Appointment of the Chairman and members is by the President, upon confirmation by the Senate (Section 3(6)), and removal for misconduct or inability to discharge the functions of office is by the President supported by two-thirds majority of the Senate (Section 3(8)). The ICPC is accountable to the Executive and Legislature in fiscal matters but independent in the discharge of its duties.

Section 153 of the Constitution establishes the CCB, which is vested with law enforcement powers that are exercised through the Code of Conduct Tribunal, a special court established to enforce the CCBTA. The Chairman and commissioners of CCB enjoy security of tenure under Section 157(2) of the Constitution.

The enabling laws of other anti-corruption agencies, i.e. EFCC and Bureau of Public Procurement, do not provide for such independence and security of tenure. There have been proposals to amend the EFCC Act to ensure a more secured tenure for the Chairman.

The legal provisions relating to the NFIU, an administrative FIU in the EFCC, are contained in Section 1 (2) of the EFCC Act and EFCC Board Resolution of 2 June 2004. Independence is not fully established.

The ICPC, EFCC, CCB and other anti-corruption agencies get regular budgetary appropriations from the National Assembly that allow them to provide specialized training for staff.

The police have the traditional role of investigating all forms of crimes, including corruption and money-laundering, under the Police Act. While in practice the investigation of these offences is left to specialized agencies like ICPC and EFCC, no law prevents the police from investigating corruption and economic crimes, and Section 69, ICPC Act specifically makes provision therefor.

The EFCC is the central coordinating agency to investigate money-laundering. However, the Nigerian Police Force and the National Drug Law Enforcement

Agency have powers to investigate money-laundering offences to a lesser extent. Nigeria has established a Special Control Unit Against Money Laundering (SCUML) charged with supervising designated non-financial institutions under MLPA.

The above institutional framework creates a very real risk of overlap and duplication of efforts in the absence of coordinated cooperation mechanisms.

Human and material resources across the enforcement agencies and training opportunities need to be enhanced in particular for large and complex cases.

Nigeria has taken measures to strengthen inter-agency coordination, including the establishment of the Inter-Agency Task Team (IATT) and through Heads of agencies' meetings, inter-agency training and operational synergies.

Public officials and members of the public are required to report corruption-related incidents to ICPC and the police. Limited provisions in relation to the EFCC also exist.

Cooperation with the private sector is mainly through oversight and sensitization by the NFIU, EFCC, SCUML and other regulating agencies. Audits and corruption risk assessments in targeted sectors have been conducted.

## **2.2. Successes and good practices**

- The absence of a prescription period for corruption cases.
- The introduction of a practice direction for judges in February 2014 by the Chief Judge of the High Court of Abuja designed to establish a system of case management that would contribute to eliminating delays in the adjudication of corruption cases.

## **2.3. Challenges in implementation**

- Nigeria is encouraged to take measures to enhance its data collection systems and to coordinate the aggregation and availability of data across institutions.
- Adopt a clear provision addressing the bribery of foreign public officials and officials of public international organizations, and consider establishing the passive version of the offence.
- Consider comprehensively criminalizing trading in influence.
- Consider adopting a provision on abuse of functions in the Penal Code, and ensure coverage of all third-party benefits.
- Consider comprehensively criminalizing bribery between private sector actors.
- Take measures to strengthen the implementation of obstruction of justice provisions.
- Ensure that legal persons are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions.
- Review the scope of persons covered by criminal immunities to ensure an appropriate balance between such immunities and the possibility of effectively investigating and prosecuting such persons.



- Take measures to strengthen procedures for lifting immunities, in appropriate cases (including addressing the requirement for consent of the Attorney-General to prosecute judicial officers under the Criminal Code), to ensure that such persons are held to account for corruption-related offences.
- Given the extensive powers of the Attorney-General over criminal prosecutions, ensure that those powers are exercised in accordance with the spirit of para. 3 of article 30.
- Ensure adequate transparency, predictability and proportionality in entering into plea bargains and out-of-court settlements, especially at the agency level, in accordance with existing guidelines. The Bill on the Administration of Criminal Justice would provide greater oversight of plea bargains.
- Nigeria is encouraged to continue efforts to address the rehabilitation of prisoners.
- Take measures to ensure that instrumentalities destined for use in the commission of offences under the ICPC Act are equally liable to criminal confiscation, tracing, freezing and seizure.
- Strengthen the administration of frozen, seized or confiscated property, including considering the establishment of a centralized office or department to manage such assets. The reviewers encourage the swift adoption of the Proceeds of Crime Bill.
- Clarify modalities relating to freezing (as opposed to forfeiture) of assets, having regard to the rights and interests of third persons.
- Establish, as a matter of priority, necessary measures for the protection of witnesses, experts and victims (as well as law enforcement officials), including their physical protection and related evidentiary rules, in line with art. 32, and consider entering into relocation agreements with other States. The reviewers welcome the swift adoption of the Witness Protection Bill, 2012.
- Consider establishing relevant protections for reporting persons in line with art. 33, including by clarifying protections in the pending legislation, and dedicate necessary resources for implementation.
- Strengthen measures to address consequences of corruption, including through amendment of the enabling laws of key anti-corruption agencies and incorporating anti-corruption clauses in contractual and concession documents.
- Take measures to address the compensation of persons or entities who have suffered damages.
- Strengthen available resources, within existing means, for specialized anti-corruption institutions to carry out their functions effectively in line with art. 36, including human and material resources and the development of specialized skills. The reviewers welcome a comprehensive needs assessment of all anti-corruption agencies.
- Strengthen independence of EFCC, by amending the EFCC Act to ensure a more secured tenure for the Chairman.

- Strengthen independence of the FIU and its operations, including regular collection and availability of statistics regarding STRs or CTRs collected and analysed, and cases referred for further investigation or prosecution.
- More specifically regulate the cooperation and immunity of participating offenders, including the possibility of mitigated punishment, within existing sentencing principles, in line with art. 37.
- Continue to enhance inter-institutional cooperation at all levels and to strengthen coordinated cooperation mechanisms to mitigate overlap and duplication of efforts.
- Nigeria is encouraged to continue its cooperation with the private sector, including awareness-raising and strengthening corruption prevention.
- Consider adopting measures to more clearly address the jurisdictional provisions of art. 42(2) and 42(4).

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

- Nigeria indicated that it would require a range of technical assistance. On criminalization and law enforcement, such assistance predominantly includes summaries of good practices, legal advice, on-site assistance and the development of implementation action plans.
- The reviewers took note of a request by Nigeria to undertake a technical assistance needs assessment of all anti-corruption institutions, building on the review recommendations, and encourage integration with ongoing efforts by national authorities and development partners to identify priority areas for technical cooperation in the implementation of the chapters under review.

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

##### *Extradition (art. 44)*

The Central Authority Unit for international cooperation (both extradition and mutual legal assistance) in Nigeria is the Attorney-General and Minister of Justice.

Extradition is governed by the Extradition Act, which applies to all Commonwealth countries. In all other cases, extradition is subject to the existence of treaties. Nigeria is party to three bilateral extradition treaties (the United Kingdom of Great Britain and Northern Ireland, the United States of America, South Africa) and can apply multilateral treaties like UNCAC and the ECOWAS Convention on Extradition, even if these have not been fully incorporated in the domestic legislation. Nigeria also subscribes to the Commonwealth (London) Scheme on Extradition. Nigeria is currently negotiating treaties with three countries with which no extradition arrangements are in place. Requests on the basis of multilateral treaties, including the Convention, were under consideration at the time of review.

Extradition is subject to dual criminality and is limited to the extent that not all offences established under the Convention have been criminalized.

The minimum imprisonment term of two years for an offence to be extraditable under the Extradition Act covers most but not all UNCAC offences and is subject to the terms of existing treaties. These establish a one-year threshold or take a list approach, and thus exclude certain offences under the Convention.

Nigeria could consider the Convention as the legal basis for extradition, although there has been no experience in its application.

From 1 January 2012 to 17 June 2013, 19 requests for extradition were received (of which 6 related to corruption and money-laundering) and 7 of the requests have been concluded. Only one request has reportedly been refused by Nigeria to date, which did not relate to corruption. It was explained that extradition cases generally take six months to one year to complete.

Political offences are exempted from extradition under the Extradition Act (Section 3) and the treaties with the United States and South Africa. The nationality of the requested person is a permissive ground for refusal unless an extradition agreement provides otherwise (Section 6(c), Extradition Act) and the *aut dedere aut judicare* obligation is not addressed. Nigeria has previously refused the extradition of a national.

The issues of fair treatment or discriminatory purpose have not been invoked to date.

A duty to consult with requesting States before refusing extradition is not specified in the Extradition Act or Nigeria's Guidelines on Extradition (1 October 2003).

*Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)*

Nigeria reported that it has concluded one agreement on the transfer of prisoners (9 January 2014). Two case examples of prisoner transfer were referred to.

There is no law or practice on the transfer of criminal proceedings.

*Mutual legal assistance (art. 46)*

Nigeria does not have comprehensive legislation on international cooperation. The MLA Act provides the legal basis for mutual legal assistance (MLA) with Commonwealth States. For non-Commonwealth States and States outside the ECOWAS region (to which the ECOWAS Protocol on MLA is applicable, which Nigeria is party to), there is a treaty requirement. In addition, Nigeria grants MLA requests on the basis of reciprocity, even in circumstances where there are no treaties, although most requests originate from treaty countries. Nigeria has adopted three bilateral MLA treaties (United Kingdom, United States, South Africa) and subscribes to the Commonwealth (Harare) Scheme on MLA. A Mutual Legal Assistance Bill, 2013 is being developed.

MLA is subject to dual criminality, including non-coercive measures (except under conditions of reciprocity), and is limited to the extent that not all offences established under the Convention have been criminalized. Dual criminality may be dispensed with on grounds of reciprocity, in the discretion of the Attorney-General, although no case examples were provided.

Nigeria has received 30 MLA requests from 1 January to December 2012, out of which 12 related to corruption and money-laundering. No data was available

for 2013. Four of the requests received since 2012 were concluded as at 30 May 2013. Nigeria has reportedly not formally refused any MLA requests to date, and has executed requests on the basis of multilateral treaties.

Nigeria recognizes grounds for refusal in line with the Convention.

According to Nigeria's MLA Guidelines (1 October 2003), direct communication between central authorities is possible without recourse to diplomatic channels. The Central Authority Unit analyses and transmits requests to competent Nigerian authorities for execution. Procedures exist for information to be authenticated and returned.

No specific time frames are specified in the MLA Guidelines, nor is there any specified procedure for periodic follow up.

Nigeria relies on its cooperation through INTERPOL and FIU channels (see below) for administrative assistance. Confidentiality provisions are in place and are adhered to except as provided under domestic law. Bank secrecy is not a ground for refusal and banking records have been provided on request. A limitation on use of information received through MLA is provided for.

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

Nigerian law enforcement authorities cooperate through regional and international networks and in specific matters on a case-by-case basis. The exchange of case-related information is done under general powers to detect and investigate corruption, economic and financial crimes, provided such exchange is not prohibited by law and does not violate the right of the defendant.

Nigeria has signed agreements and MOUs with other law enforcement organizations, including through the NFIU, although this is not a prerequisite for law enforcement cooperation. Cooperation is done by sharing of intelligence through formal and informal channels using the principle of reciprocity in the absence of a treaty. Nigeria can consider UNCAC as the basis for law enforcement cooperation, and a case example was provided.

Nigeria has cooperated with foreign competent authorities in investigations and prosecutions of corruption cases, including through INTERPOL and the Egmont Group. Nigeria is a member of GIABA.

The exchange of personnel is done on the basis of MOUs or direct bilateral arrangements. Joint training programmes are held with INTERPOL and other international organizations.

Nigeria participates in joint investigations and conducts special investigative techniques on a case-by-case basis based on existing agreements and reciprocity. Examples were provided.

### **3.2. Successes and good practices**

- Nigeria has not refused any MLA requests, including in corruption-related matters.

- The establishment and operation of the EFCC training academy as a centre of learning for other agencies in the West Africa region.

### 3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Closely monitor the legal framework for extradition and MLA, in particular the number and application of treaties, to ensure there continues to be an adequate legal basis for extradition and MLA, also with countries outside the Commonwealth. The reviewers welcome the swift adoption of the MLA Bill.
- Review the Extradition Act and existing treaties to ensure all offences under the Convention are extraditable, including by reason their period of imprisonment.
- Provide the notification under paragraph 6 of art. 44.
- Nigeria is encouraged to expedite extradition procedures and simplify evidentiary requirements in line with paragraph 9 of art. 44.
- Address the *aut dedere aut judicare* obligation.
- Provide that consultations be held before extradition is refused, and before MLA is postponed or refused.
- In the interest of greater legal certainty, specify that MLA may be granted in the absence of dual criminality on the grounds of reciprocity.
- Ensure that the element of non-coercive MLA is addressed.
- Notify the United Nations of its central authority and required language for MLA.
- Adopt measures in accordance with paragraph 17 of art. 46 to provide for greater legal certainty.
- Consider adopting measures to allow for the possibility of videoconferencing or hearings in the presence of a foreign judicial authority.
- Monitor the application of confidentiality provisions to ensure that confidentiality continues to be assured as a matter of law and practice.
- Consider addressing the postponement of MLA on the ground of ongoing criminal matters.
- Consider more clearly specifying matters incidental to the temporary transfer of persons (art. 46(27)).
- A more detailed procedural manual could be advisable for the Central Authority, which would establish specific time frames for executing MLA and a specified procedure for periodic follow up.
- Nigeria is encouraged to ensure that its Guidelines on MLA and Extradition are available online.
- Consider establishing measures on the transfer of criminal proceedings.

- Consider clarifying the legal basis for admissibility of evidence derived from special investigative techniques.

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

- Nigeria indicated that it would require technical assistance, including good practice examples and capacity-building, on MLA, the transfer of prisoners and criminal proceedings, joint investigations, special investigative techniques and to enhance law enforcement cooperation.
-