

25 November 2013

English only

Implementation Review Group

Resumed fourth session

Panama City, 26-27 November 2013

Agenda item 2

Review of implementation of the United Nations Convention against Corruption

Executive summary: Vanuatu

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.



Executive summary

Vanuatu

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

The Convention was acceded to by the Government of the Republic of Vanuatu on 12 July 2011. It entered into force on 11 August 2011, pursuant to the United Nations Convention against Corruption (Ratification) Act of 2010.

Vanuatu is a unitary State with a Parliamentary-type of Government based on the Westminster model. Its sources of law vary as a result of joint British-French administration before independence in 1980.

Key institutions involved in the criminalization of corruption and law enforcement include: the Vanuatu Police Force (VPF); Office of the Public Prosecutor; Office of the Ombudsman; Vanuatu Financial Intelligence Unit (VFIU); and Public Service Commission (PSC). Key for international cooperation are the Attorney-General's Office/State Law, Transnational Crime Unit (TCU) and VFIU.

Criminal matters, including corruption offences, are prosecuted by the Public Prosecutor, pursuant to article 55 of the Constitution of 1983 and the Public Prosecutor Act of 2003. Matters are submitted to the Public Prosecutor by the Ombudsman and Vanuatu Police Force.

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)

Section 73(1) and (2) of the Penal Code of 1988 (PC) criminalizes active and passive bribery.

Section 73(3) of PC defines a bribe and public officer. Bribe means any money, valuable consideration, office or employment, or any benefit, whether direct or indirect. Public officer means any person in the official service of the Republic (whether that service is honorary or not, and whether it is within or outside the Republic), any member or employee of any local authority or public body and includes police and judicial officers. Any member of a public body would be widely interpreted to include Members of Parliament. It was confirmed that judges could also fall under the definition, but no case examples exist.

Bribery is further covered in the Leadership Code of 1998 (LC), but no prosecutions have been made under this Code to date. Bribery concerning votes falls under the Representation of the Peoples Act of 1982.

Bribery of foreign public officials and officials of public international organizations, and bribery in the private sector are not criminalized.

Some aspects of trading in influence are covered (i.e. ss.73 and 130B, PC; ss.22 and 23, LC).

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

Section 11 of the Proceeds of Crime Act of 2012 (POCA) criminalizes money-laundering, whereby if a person knows or ought reasonably to know that given property is the proceeds of crime: acquires, possesses or uses, or engages, directly or indirectly, in an arrangement that involves such property; or converts or transfers such property; or conceals or disguises the true nature, source location, disposition, movement, ownership of or rights with respect to such property.

For participation and attempt, the PC provisions sections 28 to 35 are applicable.

A “serious crime” approach is applied to determining predicate offences, namely, offences against Vanuatu law where the minimum threshold is 12 months imprisonment or where, if the offence were committed overseas, it would have reached the 12-month imprisonment threshold or the proceeds of that offence would have amounted to a minimum of VT 10 million, had the offence occurred in Vanuatu.

All corruption offences are serious offences according to this definition.

A person can be convicted of both money-laundering and the underlying predicate offences, according to section 11(3) and (4) of POCA.

No cases of money-laundering have been prosecuted so far.

Concealment is covered under section 12 of POCA which criminalizes the receiving, possession, concealment, disposition or bringing into Vanuatu of money or other property that may reasonably be suspected of being proceeds of crime.

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

Section 123 of PC provides that a person commits misappropriation of property if he destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption). The causing of loss to another through misappropriation is criminalized (s.125(b), PC). Further provisions that may cover embezzlement, misappropriate or other diversion of property are defined in PC (i.e. ss.126 and 128, PC). However, property is narrowly defined in the Interpretation Act of 1982 and could prevent successful prosecutions.

The provisions highlighted above criminalize those acts for “all persons” and, therefore, include embezzlement and misappropriation in the private sector. Case examples were provided for both cases involving public officers and in the private sector.

Abuse of functions has been considered by Vanuatu in LC (i.e. ss.22, 23). However, the implementation, in practice, seems challenging; for example, numerous conflict of interest and abuse of power matters were investigated by the Ombudsman’s Office, but no prosecutions have been reported since LC was enacted.

Illicit enrichment is not criminalized in Vanuatu. The Republic has a system of asset declarations (annual returns) for leaders, as regulated in Part 4 of LC. A leader who does not file a return or files a return knowing that it is false is guilty of breach. The declarations have not been made public, but the pending Freedom of Information Bill may change this.

Obstruction of justice (art. 25)

Obstruction of justice is covered in section 79 of PC. The authorities provided that this section would also apply during the investigative stage. Interference “in any way” would include cases of promising, offering or giving of an undue advantage to interfere in the giving of testimony. Additional provisions which could be applicable are sections 81 and 82 of PC in regard to deceiving witnesses and offences relating to judicial proceedings.

PC has a specific provision regulating the obstruction of police officers (s.73A) and court officers (s.87). It was not clear if section 87 would also apply to lawyers, prosecutors and judges; nonetheless, section 79(c) of PC is sufficiently broad to encompass all such cases.

Due to a lack of case examples, it was not possible to assess the implementation in practice of the provisions on obstruction of justice.

Liability of legal persons (art. 26)

Criminal liability of legal persons is provided for in section 18 of PC, “provided that the acts and intentions of its principals or responsible servants may be attributed to the corporation”. Moreover, according to the Interpretation Act, a “person” includes any statutory body, company or association or body of persons corporate or unincorporated (Schedule to s.2).

The implementation, in practice, of the provisions has not been tested; however, 3 cases were under investigation and it was confirmed that the criminal liability of the natural person would also be possible.

In most cases, the law does not regulate separate penalties for natural and legal persons, except for money laundering offences in POCA.

Participation and attempt (art. 27)

The attempt to commit an offence is criminalized according to sections 3 and 28 of PC, but the “mere preparation of an offence shall not constitute an offence”.

Sections 28 to 35 of PC criminalize all forms of participation.

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

The penalties for most corruption offences are terms of imprisonment of up to, for example, 7 years for obstruction of justice, 10 years for bribery or money laundering, and 12 years for misappropriation. According to section 51 of PC, it is possible to convert the sentence into the payment of a fine.

Pursuant to article 55 of the Constitution, the Public Prosecutor has the discretion to prosecute, free of direction or control. There have been no prosecutions in relation to money laundering or LC offences.

The Public Prosecutor may grant indemnity from prosecution for any offence to a person on account of an undertaking given by that person to give evidence in a specified proceeding or an understanding or expectation that the person will give such evidence (s.9, Public Prosecutors Act). It was explained that immunity from

prosecution could be granted, but this has not been tested. A guilty plea and cooperation with the police and prosecutors are factors that could be considered as mitigating factors.

Vanuatu does not provide for immunities from criminal prosecution for public officials, except as provided for in articles 27 and 32 of the Constitution. These articles regulate that no Member of Parliament or the National Council of Chiefs is to be arrested or prosecuted during a sitting session of these bodies. However, in exceptional circumstances, exceptions are possible (i.e. where the postponement of arrest or prosecution is not possible).

Sections 60 to 70 of the Criminal Procedure Code of 2003 (CPC) regulate bail, providing wide discretionary powers to the court to determine bail conditions.

Parole is regulated in sections 50 to 54 of the Correctional Services Act of 2006. According to section 51, every inmate serving a sentence of less than 12 months will be released on parole automatically after half of the term has passed. Others, with the exception of prisoners sentenced to life imprisonment, are eligible to be considered by a community parole board for release on parole upon request and expiry of half the sentence. The granting of parole takes into account numerous factors (i.e. primarily the safety of the community, prospects of successful reintegration, conduct of the prisoner, gravity of the offence).

Administrative sanctions, such as dismissal and disqualification are provided for in the Public Service Act (dismissal for a cause: s.29; dismissal for criminal conviction: s. 29A). A person disqualified from holding office as a result of a criminal conviction can only be appointed to the public service at least 4 years after such conviction. PSC is responsible for the decision of cases involving persons working in the public service. This comprises persons employed in the ministries, departments, State-appointed offices, agencies and instruments of the Government of Vanuatu, as designated by the Prime Minister, pursuant to an enactment (s.2, Public Service Act). Political appointees are excluded from the auspices of PSC. For police officers and armed forces, teachers and judicial officers, separate service commissions exist.

There are no provisions in the Public Service Act which foresee the suspension of a public servant or similar measures pending trial. However, a parallel process of disciplinary sanctions would be possible if the conduct was brought to the attention of PSC.

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

Vanuatu does not have specific witness protection measures, except in limited cases for victims of domestic violence. The Police Force reported cases of witness intimidation and that an investigation into obstruction of justice could be opened in such cases; no such matter has been fully investigated.

The Governments Contracts and Tenders Act of 2001 provides that a person performing functions in or for any Ministry or Department must not victimise or discriminate against an employee of the Public Service because that employee has reported breaches or alleged breaches of the tender process (s.13C(2)). No similar provisions exist to protect all public officials in regard to reporting any allegations of corruption.

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

Sections 15 and 20 of POCA regulate forfeiture of tainted property in relation to a serious offence, namely, property intended for use in, or used in or in connection with, the commission of the offence, or proceeds of crime (s.2, POCA).

Proceeds of crime is defined as property derived or realized directly or indirectly from a serious offence, and also covers converted or transformed property and income, capital or other economic gains derived or realized from that property (s.5, POCA). If such property is intermingled with other property, the portion of the whole represented by the original proceeds is taken to be the proceeds of crime.

Section 53 of PC and section 44 of LC regulate the confiscation of proceeds of crime and property.

Sections 37 and 37 of POCA and 56 to 59 of PC enable search and seizure.

VFIU can issue directions to financial institutions which include freezing for up to 5 days (details are regulated in ss.13F and 13A(1)(i), Financial Transactions Reporting Act of 2005 (FTRA)). This power has been exercised in several cases. VFIU has further powers under section 13(A)(i) to direct a financial institution to facilitate any investigation.

The Vanuatu Police Force is responsible for identification, tracing, freezing or seizure (ss.55-59, CPC, ss.37 and 38, POCA) and can apply for restraining (s.55, CPC) or production orders (s.82A).

Sections 48 and 49 of POCA entitle the Attorney General to administer frozen or seized property in accordance with a court order.

The provisions apply without prejudice to the rights of bona fide third parties.

Bank secrecy laws have been superseded by FTRA. Banks are required to make any records available to VFIU/law enforcement agencies, or as requested by a court order (i.e. ss.13A, 13D, 13E, 13F and 14, FTRA).

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

The statute of limitations is established in section 15 of PC. For offences which are punishable by more than 10 years' imprisonment, the limitations period is 20 years; for more than 3 months but not more than 10 years' imprisonment, the statute of limitations is 5 years. For bribery, money laundering and obstruction of justice, the statute of limitations would therefore be 5 years. Vanuatu authorities acknowledged that the timeframes foreseen were relatively short.

Jurisdiction (art. 42)

Jurisdiction extends to cases in which the offence or an element of the offence was committed in the territory of Vanuatu; this extends to territorial waters and airspace, and all civil vessels and aircrafts registered in the Republic (ss.1 and 2(a), PC).

Pursuant to section 2(b) of PC, jurisdiction is established for any offence against Vanuatu's national security or counterfeiting local money.

If an offence has been committed by a citizen outside of Vanuatu, s/he may be prosecuted, if the double-criminality requirement is satisfied (s.4, PC).

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

No concrete forms of remedial action were cited. However, in practice, some measures to address acts of corruption exist.

The court can make an order for the payment of costs, damages or compensation, or for the restitution of any property, notwithstanding that the offender is not sentenced on conviction (s.42, PC). Section 54 of PC specifies that an order on the restitution of property to the person lawfully entitled to possession thereof can be made by the court upon conviction.

Details of the applicability of other statutes or principles which provide for redress under tort or breach of contract remained unclear.

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

The anti-corruption mandate is spread across several agencies. Within the VPF, the Serious Crime, Fraud, Intelligence and Transnational Crime Units deal with corruption offences.

The Ombudsman's Office is responsible for enquiring into any conduct on the part of any Government agency and into any defects in any law or administrative practice. Furthermore, he investigates alleged breaches of LC; 871 investigations have been made.

The Office of the Public Prosecutor employs 7 prosecutors. It receives reports from the VPF and must consider reports transferred to it from the Ombudsman.

VFIU was established in 2004 pursuant to FTRA. It is situated under the Attorney General's Office, but has no reporting line to the Office. It has 4 staff members who collaborate with other law enforcement agencies.

2.2. Successes and good practices

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

- Training of the financial service institutions by VFIU and vice versa, taking into account priorities through the awareness raising of sectors at risk of corruption;
- The establishment and effective functioning of the reintegration programme by Correctional Services;

2.3. Challenges in implementation

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

- Ensure that the definition of public officer covers the scope defined in UNCAC article 2(a) and includes a person who performs a public function for a public enterprise;
- Criminalize active bribery of foreign public officials and officials of public international organizations and consider criminalizing its passive form;

- Consider, for the purposes of legal certainty, amending the legislation to allow for the criminalization of trading in influence in a more clear and explicit manner;
- Consider criminalizing bribery in the private sector;
- Assure that all forms of embezzlement and misappropriation are criminalized and that the definition of property is wide enough;
- Consider criminalizing abuse of function for all public officials (not only leaders as provided for under LC);
- Consider adopting measures to establish illicit enrichment as a criminal offence;
- Prioritize the investigation and prosecution of corruption offences. Monitor and assess the implementation, in practice, of the corruption offences in order to take necessary measures to strengthen their implementation;
- Establish more effective, proportionate and dissuasive fines and sanctions, including for legal persons;
- Consider widening the scope of PSC to cover all public officials and harmonize the manner in which public officials are dealt with across the existing service commissions in relation to the provisions of the Convention;
- Take legislative and other measures, as appropriate, to enable the protection of witnesses and experts from retaliation or intimidation;
- Consider introducing further provisions to protect reporting persons who report in good faith and on reasonable grounds acts of corruption;
- Specify which measures could apply to address consequences of corruption as provided for in UNCAC article 34 and strengthen their application in practice;
- Ensure that sufficient measures exist to provide compensation for damages resulting from acts of corruption, in line with UNCAC article 35;
- Ensure that the statute of limitations is long enough for all corruption offences, and further ensure that the legislation provides for the suspension of the statute of limitations in prescribed cases and particularly when the alleged offender has evaded the administration of justice;
- Improve efficiency in the fight against corruption by strengthening inter-agency coordination and collaboration. Sufficient resources should be made available for capacity-building and the development of processes to address constraints and backlogs in the investigation, prosecution and adjudication of cases.

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

Vanuatu indicated that it would require a range of technical assistance. On criminalization, such assistance predominantly included summaries of good practices/lessons learned, legal advice, model legislation and legislative drafting. In relation to law enforcement, capacity-building programmes for the establishment of

witness and whistle-blower protection programmes and corruption-related trainings would be required for the police (i.e. on how to collect evidence), the Ombudsman's Office and prosecutors dealing with corruption offences. There was also a specific request to develop an action plan for implementation and to assist PSC in developing a complaints management system.

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)

The procedures regulating extradition to and from Vanuatu are contained in the Extradition Act of 2002 (EA). Conduct-based dual criminality is required with a penalty threshold of imprisonment, or other deprivation of liberty, for a maximum period of not less than 12 months (s.3(1)). An extradition treaty for Vanuatu is broadly interpreted to include Commonwealth countries, South Pacific countries and comity countries, declared to be so by regulation or certified by the Attorney General to an extradition country for the purpose of a particular request (s.2(1)(c)). Vanuatu joined the Commonwealth in 1980 and despite not having used it to date, could rely upon the London Scheme for Extradition within the Commonwealth of 2002 (London Scheme). Vanuatu does not have any additional extradition agreements or arrangements, but could, in principle, use the Convention as a legal basis for extradition in respect of any UNCAC-related offences.

The reviewers noted that the dual criminality requirement may be problematic, as some UNCAC-related offences have not been criminalized (e.g. bribery of foreign public officials and bribery in the private sector).

Vanuatu does not make extradition conditional on the existence of a treaty with Commonwealth and South Pacific Countries, but does with other States. Section 4 of the Act contains a comprehensive list of grounds for refusing extradition, including the nature of the crimes for which extradition is requested as political offences; the possibility of prosecution or punishment of a person because of race, religion, nationality, political opinions, sex and status; the existence of an extradition offence only under the military but not ordinary criminal law;; immunity due to the lapse of time, amnesty or any other reason; and double jeopardy. Vanuatu will also not refuse an extradition request on the sole ground that the offence involves fiscal matters (s.3(4)(a), EA).

There are different evidentiary requirements in EA, depending on the country requesting the extradition. These requirements differ if the requesting State is a Commonwealth country (Part 3), South Pacific country (Part 4), treaty country (Part 5) or comity country (Part 6).

Division 2, Part 2 of EA deals with arrests in relation to extradition offences. Vanuatu has a mechanism for dealing with urgent requests by issuing a provisional arrest warrant. Such a request can also be received via the International Criminal Police Organization (ICPO)-INTERPOL.

Section 60 of EA provides for the refusal of extradition based on nationality, but requires the discretion of the Attorney General (ss.1(b)). If the extradition of such a person is denied, he may be prosecuted and punished. Temporary surrender of

Vanuatu nationals for purposes of trial is possible (s.19, EA). Vanuatu may refuse to grant an extradition request for the enforcement of a sentence imposed under the domestic law of the requesting State if the judgment was handed down in absentia (s.4(h), EA).

In Vanuatu, extradition proceedings are conducted in the same manner as criminal proceedings (s.5, EA). The general guarantees of fair treatment are contained in the Constitution (art.37), PC (i.e. rights of the accused at trial: s.14) and CPC (presumption of innocence: s.81).

The legislation does not contain provisions requiring consultations to take place with requesting States before refusing extradition; however, in practice, such consultations have been conducted.

Vanuatu does not have substantial experience in dealing with extradition. To date, only 3 extradition requests have been received and in the last 2 years, none have been sent.

The authority responsible for extradition and mutual legal assistance (MLA) in Vanuatu is the Attorney General.

Vanuatu is de facto part of the Scheme for the Transfer of Convicted Offenders within the Commonwealth. However, it has not used this Scheme and has not entered into any agreements or arrangements on the transfer of sentenced persons. Moreover, in relation to UNCAC article 47, the transfer of criminal proceedings has not been implemented.

Mutual legal assistance (art. 46)

The procedures regulating MLA are regulated in the Mutual Assistance in Criminal Matters Act of 2005 (MACMA) and POCA. In principle, the Scheme relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth also applies, but has not been used in practice.

Vanuatu would be willing to provide the widest assistance possible with regard to UNCAC-related offences upon the request of Member States, but such assistance is subject to the approval of the Attorney General (s.5, MACMA).

The dual criminality requirement applies to Parts 4 (assistance for search and seizure) and 7 (assistance regarding proceeds of crime) of MACMA, but not to other Parts of the Act. The principle of reciprocity was deemed to be applicable to such Parts.

No MLA examples in relation to legal persons exist.

Vanuatu can generally afford the types of assistance listed in UNCAC article 46(3) (ss.1, 2, Parts 3, 4 and 7, MACMA; Parts 4 and 5A, POCA). Part 3 of POCA (forfeiture orders, pecuniary penalty orders and related matters) and Division 2, Part 7 (assistance regarding proceeds of crime) of MACMA provide for conviction-based forfeiture. Provisions do not exist on recovery of assets in accordance with UNCAC Chapter V.

Vanuatu requires an MLA request before information can be transmitted. However, where information in an MLA request is to remain confidential (s.63, MACMA) or to be restricted in its use (s.62, MACMA), this will be respected.

The authorities explained that there are no obstacles to providing legal assistance posed by bank secrecy in relation to money laundering offences (ss.13D and 14, FTRA).

Vanuatu can transfer detained persons for purposes of identification, testimony or other assistance, pursuant to Part 5 of MACMA; immunities are granted only to a person in Vanuatu (s.25).

Section 6 of MACMA sets out how a foreign country is to make an MLA request.

Based on section 55 of MACMA, the examination of a person giving evidence may be conducted through a video link.

Sections 8, 9 and 10 of MACMA contain mandatory (s.8) and optional (depending on the Attorney General: ss.9 and 10) grounds for refusal of an assistance request.

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

Vanuatu has various means to facilitate law enforcement cooperation, including joint investigations. It has an arrangement with the Australian Federal Police (AFP) on direct cooperation. As part of the Pacific Transnational Crime Network (PTCN), AFP through its Law Enforcement Cooperation Program established TCU under the Vanuatu Police Force.

Vanuatu is party to the multilateral agreement that established PTCN in the region, a multilateral arrangement between Pacific Chief of Police, and arrangements established through the Forum Secretariat, Melanesian Spearhead Group, INTERPOL Fiji and INTERPOL New Zealand. The Vanuatu Police Force is also part of the Pacific Transnational Crime Commission.

Personnel of AFP have been located within the Vanuatu Police Force (i.e. TCU), as liaison officers. Vanuatu police officers have also been seconded into AFP, and TCU seconded to Fiji and Samoa through PTCN.

VFIU has signed 7 memoranda of understanding with foreign FIUs. It is also a member of the Pacific FIU Association, Asia Pacific Group on Money Laundering and Egmont Group of FIUs.

Several successful examples of regional cooperation and coordination were cited; notably, with AFP.

There is no legislation in place that provides for the use of special investigative techniques.

3.2. Successes and good practices

Overall, the following success and good practice in implementing Chapter IV of the Convention is highlighted:

- Vanuatu's international law enforcement cooperation, as facilitated primarily through TCU.

3.3. Challenges in implementation

The following challenges and recommendations were highlighted by the reviewers:

- Criminalize all UNCAC-related mandatory offences and consider criminalizing the optional UNCAC offences which are currently not established as crimes in the domestic legislation to satisfy the dual criminality requirements of EA, MACMA and POCA and ensure that extradition and MLA requests (to the extent they involve coercive measures) can be granted with regard to corruption-related offences;
- Consider allowing for an extradition request that includes several separate offences, one of which is extraditable, to be addressed;
- Ensure that any extradition treaties that Vanuatu may conclude with other Member States contain direct references to UNCAC-related offences as being extraditable;
- Consider simplifying and streamlining procedures and evidentiary requirements in order to allow for extradition and MLA requests to be dealt with efficiently and effectively. This may include the adoption of a request management system and internal guidelines;
- Notify the Secretary-General of the United Nations of the central authority designated for extradition and MLA, as well as the acceptable language for executing such requests;
- “Ethnic origin” be specifically included in the legislation (i.e. s.4, EA), so that this may also be used as a ground for potential discrimination in the requesting State and thus, a reason for refusing extradition;
- Consider spontaneously transmitting information to a foreign competent authority, without a prior request, where such information could assist in the investigation and prosecution of UNCAC-related offences;
- Introduce legislative provisions that do not allow Vanuatu to decline rendering MLA on the ground of bank secrecy or fiscal matters (noting that this is currently addressed only for money laundering offences);
- Consider developing internal procedures to guide the manner in which discretion and “any conditions” (i.e. s.7, MACMA) are to be exercised and applied by the Attorney General;
- Reasons should be given to the requesting State for any MLA refusal, and prior to this, consultations taken;
- Require that a person (i.e. witness, expert), detained or not, who is transferred overseas, pursuant to an MLA request, not be prosecuted, detained, punished or subjected to any other restrictions of his/her personal liberty;
- Take legislative measures or adopt guidelines to ensure a more consistent approach to the determination of the costs associated with executing MLA requests;

- Consider the possibility of transferring criminal proceedings where it is in the interests of proper administration of justice. This may require introducing legislative measures;
- Consider amending relevant legislation in order to introduce special investigative techniques and providing corresponding training to law enforcement personnel.

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

The following technical assistance needs were identified:

- Summary of good practices/lessons learned in relation to extradition and special investigative techniques;
 - Legal advice on how to improve extradition, MLA, the transfer of criminal proceedings and special investigative techniques;
 - Legislative drafting in relation to the transfer of sentenced persons and criminal proceedings;
 - Capacity-building programmes for authorities in charge of international cooperation in criminal/investigative matters (in particular, TCU) and for cross-border law enforcement cooperation, as well as for designing and managing the use of special investigative techniques;
 - Development of an international cooperation record-keeping system, as well as extradition and MLA templates for requesting States and internal guidelines for staff on how to deal with international cooperation requests;
 - Technological assistance (e.g. set-up and management of databases/information-sharing systems);
 - Model agreements and arrangements on law enforcement cooperation and joint investigations.
-