

25 May 2018

English only

---

## Implementation Review Group

### Ninth session

Vienna, 4–6 June 2018

Item 2 of the provisional agenda\*

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

## Executive summary

### 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 first year of the second review cycle

---

\* CAC/COSP/IRG/2018/1.



## II. Executive summary

### Sri Lanka

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

Sri Lanka signed the Convention on 15 March 2004 and ratified it on 31 March 2004. The Convention entered into force for Sri Lanka on 14 December 2005.

Sri Lanka's implementation of chapters III and IV of the Convention was reviewed during the third year of the first cycle ([CAC/COSP/IRG/I/3/1/Add.20](#)).

Sri Lanka has a mixed legal system of Roman Dutch civil law and English common law, and applies the dualist system for the implementation of international treaties. The 19th Amendment to the Constitution of May 2015 provides for the establishment of a new Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and empowers it to implement the Convention, thus giving the treaty constitutional recognition.

Sri Lanka is a member of the Asia-Pacific Group on Money Laundering (APG) and the Egmont Group.

The most important institutions in the fight against corruption are CIABOC, the Police's Financial Crimes Investigation Division (FCID), Attorney-General's Department, Financial Intelligence Unit (FIU), Public Service Commission (PSC), National Procurement Commission (NPC), Auditor-General and Special Presidential Task Force for Recovery of Illegally Acquired State Assets (START).

#### 2. Chapter II: Preventive measures

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

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Sri Lanka has not adopted a single anti-corruption strategy, but has taken several significant steps and measures to preventing corruption. The Constitution's Directive Principles of State Policy and Fundamental Duties (Chapter VI) call for integrity and prevention of corruption in government. The 2007 National Anti-Corruption Action Plan includes measurable and time-bound actions; however, it has never been systematically implemented or updated. In 2015, CIABOC adopted an anti-corruption strategy, "Seven Steps to Zero Tolerance" to guide its work in the areas of enforcement and prevention, together with a three-year implementation action plan. The CIABOC strategy calls for the nomination of integrity officers in public institutions, increased transparency of public services and strengthened partnership with civil society. Its implementation remains ongoing, especially in regards to strengthening the CIABOC's prevention functions. The strategy has been incorporated into the 2015–2017 National Action Plan for the Open Government Partnership. At the time of review, efforts were under way to adopt a comprehensive national anti-corruption strategy.

CIABOC, as the main anti-corruption body and designated authority under article 6(3) of the Convention, is headed by three Commissioners and a Director-General (DG). The commissioners are appointed by the President upon recommendation of the Constitutional Council for a non-renewable five-year period, and can be removed only with Parliament's approval. The DG's appointment, tenure and removal are solely in the hands of the President and no rules are in place regarding disciplinary matters; however, the appointment is made in consultation with the commissioners and any Presidential decision can be subject to subsequent judicial review (article 126 of the Constitution). CIABOC's independence is prescribed by the 19th Amendment to the

Constitution and the provisions on appointment, tenure and removal of its commissioners (section 2, CIABOC Act).

Among other work, CIABOC operates a reporting mechanism for citizens and organizes ad hoc training and awareness-raising activities. With a view to adopting a more structured approach to corruption prevention, CIABOC has taken steps towards the establishment of a dedicated prevention unit.

The Law Commission of the Ministry of Justice periodically reviews Sri Lanka's laws, and, to date, has proposed several amendments to the Bribery Act, Prevention of Money Laundering Act (PMLA) and Mutual Assistance in Criminal Matters Act (MACMA). In addition, CIABOC and relevant ministries and institutions have initiated legislative amendments of the Declaration of Assets and Liabilities Act (DALA), CIABOC Act, Commission of Inquires Act, Judicature Act, MACMA and Right to Information Act (RIA).

Sri Lanka participates in several regional and international forums, including the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and the South Asian Association for Regional Cooperation (SAARC). Sri Lanka is a member of the Commonwealth of Nations, INTERPOL, the Open Government Partnership, the Forum of Election Management Bodies of South Asia, and the Asset Recovery Inter-Agency Network-Asia Pacific.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The appointment, transfer, disciplinary control and dismissal of public officials fall within the purview of the PSC (Constitution, arts. 54–55) and can be further delegated to designated public officials or committees (arts. 56 and 57).

Provisions in the Procedural Rules on the Appointment, Promotion and Transfer of Public Officers (PRs) and the Establishments Code (EC) set out rules for recruitment, appointment, remuneration, promotion, termination, resignation, and general duties and rights of public officials. Vacancy announcements are published in the Government Gazette, newspapers and on the Internet. The selection of candidates is based on written exams and interviews. All appointments are made in accordance with “service minutes” and “schemes of recruitment”, developed for each post by relevant government departments and approved by the PSC (chapter IV PRs, chapter II EC). On appointment, public officials take an oath of office (art. 85 PRs). A system of rotation of public officials is in place (chapter XVIII). Complaints regarding the recruitment process, disciplinary action or any other grievances may be lodged with the PSC or the Administrative Appeals Tribunal (arts. 58, 59 Constitution, chapter XX PRs), subject to judicial review under articles 138 and 126 of the Constitution.

The EC prescribes rules relating to public officials' conduct and discipline (chapters 47 and 48). Public officials must refrain from secondary employment, but exceptional permission may be granted (chapter 30). No cooling-off period is in place for public officials moving to the private sector. While the EC calls on public officials to avoid conflicts of interest (chapters 29–30), it does not comprehensively outline obligations and procedures in this regard. Gifts are generally prohibited, but courtesy gifts of a value less than LKR 5,000 (about USD 30) may be permissible if reported to the Secretary of the Ministry of Foreign Affairs (chapter 47). Chapter 48 regulates disciplinary procedures and sets out sanctions for non-compliance with the Code, which include reprimand, disciplinary transfer, reduction in rank or of salary, and dismissal. Sri Lanka does not define any public positions as particularly vulnerable to corruption.

No specific duty to report corruption exists for public officials. Although officials can use the CIABOC reporting mechanism, they are often reluctant to do so in fear that it would interfere with their confidentiality obligations.

Members of Parliament, judges, public officials of government departments, ministries, and local authorities, chairpersons and staff of public corporations, candidates for elected public office and elected officials are required to declare their and their family members' assets and liabilities (DALA, sections 2–3). Declarations must be submitted within three months after appointment and thereafter annually (section 3 DALA, art. 87 PRs). Failure to declare, and any false statements or omissions result in prosecution or disciplinary action (section 9 DALA, chapter 29 EC). Declarations are stored with Heads of respective offices and may be requested by an investigative body for inspection. No formal monitoring or verification system is in place. CIABOC has proposed several amendments to the DALA to address the existing limitations. Declarations are available to public for a fee (section 5(3) DALA).

General criteria concerning candidature for and election to public office are stipulated in the Constitution (Chapter XIV). Detailed criteria are set out in specialized laws, including the Presidential Elections Act, the Parliamentary Elections Act, the Provincial Elections Act, the Referendum Act and the Local Authorities Elections Ordinance. While office-bearers of recognized political parties and candidates nominated for elections must declare their assets (sections 2–4 DALA), non-compliance is not a hindrance to election. A public official who seeks election as a member of Parliament must resign from public service (chapters 32 and 47 EC).

No law is in place regarding funding of candidates for elected public office or funding of political parties, and discussions on the adoption of such legislation are under way. The Parliamentary Elections Act provides for public subsidies of recognized political parties for general elections (section 127).

Independence of the judiciary is guaranteed in the Constitution (chapter XV) and interference with the judiciary is a punishable offence (art. 111C). Judges of the Supreme Court and the Court of Appeal are appointed by the President subject to the approval of the Constitutional Council, and can only be removed by an order of the President with the support of the majority of the Parliament on the ground of proved misbehaviour or incapacity (art. 107). However, only serious violations trigger this impeachment process and ordinary, less serious disciplinary violations are not subject to any disciplinary action and sanctions. A proposed amendment to the Constitution would introduce a new procedure to address instances of misconduct not rising to the level of impeachment. Judges of the High Court are appointed by the President on the recommendation of the Judicial Service Commission (JSC) (art. 111 Constitution). The JSC is vested with authority over the appointment, transfer, dismissal and disciplinary control of judges in the High Court and lower courts and scheduled public officials (art. 111H Constitution). The JSC Rules and JSC circulars, the EC, the Supreme Court Rules and the Court of Appeal Rules govern the conduct of judges. Sri Lanka is in the process of developing a comprehensive judicial code of conduct. The JSC, through the Judges Institute, provides training to judges aimed at strengthening their integrity.

The Attorney-General is appointed by the President, subject to the approval of the Constitutional Council. In line with the Removal of Officers (Procedure) Act, the Attorney-General can only be removed by Parliament on specific grounds after inquiry. Prosecutors are considered public officials and therefore must comply with the EC, PRs and the rules of conduct and etiquette governing all attorneys as regulated by the Supreme Court. Disciplinary matters concerning officers of the Attorney-General's Department are handled by the PSC.

#### *Public procurement and management of public finances (art. 9)*

Sri Lanka applies a decentralized procurement system, where the responsibility of procurement actions is vested with secretaries of respective line ministries. The NPC formulates procurement procedures and guidelines and monitors their implementation (Chapter XIXB, Constitution). All government procurement must be carried out in line with the 2006 Procurement Guidelines, which set out various procurement methods (chapter 3), procurement preparedness and planning rules (chapter 4),

bidding procedures (chapter 5–7) and rules for awarding of contracts (chapter 8), as well as the 2017 Guide to Project Management and Contract Management for Infrastructure Development Projects. In addition, the 2006 Procurement Manual provides detailed rules on various aspects of public procurement. Complaints can be lodged with the NPC, the Procurement Appeals Board or the Supreme Court. At the time of the review, both the Guidelines and the Manual were being revised by the NPC to fully comply with international standards. The NPC, Sri Lanka Institute of Development Administration and MILODA Academy of Financial Studies provide training to procurement officials.

Chapter XVII of the Constitution deals with the management of public finances, including the adoption of the national budget. While Parliament has full control over public finances (art. 148 Constitution), the Department of National Budget of the Ministry of Finance formulates the national budget, including preparing budget estimates and a three-year budgetary framework. It also monitors budgetary expenditures, including allocation of financial resources for public programmes and projects, assisting the implementation of the national budget and monitoring the implementation of budgetary provisions. The Fiscal Management (Responsibility) Act (FMRA) regulates the reporting on revenue and expenditure by public bodies and requests the Ministry of Finance to prepare regular budget position reports (arts. 10–15 FMRA). The Audit Service Commission, consisting of the Auditor-General and four other members, overlooks the compliance by public authorities with the Accounting and Auditing Standards Act. The Financial Regulations and the Treasury Circulars issued by the Ministry of Finance lay out the rules regarding the preservation of accounting books, financial statements and public records. Ministries, departments and institutional bodies, as well as non-revenue-earning statutory bodies and public enterprises are required to report in accordance with these regulations and are audited by the Auditor-General. Forgery or falsification of public accounts is a criminal offence (arts. 452–453, Penal Code; art. 5(2), Offences against Public Property Act).

#### *Public reporting; participation of society (arts. 10 and 13)*

The Constitution guarantees the right of access to information (art. 14A). Any violations can be reported to the Ombudsman and the Human Rights Commission.

In 2017, following years-long consultations with the civil society, Sri Lanka adopted the RIA to comprehensively regulate access to information. The RIA came into force on 4 February 2017 but its provisions were not fully implemented at the time of review. Among others, the Act describes procedures for obtaining information (sections 24–30), grounds for denial of access (sections 5 and 35) and duties of public bodies to maintain records (section 7). It also requires public authorities to appoint dedicated information officers, as well as appeal officers (section 23, 31). The Right to Information Commission monitors public bodies' compliance, issues guidelines and serves as a second instance body for appeals (sections 14–15, 31–34).

Most government departments maintain their own websites, and Sri Lanka aims to build an e-government system to provide public services electronically. CIABOC is in the process of developing citizens charters for local government and public administration to provide citizens with detailed information on existing public services, including their costs and time frames for execution.

Anyone can report corruption incidents to CIABOC in person, through the general post, a dedicated hotline and by email, and the CIABOC Act provides immunity from civil and criminal liability to such persons (s. 9). The Assistance to and Protection of Victims of Crime and Witnesses Act (APVCWA) further provides for the protection of reporting persons against any form of harassment at work.

CIABOC cooperates with civil society through various activities. Civil society has been consulted as a matter of practice in drafting laws, such as DALA, Audit Act and RIA.

CIABOC works with the Ministry of Education and the National Institute of Education to incorporate anti-corruption into school curricula, and is developing regulations to curb corruption in the school administration, creative competitions and school integrity clubs.

*Private sector (art. 12)*

Measures pertaining to record-keeping, preparation of financial statements, accounting and auditing in the private sector are prescribed in the Accounting and Auditing Standards Act (AASA), Companies Act (CA), Securities and Exchange Commission Act, Monetary Law Act, Banking Act, Insurance Act and Finance Companies Act.

The AASA is applicable to “specified business enterprises” (section 5 and the schedule of AASA), that currently comprise 1,410 enterprises, including private companies and banks. Business enterprises are required to audit their accounts (section 6 AASA) and non-compliance is punishable (sections 6–7, 27 AASA). The Institute of Chartered Accountants of Sri Lanka (ICASL) has adopted Accounting and Auditing Standards in accordance with AASA sections 2–3 and to comply with international standards. The Accounting and Auditing Standards Monitoring Board monitors compliance with the AASA and the Standards and refers suspected cases of corruption to law enforcement authorities. The Accounting Standards Committee and the Auditing Standards Committee make recommendations relating to the Standards (sections 8–9 AASA).

According to the CA, all companies formed under the CA are obliged to keep correct accounting records (section 148), prepare financial statements (sections 150–153) and appoint an auditor (sections 154–160). Company records should be kept and available for public inspection (section 120). Applicable measures and penalties for non-compliance are stated in Part XXI.

According to the AASA, audits of specified business enterprises must be carried out by ICASL members. In line with the CA, audits of other entities can be carried out by auditors registered with the Company Registrar.

In order to promote the use of good commercial practices, ICASL, the Chamber of Commerce and other associations conduct annual competitions on corporate reporting and corporate best practices. Codes of corporate governance have been adopted for licensed banks and finance companies.

No special whistle-blowing mechanism exists for the private sector.

Tax deductibility of expenses that constitute bribes is prohibited (sections 10–19 of the Inland Revenue Act 2017).

*Measures to prevent money-laundering (art. 14)*

As a member of the APG, Sri Lanka is bound by the FATF recommendations and subject to its evaluations.

The domestic legal regime against money-laundering includes the PMLA, Financial Transactions Reporting Act (FTRA) and Convention on the Suppression of Terrorist Financing Act. Offences in the Bribery Act and other corruption related offences in the Penal Code are considered predicate offences for the purposes of the PMLA and FTRA under the definition of “unlawful activity”. Therefore, money derived through corruption comes under the ambit of the FIU’s supervisory regime.

All institutions carrying out finance businesses or designated non-finance businesses, as defined under section 33 of the FTRA, are required to comply with the FTRA provisions, including regarding verification of customers’ identity, maintenance of records and ongoing due diligence. Covered institutions are required to file suspicious transaction reports with the FIU, in accordance with the FTRA. The FIU supervises institutions’ compliance with the FTRA, including through on-site inspections, imposes administrative penalties, issues directives and refers matters for court

proceedings. Existing sectoral bank and non-bank supervision departments and the Exchange Control Department also play a supervisory role.

The FTRA lays out the powers of the FIU to transmit information to domestic law enforcement authorities, including CIABOC (section 15) and foreign institutions (sections 15–17). The FIU is a member of the Egmont Group and has entered into memorandums of understanding with 34 foreign counterparts. Sri Lankan authorities cooperate through various platforms, including INTERPOL, the South Asian Association for Regional Cooperation (SAARC) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

Regulations are in place requiring financial institutions, including money remitters and their agents, to obtain, maintain information on the originator of funds transfers and monitor transactions which contain insufficient information.

Sri Lanka has a disclosure-based regime to monitor the movement of currency and bearer negotiable instruments across its borders (sections 24–27 FTRA). Cross-border transfers exceeding USD 15,000 (USD 10,000 if outgoing) are subject to mandatory declaration, as per Foreign Exchange Act Regulations of 2017. Any cash and negotiable instruments imported into or exported from Sri Lanka may be seized or detained if there is a suspicion that they are derived from, or intended for use in, the commission of an unlawful activity (sections 24–25 FTRA).

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

- Measures to promote the participation of society, including through the Open Government Partnership and National Anti-Corruption Action Plan (arts. 5 and 13).
- Introduction of cyberkiosks throughout the country to facilitate access to electronic public services (art. 10(a)).
- CIABOC's ongoing activities in the area of education, including school integrity clubs, dedicated syllabi and competitions (art. 13(1)(c)).

## **2.3. Challenges in implementation**

It is recommended that Sri Lanka:

- Implement an effective, coordinated anti-corruption policy with clearly stated goals, means to achieve them, responsible bodies and coordination (art. 5(1)).
- Continue efforts to adopt a more structured approach towards CIABOC's prevention work, including through the establishment and effective functioning of a dedicated prevention unit (arts. 5(2) and 6(1)).
- Enhance CIABOC's independence and effectiveness, including by adopting clear rules on the DG's tenure and removal, specifying the procedure for disciplinary control over the DG, providing CIABOC with sufficient material resources and providing specialized training for staff and exercising administrative and disciplinary control over its officers (art. 6(2)).
- Consider identifying positions in the public sector that are especially vulnerable to corruption and adopting adequate procedures for the selection and training of public officials holding such positions (art. 7(1b)).
- Consider adopting a comprehensive law on the funding of candidates for elected public office and of political parties (art. 7(3)).
- Strengthen measures to prevent and detect conflicts of interest, including by adopting clear rules on what constitutes conflict of interest and penalties for non-compliance, creating a monitoring mechanism and providing training to public officials (arts. 7(4) and 8(5)).
- Strengthen the application of the EC, including through providing training to public officials; and consider reviewing and modernizing the Code taking into account international good practices (art. 8, (1)–(3)).

- Strengthen measures to facilitate the reporting of corruption by public officials, including by providing guidance to public officials and ensuring confidentiality (art. 8(4)).
- Reform and strengthen the asset declarations system in line with the amendments proposed by the CIABOC, including by: assessing the possibility of introducing effective monitoring and verification; considering the adoption of electronic filing systems; permitting competent authorities to share information with foreign counterparts; effectively applying deterrent penalties for non-compliance, also to Heads of offices who do not abide by the DALA and to elected officials; and consider expanding the scope of declarations to include potential conflicts of interest (arts. 8(5) and 52(5)).
- Consider strengthening the measures concerning gifts, secondary employment and outside activities of public officials with a view to providing clear duties and rules for compliance (art. 8(5)).
- Ensure that the sanctions set out in the EC are effectively applied in practice (art. 8(6)).
- For the sake of institutional clarity, formally abolish the National Procurement Agency, which is no longer operational and has been replaced by the NPC (art. 9(1)).
- Continue efforts to amend the Procurement Guidelines and Manual in line with the Convention and consider introducing screening procedures and more structured training for procurement officials (art. 9(1)).
- Fully operationalize the RIA, including through the designation and training of information officers and raising awareness among public officials and the public (art. 10(a)).
- Consider publishing periodic reports assessing the risks of corruption in public administration (art. 10(c)).
- Continue strengthening judicial integrity, including through adopting rules on disciplinary violations of judges of the Supreme Court and Court of Appeal and adopting a judicial code of conduct (art. 11(1)).
- Consider adopting a code of conduct for prosecutors and ensure sufficient training to prosecutors (art. 11(2)).
- Take further measures to prevent corruption in the private sector, including through strengthening procedures regarding subsidies and licences, consider imposing restrictions on activities of former public officials, developing standards of conduct for the private sector and effectively identifying the identity of persons involved in the establishment and management of businesses (art. 12(1)–(2)).
- Consider the possibility of regulating in law the current practice of publishing draft legislation to allow the public to express their views (art. 13(1)(a)).
- Continue taking measures to encourage the public to report instances of corruption, including through the full implementation of the APVCWA and the adoption of an envisaged national policy on whistle-blowing (art. 13(2)).
- Continue to strengthen the implementation of a comprehensive risk-based approach to anti-money-laundering (art. 14).
- Strengthen the FIU's ability to exchange information at the international level, and provide it with sufficient resources to carry out its supervisory functions (art. 14(1)(b)).
- Strengthen monitoring and implementation of measures requiring financial institutions, including money remitters, to identify and scrutinize funds transfers (art. 14(3)).

- Continue efforts to address the remaining issues of the FATF evaluation, including in the areas of CDD, wire transfers, money value transfer services and internal controls (arts. 14(4) and 52).

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

- Legislative assistance (arts. 7, 8 and 9);
- Institution-building (arts. 7 and 12);
- Policymaking (art. 7);
- Capacity-building (arts. 7, 8, 10, 12, 13 and 14); and
- Research/data-gathering and analysis (art. 7).

### **3. Chapter V: Asset recovery**

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

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

Sri Lanka relies on the PMLA, MACMA and the Criminal Procedure Code (CPC) for the confiscation and recovery of criminal proceeds. Steps towards the adoption of proceeds of crime legislation were under way at the time of review.

Mutual legal assistance in criminal matters, including asset recovery, may be provided to requesting States designated by Ministerial order as ‘specified countries’ (i.e., Commonwealth and other countries with which Sri Lanka has entered into MLA agreements) (section 17 MACMA) (at the time of review 8 countries, 6 with treaties containing asset-recovery provisions). Although MLA can also be provided to other countries on a case-by-case basis on the basis of reciprocity or ad hoc agreements, the need for a Ministerial order presents significant challenges in practice. The Convention’s provisions are not directly applicable.

Sri Lanka spontaneously transmits information based on reciprocity, especially in connection with the PMLA offences as the PMLA explicitly obliges the Government to assist other States without a prior request (section 32). As a member of the Egmont group, the FIU transmits relevant information to foreign counterparts. Sri Lanka also cooperates through the Asset Recovery Inter-Agency Network for Asia and the Pacific (ARIN-AP) and StAR/INTERPOL Global Focal Points Network for Asset Recovery.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

The FIU, established in 2006 and set up at the Central Bank, is the main supervisory authority for suspicious financial transactions. The FIU is a hybrid-type body, analysing cases and referring suspicious transactions to law enforcement authorities. Its powers and functions are set out in the FTRA (Part III).

The 2016 Financial Institutions (Customer Due Diligence) Rules (FIRs) have been issued by the FIU and apply to all financial institutions as defined therein. The FIRs establish obligations with regard to money-laundering risk management and internal controls, know-your-customer (KYC), customer due diligence (CDD), enhanced scrutiny for persons and accounts, correspondent banking, wire transfers and record-keeping. Training of financial institutions is provided at the internal level of institutions and by the FIU.

Financial institutions are required to identify and verify the identity of beneficial owners of all accounts maintained (FIRs, rules 30–31). Enhanced scrutiny of both domestic and foreign politically exposed persons (PEPs), their family members and close associates, is required (rules 59–60). The FIU issued Guidelines for Financial

Institutions on Identification of Beneficial Ownership (No. 04 of 2018). No centralized bank register is in place.

Pursuant to the Banking Act, banks with no physical presence in Sri Lanka are prohibited (section 2(1)) and financial institutions are prohibited from entering into business relations with them and from providing correspondent banking services to financial institutions that permit their accounts to be used by shell banks (FIRs, rule 67).

Financial institutions are required to maintain records of transactions, both domestic and international, and including CDD and KYC records, for a minimum period of six years from completion of such transactions or the date on which the business relationship was fulfilled (FIRs, rules 89–91). All records must be immediately available to relevant domestic authorities and the FIU (FIRs, rule 94).

Provisions in the DALA require that disclosures of assets held by public officials include assets and liabilities inside and outside of Sri Lanka. There are limited resources to monitor and verify disclosures, address non-compliance and raise awareness.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

While no provision prohibits foreign countries from participating in Sri Lanka's court proceedings and initiating civil action to establish ownership of property or seek compensation, this has never happened in practice.

Confiscation of corruption proceeds is limited to the proceeds of money-laundering and bribery (sections 26A, 28A(1) and 39 of the Bribery Act, sections 3 and 13 PMLA). Freezing is not regulated, although Sri Lanka explained that section 124 CPC on the assistance of magistrates in investigations could be applied.

Sections 15 and 19 of the MACMA allow the Central Authority (i.e. Ministry of Justice) to give effect to search, seizing and confiscation orders issued by courts in "specified countries", and section 17 allows the Central Authority to assist "specified countries" in tracing proceeds of crime. No requests for asset confiscation under section 19 of MACMA had been received by Sri Lanka at the time of the country visit.

Section 13 of the PMLA allows Sri Lankan courts to issue confiscation orders for movable or immovable property derived or realized from unlawful activity. However, no cases have applied section 13 to property of foreign origin. Non-conviction-based confiscation is not possible.

The MACMA provides for a partial preservation of property for confiscation (sections 15(9)–(10)). The envisaged proceeds of crime legislation will convert the START into a statutory body with a mandate to manage proceeds of crime.

The MACMA specifies requirements for MLA requests and grounds for refusal (sections 5–6). Sri Lanka does not apply any de minimis threshold for assistance (section 6). Before lifting any provisional measure, consultations with requesting States are a standard practice.

*Return and disposal of assets (art. 57)*

The central authority, in consultation with the Minister of Finance, may order either the whole or any part or value of confiscated property to be given to a requesting State where deemed appropriate in the interests of comity or based on an international arrangement (section 22 PMLA). The central authority may specify suitable steps giving effect to a request, which includes disposal of confiscated property in such manner as the central authority may specify to give effect to the request (section 19(7) MACMA). The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention.

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

- The Special Presidential Task Force on Recovery of State Assets (START), established to coordinate efforts to investigate, identify, trace, seize and transfer State assets and revenue (art. 51).
- The provision of sample forms for MLA requests (art. 51).

### **3.3. Challenges in implementation**

It is recommended that Sri Lanka:

- Continue to strengthen international cooperation mechanisms as a basis for asset recovery by addressing the limitations on mutual legal assistance in line with the findings of Sri Lanka's first cycle country review report and the results of the 2015 APG review, enhance data collection mechanisms, and expedite the adoption of proceeds of crime legislation (arts. 51 and 54).
- Take measures to allow for the provision of assistance and the enforcement of foreign confiscation, freezing and seizing orders from "non-specified" countries (arts. 51 and 54).
- Introduce a system to notify financial institutions of the identity of particular persons to whose accounts enhanced scrutiny should be applied (art. 52(2)(b)).
- Consider extending the six-year period for maintenance of records, which has been identified as a potential obstacle to successful investigations (art. 52(3)).
- Address the recommendation under article 8(5) above (art. 52(5)).
- Consider requiring public officials to declare foreign financial accounts, to maintain appropriate records related thereto and providing for appropriate sanctions for non-compliance (art. 52(6)).
- Ensure that measures for direct recovery, as outlined in article 53 of the Convention, are available to other States (art. 53(a)(b)(c)).
- Adopt measures to allow freezing, seizure and confiscation of proceeds derived from all Convention offences, as recommended in the first cycle review, including through the adoption of a proceeds of crime law, and ensure that such measures may be taken for purposes of international cooperation (art. 54(1)(a), (2)).
- Consider introducing non-conviction-based confiscation (art. 54(1)(c)).
- Strengthen measures to preserve property for confiscation and continue efforts to designate a central asset management authority, as recommended in the first cycle review (art. 54(2)(c)).
- Ensure that coercive MLA may be provided to all States parties and consider using the Convention as a legal basis in this regard (art. 55(6)).
- Continue to ensure that consultations with requesting States are carried out before lifting any provisional measures (art. 55(8)).
- Take measures to enable the central authority to return confiscated property to its prior legitimate owners (art. 57(1)(2)).
- Take legislative and other measures to ensure the return of property as specified in article 57(3) of the Convention.
- Clarify the matter of costs in the context of ongoing revision of the legislation (art. 57(4)).
- Provide sufficient resources to the FIU to effectively carry out its supervisory and analytical functions (art. 58).
- Consider concluding bilateral or multilateral agreements or arrangements to address the requirements of chapter V of the Convention (art. 59).

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

- Legislative assistance (arts. 52, 53 and 54).
-