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Review of implementation of the United Nations Convention against Corruption

Executive summary: Antigua and Barbuda

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

Antigua and Barbuda

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

Antigua and Barbuda is a unitary twin island democratic State and a former British colony. Antigua and Barbuda ratified the United Nations Convention against Corruption (“UNCAC”) on 21 June 2006.

Antigua and Barbuda became independent on 1 November 1981. The Constitution is the supreme law of Antigua and Barbuda. There are three branches of government, the Executive, the Legislature and the Judiciary and the functions and operation of these three branches are carried out based on the principle of the separation of powers. Antigua and Barbuda follows a dualistic system with regard to the domestic incorporation of international treaties. Hence, the provisions of the Convention must be transformed into national legislation by Parliament (which has yet to be done).

The executive authority of Antigua and Barbuda is vested in a monarch (Her Majesty Elizabeth II) which is in turn vested in the Governor General of Antigua and Barbuda. The Governor General exercises his functions on the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where other provisions are made under the Constitution or any other law that requires the Governor General to act on his own discretion.

The law of Antigua and Barbuda is founded on British Common Law. The Magistrates’ Court is the lowest court exercising both criminal and civil jurisdictions. The High Court hears both civil and criminal matters. The Eastern Caribbean Court of Appeal hears appeals from both the High Court and the Magistrates Court. The Appeal Court sits at different times in the members of the Organization of Eastern Caribbean States (OECS). The final Court of Appeal is the Privy Council which sits in the United Kingdom.

Entities involved in the fight against corruption include: the Integrity Commission; Public Service Commission; Office of the Director of Public Prosecutions; the Office of the Attorney General; the Office of National Drug and Money Laundering Control Policy (ONDMP), as well as civil society.

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)

Bribery of public officials is addressed in Section 2 of the Prevention of Corruption Act, No. 21 of 2004. While the statute refers to offers or grants made directly or indirectly to a public official, the promise to a public or foreign public official of an undue advantage is not encompassed by this definition.

Bribery of foreign public officials, both active and passive, is addressed in the legislation of Antigua and Barbuda, although the promise to a foreign public official of an undue advantage is not addressed.

Antigua and Barbuda has adopted legislation requiring public officials to act fairly and impartially in the exercise of public duties, namely through the Prevention of Corruption Act 2004, The Tenders Board Act Cap 424A and the Second Schedule of the Code of Conduct of the Integrity In Public Life Act 2004. Trading in influence is referred to in the Tenders Board Act and the Second Schedule of the Code of Conduct of the Integrity In Public Life Act 2004 explicitly prohibits this although there is no reference to active or passive trading in influence. Bribery in the private sector is not currently addressed in the legislation of Antigua and Barbuda.

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

Section 61 of the Proceeds of Crime Act, 1993, as sections 3, 4 and 5 of the Money Laundering Prevention Act 1996 and sections 5a and 5b of the Money Laundering Prevention Act (amendment) 2009 addresses money-laundering in both criminal and preventive aspects, and covers acts relating to receiving, possessing, concealing, transferring, investing and disguising proceeds of crime. Aiding, abetting, counselling, procuring or conspiring to commit the offence of money-laundering is also covered.

According to Section 61(2) of the Proceeds of Crime Act, 1993, a conviction for money-laundering may result in a prison sentence of twenty years or a fine of Eastern Caribbean Dollar 200,000 or both. In the case of a corporate body, it is liable, on conviction, to a fine of Eastern Caribbean Dollar 500,000. In addition, all laundered funds and property may be confiscated and forfeited with due consideration for the rights of bona fide third parties.

Predicate offences include all scheduled offences in Antigua and Barbuda, as well as offences committed outside the country and which would constitute a schedule offence. The legislation that covers predicate offences as contained in the Schedule of the Proceeds of Crime Act, 1993 and as amended by the Proceeds of Crime Act 2014, Sections 2 and 5B of the Money Laundering (Prevention) Act, 1996, as amended, and section 19 of the Prevention of Corruption Act 2004.

Antigua and Barbuda has not yet furnished copies of its money-laundering legislation to the Secretary-General of the United Nations.

Criminal concealment is addressed under Section 37 of the Larceny Act (Cap 241), which makes it an offence for a person to receive stolen property knowing it to be stolen property, whether or not the principal offender has been convicted or is not amenable to justice.

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

Sections 20, 22 and 25 of the Larceny Act, which refers specifically to persons employed in the public service of Her Majesty, make it a crime to steal, embezzle or dispose of any property received or entrusted to the official by virtue of their employment, which includes misappropriation. Section 3 of the Prevention of Corruption Act, 2004 also addresses the issue of embezzlement and abuse of functions by a public official.

Abuse of functions by public officials is addressed under Section 3 of the Prevention of Corruption Act, 2004 and through the Code of Conduct for public officials contained in the Second Schedule of the Integrity in Public Life Act 2004.

Sanctions are set out in section 8 of the Prevention of Corruption Act and Section 21(2) of the Integrity in Public Life Act respectively.

Section 7(1) of the Prevention of Corruption Act makes it an offence where a public official holding office or who has held public office cannot explain a standard of living which is above his normal emoluments. The section is also applicable where a third party holds unexplained property on behalf of an accused public officer.

The embezzlement of property in the private sector is not addressed by the legislation of Antigua and Barbuda.

Obstruction of justice (art. 25)

The Perjury Act CAP 324 makes it a crime for any person to commit an act of perjury. Section 4 of the same act also establishes perjury as a criminal offence where a false affidavit, affirmation or declaration is made outside of Antigua and Barbuda for the purpose of being used in Antigua and Barbuda.

It is an offence to use physical force, threats or intimidation to interfere with the course of justice exercise of official duties by a judge or magistrate. In addition, Section 38(1) and (2) of the Small Charges Act makes it a summary offence to inter alia assault, obstruct or wound a police officer in the exercise of his duties.

Liability of legal persons (art. 26)

Criminal and civil liability of legal persons is covered in Antigua and Barbuda, by the Proceeds of Crime Act 1993, Money Laundering (Prevention) Act 1996 as amended and the Larceny Act Cap 241. While the Larceny Act only refers to “persons” being a citizen above the age of 18, the amended Money Laundering (Prevention) Act, 1996 specifically sets out the liability of legal persons in its section 4.

Participation and attempt (art. 27)

Section 3 of the Prevention of Corruption Act 2004 and Section 5 of the Money Laundering (Prevention) Act 1996, and section 3 of the Proceeds of Crime Act 1993 provides for charging offenders, within the scope of the common law, for being accomplices, aiders and abettors and takes into account the level of participation of each offender and charges accordingly. Aiding, attempting, abetting, counselling, and conspiracy are criminalized conduct under the above acts.

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

Offences committed under the Prevention of Corruption Act 2004 are indictable offences and as such the penalties are higher than those imposed by the Integrity in Public Life Act 2004 for summary offences committed in breach of the Code of Conduct. Indictable offences are tried in the High Court while summary offences are tried in the Magistrate Court, guided by the Magistrate’s Code of Procedure Act CAP 255. A person in public life who breaches the Code of Conduct set out in the Integrity in Public Life Act 2004 commits a summary offence and is liable on conviction to a fine not exceeding \$50,000 or a term of imprisonment not exceeding three years, or both a fine and imprisonment. In addition, the Prevention of

Corruption Act 2004 sets out that there is no immunity from prosecution for any public official. Therefore a person's status as a public official does not prevent an investigation and charging for allegations of corruption.

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

Legislation is in place for the protection of witnesses and reporting persons. Section 18 of the Evidence (Special Provisions) Act 2009 provides for rules relating to the protection of witnesses. An anonymity order can be obtained under this Act. Furthermore, the taking of evidence for another jurisdiction includes testimony being given by means of technology that permits the virtual presence of a witness before a court. No independent legislation has been enacted to protect persons who report acts of corruption in good faith, however, section 47 of the Freedom of Information Act 2004 provides immunity from any sanctions where a person reports such acts as stated therein. There is no witness protection programme, due principally to resource constraints and ability to guarantee confidentiality of witnesses and reporting persons in an island State of about 93,000 inhabitants (2015).

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

The Prevention of Corruption Act 2004, sets forth in its section 8 the legal mechanism that permits the court, upon conviction under sections 3, 4, 5, 6 or 7 of the act, to order the confiscation of items acquired as a result of the offence or used in the commission of the offence. This includes the freezing, seizure, confiscation and forfeiture of criminal property or proceeds and includes all property, equipment or other instrumentalities used in the commission of the offence. Where a person is convicted of a scheduled offence under the Proceeds of Crime Act 1993 as amended, the Director of Public Prosecutions can apply for a forfeiture order against tainted property or a confiscation order in respect of the benefit derived from the commission of the offence. Civil recovery is allowed for under section 12 of the Proceeds of Crime, amended as of 22 May 2014. The Attorney General on application can recover property which is or represents property obtained through unlawful conduct, or used in or is intended to be used in or in connection with unlawful conduct. These proceedings are based on the civil standard of proof.

The Money Laundering (Prevention) Act 1996 as amended, allows for a defendant's property that is subject to a freeze order to be forfeited where the defendant has been convicted of a money-laundering offence. Monies that are forfeited or confiscated or proceeds from the sale of property that is forfeited under the Money Laundering (Prevention) Act 1996 as amended is placed into the Forfeiture Fund, after the deduction of 20 per cent management expenses, which are paid into a Consolidated Fund, under the administration and control of the Minister of Finance.

On bank secrecy, bank records and documents can be obtained by way of a court order pursuant to section 15 of the Money Laundering Prevention Act 1996 as amended and section 42 of the Proceeds of Crime Act 1993 as amended.

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

There is no statute of limitations in Antigua and Barbuda for indictable offences. For summary offences, section 75 of the Magistrate's Code of Procedure CAP 255

provides that a charge is to be laid within 6 months from the time the matter of the charge arose, unless otherwise stated. Charges laid outside of this period are not within the jurisdiction of a magistrate's court.

Jurisdiction (art. 42)

Offences committed within the territorial waters and air space of Antigua and Barbuda are punishable in the Courts of Antigua and Barbuda. Section 19 of the Prevention of Corruption Act 2004 and sections 263 to 266 of the Antigua and Barbuda Merchant Shipping Act 2006 extends jurisdiction to vessels and aircraft bearing the flag of Antigua and Barbuda, including foreign vessels and aircraft if within or over the territory of the country.

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

Under section 12 of the Proceeds of Crime, amended as of 22 May 2014, civil recovery is permitted in circumstances where there have been no criminal proceedings against a person and it can be proved on a balance of probabilities that property has been obtained by unlawful conduct or used in or in connection with or is intended to be used in, or in connection with, unlawful conduct.

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

Antigua and Barbuda has several specialized offices that work in the area of anti-corruption and law enforcement. Provisions for interagency cooperation among agencies are contained under the Proceeds of Crime Act. While no formal barriers to cooperation exist between these, coordination appears to be a challenge, in particular with regard to detection and investigation of corruption.

2.2. Successes and good practices

Overall, the following success in implementing Chapter III of the Convention is highlighted:

- Practical cooperation between financial institutions and the Office of National Drug and Money Laundering Control Policy.

2.3. Challenges in implementation

- Consider adopting measures to improve the collection, statistics and analysis of data on corruption related cases.
- Consider becoming involved in a Regional Justice Protection Programme in order to provide for the protection of witnesses, experts and victims, by facilitating international and regional cooperation in this regard (Article 32 and 33).
- Strengthen measures to criminalize the interference with witnesses who provide evidence or give testimony (art. 25(a)).
- Consider adopting legislation that makes criminal the promise of an undue advantage to a public official and to a foreign public official or officials of public international organization.
- Consider adopting legislation to criminalize bribery in the private sector.

- Consider adopting a specific offence of trading in influence that would cover passive and active trading in influence (art. 18).
- Consider adopting measures and legislation to provide protection against unjustified treatment for persons outside of the public service who report cases of corruption (arts. 32 and 33).
- Consider the development and implementation of measures or mechanisms to strengthen the effectiveness of institutions engaged in the prevention and investigation of corruption, including through appropriate training and resources; strengthening increasing coordination, regular interagency meetings to facilitate information-sharing and cooperation and clarifying relevant mandates and jurisdictions, in accordance with articles 36 and 38 of the Convention.
- Consider adopting measures to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them. Establish evidentiary rules and consider entering into relocation agreements and ensuring the protection of victims in line with article 32(4) and (5).
- Consider adopting measures to further encourage financial institutions and members of the general public to report corruption.
- Consider adopting measures to protect reporting persons and whistle-blowers in cases involving offences under this Convention (arts. 32 and 33).
- Consider awareness-raising on corruption in communities.
- Consider consolidating and tracking cases regarding the implementation of the articles of the Convention in order to effectively track implementation.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Antigua and Barbuda enacted an Extradition Act, 1993, that allows for extradition in the absence of a specific bilateral treaty. The country has entered into treaties with the United States of America and it is also a party to the Organization of American States extradition treaty.

The Extradition Act allows for extradition on the basis of dual criminality for any offence punishable by at least 12 months of imprisonment. All UNCAC offences that have been criminalized satisfied the requirement for extradition. The Convention is not used as a basis for extradition.

Antigua and Barbuda does not extradite an individual whenever it is believed that the request has been made for the purpose of prosecuting, being prejudiced at trial, punishing, or restricted in his personal freedom on the account of his race, religion, nationality, or political opinions. Extradition of sentenced persons abroad is rejected if conviction was obtained in his absence (section 8 of the Extradition Act). Extradition cannot be denied solely on the ground of involving a taxation matter.

A court may issue a provisional warrant of arrest, when the person whose extradition is requested, is located in its territory or on its way to the country (section 10).

Antigua and Barbuda can extradite its own nationals. Extradition will also proceed in cases involving multiple offences as long as at least one offence is covered under the Convention. Persons extradited to Antigua and Barbuda will be afforded the same judicial guarantees as nationals. The Attorney-General may order to take into custody temporarily a person sought for extradition, pending further extradition proceedings.

Antigua and Barbuda has signed a bilateral agreement with the United Kingdom of Great Britain and Northern Ireland concerning transfer of sentenced persons (June 2003).

There is no provision in the law for transfer of criminal proceedings.

Mutual legal assistance (art. 46)

The Mutual Legal Assistance in Criminal Matters Act 1993, provides for assistance within Commonwealth countries and other foreign countries, on the basis of reciprocity and on the basis of dual criminality (section 19(2)(d) and (3)(a)).

The Act also allows for the transfer of prisoners for the purpose of giving evidence (section 24(1) and (2)). Before refusing a request for mutual legal assistance, additional information may be requested (section 19(8)). Written requests should be in English language. Where an oral request is made, it must be followed up by a written request.

Antigua and Barbuda has a bilateral treaty on mutual legal assistance with the United States of America. It also has a treaty with the United Kingdom concerning proceeds and instrument of crimes. The country is also a party to the Inter-American Convention on Mutual Criminal Assistance. In the absence of a specific bilateral treaty, Antigua and Barbuda has cooperated in an instance concerning corruption offences on the basis of reciprocity and having treated such requests as being made on the basis of the Convention.

The Central Authority for mutual legal assistance is the Attorney-General as the Minister responsible for legal affairs. Requests for assistance may be made directly to the Central Authority who in turn will transmit it for execution by the relevant national authority. Requests may also be transmitted through diplomatic channels.

Ordinary costs for mutual legal assistance are borne by the country making the request. In case of a request of an extraordinary nature made by a Commonwealth country, the Central Authority shall consult with the Central Authority of the requesting State as to the terms and conditions under which compliance with the request may continue. In the absence of an agreement, the Central Authority of Antigua and Barbuda may refuse to continue further with the request (the requesting State is expected to cover extraordinary costs (section 19(4)).

In cases concerning money-laundering, requests may be transmitted directly from other financial intelligence units (FIUs). The Office of National Drug and Money Laundering Control Policy (ONDCP) is a member of the Egmont Group. Officers

from the ONDCP may also exchange information with other international law enforcement agencies.

An offence within the scope of an international treaty applicable to Antigua and Barbuda and the requesting State shall not be deemed as a political offence if the international instrument imposes to the parties thereto an obligation to afford assistance related that offence (section 19(9)). Bank secrecy is not an obstacle for cooperation concerning offences of money-laundering.

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

Antigua and Barbuda has provided cooperation, including coordination, with other law enforcement agencies in other States parties, in cases concerning money-laundering mostly arising out of drug-related offences and a few cases of corruption offences. This included exchange of information, identification of persons, tracing and forfeiting the proceeds of crimes and instrumentalities (section 23 of the Money Laundering Prevention Act of 1993, as amended, (MLPA)).

Antigua and Barbuda is also a party to the CARICOM Arrest Warrant Treaty and has cooperated with law enforcement agencies in the region and the United Kingdom, in cases concerning offences other than those described in the Convention.

The Evidence Act of 2009 (special provisions) regulates the use of electronic forms of surveillance (section 60).

3.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- Antigua and Barbuda law enforcement agencies such as the ONDCP and the Royal Police Force have entered into memorandum of understanding with foreign peer agencies to enhance cooperation in investigating offences, including those covered under the Convention.
- The Mutual Legal Assistance Act sets out specifically that assistance concerning offences included in international treaties are exempted from being considered an offence of a political nature.

3.3. Challenges in implementation

- Consider using the Convention for the purpose of extradition and thereby cooperate globally with different States parties concerning corruption offences, or otherwise conclude extradition agreements with other State parties (art. 44(6)).
- Consider adopting measures to regularly use the Convention as a basis of mutual legal assistance and thereby cooperating globally with different States parties concerning corruption offences (art. 46(7)).
- Notify the Secretary-General on the central authority for mutual legal assistance as well as on the language acceptable for receiving requests (art. 46(14)).

- Legislate on transfer of criminal proceedings and consider entering into agreements on transfer of sentenced persons and implement them (arts. 45 and 47).
- Take necessary measures to expand the type of special investigative techniques, as foreseen in the Convention, in order to investigate and prosecute corruption offences. (art. 50).

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

Antigua and Barbuda has identified the need for the following forms of technical assistance, if available, to strengthen full implementation of the Convention:

- Legislative drafting assistance to incorporate provisions of the Convention into the domestic legislation;
- Capacity-building for inter-agency coordination concerning international cooperation on the basis of the Convention.