Implementation Review Group
Resumed twelfth session
Vienna, 6–10 September 2021
Agenda item 4
State of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

Contents

<table>
<thead>
<tr>
<th>II. Executive summary</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cuba</td>
<td>2</td>
</tr>
</tbody>
</table>
II. Executive summary

Cuba

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

The implementation by Cuba of chapters III and IV of the Convention was reviewed in the second year of the first review cycle and the executive summary of that review was published on 13 September 2013 (CAC/COSP/IRG/I/2/1/Add.20).

The country’s legal system is based on civil law. The provisions of international treaties in force for Cuba form part of or are incorporated into the domestic legal framework; the Constitution takes precedence over those international treaties (art. 8 of the Constitution).


The main institutions involved in preventing and combating corruption are the Office of the Comptroller General, the Office of the Attorney General, the State Review Commission, the Central Bank of Cuba and the Ministry of the Interior.

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)

One of the specific objectives of the National Social and Economic Development Plan for 2030 is to prevent and combat corruption. The policies aimed at preventing corruption include (a) resolution 60/11 of the Office of the Comptroller General, which requires public entities and other entities subject to the Office’s control to implement an internal control system, including a risk analysis (chapter II, section two), the Office being responsible for evaluating the implementation of that system (art. 31(1) of Act 107); (b) a national assessment of the risks of money-laundering, terrorist financing and the proliferation of weapons of mass destruction; and (c) other sector-specific strategies for preventing and combating money-laundering and terrorist financing. The Cuban authorities confirmed that measures were being taken to ensure that policies related to money-laundering and terrorist financing were well coordinated.

Cuba takes part in regional and global anti-corruption initiatives. The country is a member of the Ibero-American Network for International Legal Cooperation, the Financial Action Task Force of Latin America and the Association of Supervisors of Banks of the Americas.

The Office of the Comptroller General (arts. 160–163 of the Constitution) is the highest authority with regard to the prevention of corruption (art. 1 of Act 107 and art. 2 of the Act’s implementing regulations). Its functions include assisting in the fight against corruption and liaising with other agencies that are involved in preventing corruption (art. 31(b), (d) and (i) of Act 107). The Office has operational

---

1 The Cuban authorities have reported that, after the country visit and as part of the country’s legislative process based on the new Constitution, Act 131 on the organization and functioning of the National Assembly of People’s Power and the Council of State and Act 132 on the organization and functioning of the Municipal Assemblies of People’s Power were adopted in December 2019.
independence, is subordinate to the President and reports to the National Assembly of People’s Power (arts. 161 and 162 of the Constitution; see also third preambular paragraph and arts. 1.5 and 3.1 of Act 107).

The State Control Commission was established under Agreement CE/2013 in order to examine cases involving illegal activities with a view to identifying and recommending preventive measures (art. 2). It is chaired by the Comptroller General and composed of the Minister of Finance and Pricing and the Minister of Justice; representatives of the Office of the Attorney General and the Ministry of Economic Affairs and Planning, the Ministry of Foreign Affairs, the Ministry of Foreign Trade and Foreign Investment, the Ministry of the Interior, the Ministry of the Revolutionary Armed Forces, the Ministry of Labour and Social Security and the Central Bank of Cuba; and the heads of the National Tax Administration and the Customs Service (art. 3 of Agreement CE/2013).

As part of the internal control system created through resolution 60/11 of the Office of the Comptroller General, public entities are required to have a prevention and control committee as an advisory body responsible for (a) ensuring the proper functioning of the internal control system and (b) coordinating and guiding the dissemination of information and training for staff in the area of corruption prevention. The highest authority of each institution chairs the committee and appoints its members (art. 14 of resolution 60/11).

Cuba has informed the Secretary-General of the United Nations that the Office of the Comptroller General is the authority that can assist other States parties in developing and implementing specific measures for the prevention of corruption.

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

The hiring, retention, promotion and retirement of public officials are governed by Decree-Law 196, Decree-Law 197 and Act 116 (the Labour Code). Decree-Laws 196 and 197 apply to officials appointed or elected to managerial positions in the public service and to other officials appointed to professional positions of a certain level of complexity and responsibility (“senior officials”) (art. 3 of Decree-Law 196 and art. 1 of Decree-Law 197). The Labour Code applies to all other civil servants and, for matters not covered elsewhere, to senior officials (art. 5). These rules also apply to judges, prosecutors and comptrollers for matters not covered elsewhere.

The selection process for senior officials is based on individual qualities and merits (art. 11 of Decree-Law 196), provided that certain minimum requirements are met (art. 12 of Decree-Law 196 and art. 7 of Decree-Law 197). Each hiring entity regulates the specific features of its selection processes (second special provision of Decree-Law 196). Chapter II of Decree-Law 196 and chapters IV and V of Decree-Law 197 govern promotion, retention, transfer and retirement. The internal control system of each body must include procedures for the rotation of personnel in key tasks (art. 12 (d) of resolution 60/11 of the Office of the Comptroller General).

The Ministry of Education, in coordination with the agencies of the State Administration, runs training programmes for senior officials, including programmes to update their knowledge of the Code of Ethics for Senior Officials (arts. 32 and 40 of Decree-Law 196).

The Ministry of Labour and Social Security is the body responsible for establishing pay scales (art. 188 of the Labour Code).

The requirements relating to eligibility for elected public office (art. 207 of the Constitution and arts. 8 and 10 of Act 72) and the grounds for ineligibility (arts. 7 and 9 of Act 72) are established by law.

Election campaigns and campaign financing are prohibited. Information about candidates is provided through the publication of their curricula vitae, a service that
is guaranteed and paid for by the State (art. 171 of Act 72). Candidates are nominated by candidature commissions; there are no political party lists (title IV of Act 72). Officials are prohibited from carrying out activities that may impinge on the interests of the entity where they work or from holding other remunerated positions, with certain expressly approved exceptions (art. 13 of Decree-Law 196 and art. 4 of Decree-Law 197). There is no specific system in place to prevent other types of conflicts of interest.

Certain categories of officials (classed as “cuadros”) must act, both in the performance of their duties and in their personal lives, in accordance with the principles set out in the Code of Ethics for Cuadros (art. 37 of Decree-Law 196). The Code was adopted through Agreement 3050/96 of the Council of Ministers. It must be disseminated and training on ethics must be provided (arts. 38 and 39 of Decree-Law 196). Codes of ethics have been adopted voluntarily in different professional sectors, including the Code of Ethics for Auditors of the National Audit System, the regulations on ethical standards for cuadros, directors and officials of the customs system and the code of ethics for staff in the Ministry of Justice system.

All citizens, including public officials, are required to report offences (arts. 116 and 118 of the Criminal Procedure Act and art. 161 of the Criminal Code).

Violations of the Code may give rise to penalties (art. 40, chapter IV, of Decree-Law 196 and chapter VI of Decree-Law 197).

Judicial independence is provided for (art. 148 of the Constitution and art. 2 of Act 82). The People’s Supreme Court, which is the highest judicial authority (art. 148 of the Constitution), is accountable to the National Assembly of People’s Power in respect of the work of the people’s courts (art. 40 of Act 82).

Entry into the judicial profession is through selection by the National Assembly of People’s Power, the Council of State or the respective Provincial Assemblies of People’s Power, as applicable (art. 149 of the Constitution and arts. 45–48 of Act 82). Act 82 also governs promotion (title III, chapter III), general requirements for and impediments to entering and remaining in the judicial profession and special requirements for senior judges (title III, chapter I), and termination of office (title III, chapter VI). Title III, chapter VIII, establishes the disciplinary regime.

Judges are prohibited from holding any other office or employment, except for teaching positions (art. 62 of Act 82). Judges can be recused in some instances, such as where there is a conflict of interest (art. 23 of the Criminal Procedure Act). Cuba has a Code of Judicial Ethics that has been adopted by the People’s Supreme Court.

The Office of the Attorney General has functional independence, is subordinate to the President and reports to the National Assembly of People’s Power (arts. 157 and 159 of the Constitution and art. 3 of Act 83).

The Attorney General and deputy attorneys general are selected by the National Assembly of People’s Power; prosecutors at the Attorney General’s Office are appointed by the Council of State, on the proposal of the Attorney General; and prosecutors at the provincial and municipal prosecutor’s offices are appointed by the Attorney General (art. 158 of the Constitution and art. 29 of Act 83). Act 83 also establishes the general requirements for and impediments to entering and remaining in the prosecutorial profession (arts. 30–33) and termination of office (title IV, chapter III). Title IV, chapter IV, establishes the disciplinary regime.

Prosecutors are prohibited from holding any other office or employment (art. 33 of Act 83). Prosecutors may recuse themselves in the instances set out in article 23 of the Criminal Procedure Act (art. 30 of that Act). The Office of the Attorney General adopted a code of ethics in 2012.
Public procurement and management of public finances (art. 9)

Public procurement is governed by, inter alia, the principle of free will, equality between parties and good faith (art. 2 of Decree-Law 304), which means that public contracts may be let through direct and discreional awarding. In exceptional cases, particularly when foreign investment is involved (as defined in art. 2 (k) of Act 118), negotiated procedures or tendering are the forms of public procurement used in the investment process (art. 49.1 of Decree 327). However, by decision of an authority higher than the party involved in the investment, direct award may be used in any case (art. 49.2 of Decree 327).

In a negotiated procedure, there is a restricted call for bids and the investor is authorized to select the winner at its discretion with no requirement to make the decision public (art. 49 of Decree 327). Tendering may be open or restricted (art. 52 of Decree 327). There are no objective criteria for determining which modality should be used.

In open tendering, the tender documents, which contain the rules and conditions governing the tender, are made public through any media (arts. 53.2 and 54.1 of Decree 327).

The final report establishing the result of the tender can only be contested before the commission that issued it (art. 60 of Decree 327). The commission’s decision may be contested through judicial proceedings (art. 63 of Decree 327).

Resolution 570/2012 of the Ministry of Economic Affairs and Planning establishes a procedure similar to that established in Decree 327 for tenders relating to assets of a State establishment that are to be managed by non-agricultural cooperatives.

Personnel responsible for procurement are not subject to any additional rules beyond those governing other public officials.

The National Assembly of People’s Power debates and approves the State budget and monitors budget performance (art. 108 (k) of the Constitution). Between sessions of the National Assembly of People’s Power, the Council of State reviews and approves any necessary adjustments to the State budget (art. 122 (s) of the Constitution). The Council of Ministers, assisted by the Ministry of Finance and Pricing, draws up the draft State budget and ensures that the approved budget is executed (art. 137 (f) of the Constitution and section two, chapter II, of Decree-Law 192). Resolution 375 of the Ministry of Finance and Pricing establishes the budget planning methodology. The Office of the Comptroller General oversees and reviews the preparation and execution of the budget and the report on budget performance (art. 31 (k) of Act 107).

Any changes to the budget must be approved by the Council of State, the Council of Ministers or the Ministry of Finance and Pricing, as appropriate (see, for example, arts. 4 and 6 of Act 125/2018). At the end of each year, the Ministry of Finance and Pricing submits to the Council of Ministers the report on the budget’s performance (arts. 31–33 of Decree-Law 192).

The heads of State Administration bodies and agencies must adopt measures to ensure that resources are used rationally and budgetary expenditure levels are not exceeded, and take action to prevent non-compliance (arts. 12 and 13 of Act 126). Decree 228 establishes sanctions for violations of the rules governing the preparation, execution, control and performance of the budget.


The falsification of public documents is a criminal offence (arts. 250 and 252 of the Criminal Code).
Public reporting; participation of society (arts. 10 and 13)

One of the specific objectives set out in the National Plan is to improve the mechanisms for citizens to access information on its public administration. Access to information is governed by the Constitution (art. 53). However, at the time of the country visit, the act on transparency and access to information that would govern that right had not yet been adopted.2

Decree-Law 281 establishes the principles for the organization and functioning of the government information system, the main purpose of which is to manage information considered relevant to the Government (art. 10).

Cuba has implemented an e-government platform for the provision of services, processing of official paperwork and dissemination of information (title III of Decree-Law 370).

Cuba has a “Citizen’s Portal” website that disseminates information of interest to citizens. In addition, various State entities have websites on which relevant information is published. However, there is no regulation that establishes the minimum information that each entity must publish.

Citizen participation is considered essential, as set out in the National Plan. Citizens have the right (a) to participate in the control of the State through plebiscites, referendums and popular consultations; (b) to express an opinion on the reports submitted by elected officials; and (c) to be informed about the management of State bodies and authorities (arts. 80 and 204 of the Constitution). Citizens may also propose legislation (art. 164 k of the Constitution).

Cuba has engaged in various initiatives to facilitate access to anti-corruption bodies. Citizens may report any act of corruption to the Office of the Comptroller General (art. 20 of Act 107). The Office of the Attorney General has implemented the Citizen Assistance System, which includes a telephone hotline for questions, concerns and complaints.

Private sector (art. 12)

Private enterprises with foreign capital must comply with the Cuban Financial Reporting Standards (arts. 50 and 52 of Act 118). These companies submit annual reports on their activities to the Ministry of Foreign Trade and Foreign Investment (art. 53 of Act 118). Legal persons that receive public funds are subject to oversight by the Office of the Comptroller General (art. 12.1 of Act 107). Private enterprises are required to register with the Commercial Registry and to file annual financial reports on their balance sheets (arts. 2 and 5 of Decree-Law 226). The falsification of private or commercial documents is an offence under the Criminal Code (arts. 251 and 257).

There are no specific initiatives (a) to promote cooperation between law enforcement agencies and relevant private entities; or (b) to promote the adoption of internal rules or procedures aimed at safeguarding the integrity of relevant private entities, such as codes of ethics. There are no restrictions limiting the activities of former public officials or prohibiting such officials from taking up employment in the private sector.

According to the Cuban authorities, the tax deductibility of expenses that constitute bribes is not possible because such expenses are not on the list of deductible expenses (arts. 84 and 86 of Act 113/12).

Measures to prevent money-laundering (art. 14)

The Central Bank of Cuba oversees and audits financial institutions and regulates and oversees the activities carried out by non-financial entities that provide support

---

2 The Cuban authorities have reported that the act on transparency and access to information was included in the legislative calendar the acts and decree-laws to be adopted during the current parliamentary term.
services to financial institutions, collection and payment services and other services relating to financial and exchange activities and that require prior authorization from the Central Bank (art. 11 (e) and (f) of Decree-Law 361 and arts. 3 and 75 of Decree-Law 362). The Central Bank is authorized to issue rules, procedures and regulations to oversee financial institutions (art. 12 (21) of Decree-Law 361).

Other regulated entities, such as lawyers, notaries and those who keep their own accounts or keep accounts through other forms of non-state management when preparing to carry out or carrying out certain transactions for a customer (art. 2, para. 1, subparas. 3–5, of Decree-Law 317) must comply with the rules issued by their reporting or regulatory body (art. 2, paragraphs 2 and 3, of Decree-Law 317). The designated supervisory and regulatory bodies for non-financial activities and professions include, owing to their nature, the Ministry of Labour, the Ministry of Finance and the Directorate for Assistance of the National Organization of Collective Law Firms and Specialized Legal Services. Real estate agencies are State entities that operate under licences established for State activities and are not regulated entities. Real estate agencies established as commercial companies are audited and overseen by various agencies of the Central State Administration and the Office of the Comptroller General. Self-employed persons licensed to handle transfers of ownership, sales and purchases of dwellings (resolution 104 of 22 October 2019) act as intermediaries for the successful completion of the transfer of ownership, sale and purchase of dwellings.

Regulated entities are required, inter alia, (a) to identify and verify customer and beneficial owner information, applying due diligence procedures for that purpose (arts. 7.1 and 9 of Decree-Law 317 and art. 23 of instruction 26/2013 of the Central Bank of Cuba); (b) to report suspicious transactions (arts. 3.2, 10 and 11 of Decree-Law 317 and art. 3 of Decree 322); and (c) to keep records, for a period of not less than five years, of documentation concerning their customers and the transactions carried out by those customers (art. 8 of Decree-Law 317 and art. 20 of instruction 26/2013 of the Central Bank). Cuba requires regulated entities to apply a risk-based approach to combating money-laundering (art. 7.2 of Decree-Law 317).

Cuba has a Coordinating Committee, composed of the Central Bank of Cuba, the Office of the Attorney General, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior, the Customs Service, the National Tax Administration and other experts from the bodies and agencies of the Central State Administration. The Coordinating Committee is mandated to identify and assess national risks relating to money-laundering and other conduct of similar gravity, to prepare national risk assessments in those areas and to propose strategies to prevent, detect and combat such risks (arts. 19 and 20 of Decree-Law 317). The Directorate General for the Investigation of Financial Transactions is authorized to exchange information at the national and international levels (arts. 3.1 and 7 of Decree 322).

Cuba has adopted measures to detect and monitor the cross-border movement of cash, requiring a declaration by persons who, upon entering the country, are carrying cash exceeding $5,000 or its equivalent in other freely convertible currencies (art. 2 of Central Bank resolution 17/2012). Although Central Bank resolution 17/2012 does not require persons entering the country to declare securities, the customs declaration form (resolution 439/12 of the Customs Service) does require such securities to be declared (when their value exceeds $5,000). The import and export of Cuban pesos is limited to 2,000 pesos in cash or other payment instruments or negotiable instruments used in international banking practice (art. 1 of Central Bank resolution 276/2019).

Electronic transfers from abroad must include information on the originators, intermediaries and beneficiaries. That information must be retained throughout the payment chain (art. 64 of Central Bank instruction 26/2013). In the absence of such information it is left to the discretion of each financial institution to execute, reject or suspend the transfer or take appropriate follow-up action. Institutions must have risk-based procedures in place for making such decisions (art. 65 of instruction 26/2013). For transfers within Cuba, financial institutions must ensure that such transfers are
accompanied by basic information on the originator and beneficiary and that that information is permanently available (art. 59 of instruction 26/2013). There is no specific provision that requires financial institutions to apply enhanced scrutiny to transfers that do not contain complete originator information.

Cuba is a member of the Financial Action Task Force of Latin America.

2.2. Successes and good practices

• The duty of all bodies and entities subject to control by the Office of the Comptroller General to implement an internal control system, as described in resolution 60 (art. 5) of the Office of the Comptroller General.

2.3. Challenges in implementation

It is recommended that Cuba:

• In addition to the prohibition on holding other positions, endeavour to adopt systems for public officials to declare other potential conflicts of interest (art. 7, para. 4).

• Continue efforts to ensure that, in addition to the Code of Ethics for Cuadros and other sector-specific codes that have been adopted, all sectoral entities adopt codes of ethics that apply to all public officials in that entity (art. 8, para. 2).

• Strengthen, in accordance with the fundamental principles of its legal system, existing measures on public procurement, in order to ensure that the public procurement system is based on transparency and competition, that direct award without competitive bidding is the exception and that the public procurement system includes (a) objective and predetermined criteria for public procurement decisions in order to reduce discretion; (b) clear provisions governing the complaints procedure (including a mechanism for appeal before an independent body) and sanctions for violations; and (c) the strengthening of integrity measures for personnel responsible for procurement (art. 9, para. 1).

• Enhance transparency in the public sector through public access to information, in particular by regulating access to information through the adoption of procedures allowing members of the general public to obtain information, including information on the organization, functioning and decision-making processes of its public administration and on decisions and legal acts that concern the general public, which could include periodic reports on the risks of corruption in the public sector (art. 10 (a) and (c)).

• Continue to take measures to prevent corruption involving the private sector, which could include increased cooperation between law enforcement agencies and private entities and the adoption of codes of ethics (art. 12, para. 1).

• Monitor due diligence measures in relation to persons active in the real estate sector and, if necessary, take appropriate steps to extend the scope of those measures (art. 14, para. 1).

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)

Any cooperation undertaken for asset recovery purposes is based on the relevant provisions of the Civil Code, the Criminal Code and the Criminal Procedure Act,

---

3 The Cuban authorities have reported that after the country visit and as part of the country’s legislative process based on the new Constitution, the adoption of an act on transparency and access to information had been included in the legislative calendar of the laws and decrees to be adopted during the current parliamentary term, in 2021.
signed mutual legal assistance treaties relating to the seizure and confiscation of property, and reciprocity. At the time of the country visit, Cuba had not yet received or submitted any such requests.

Cuba can exchange information without prior request. At the time of the country visit, Cuba had received, but not provided, information in that manner. The Asset Recovery Network of the Financial Action Task Force of Latin America and the secure network of the Egmont Group could be used for such exchanges. A number of bilateral treaties contain an optional provision indicating that information may be shared without prior request.

Although Cuba has not concluded any specific bilateral or multilateral agreements to enhance the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention, some of its bilateral treaties on mutual legal assistance contain provisions on asset recovery.

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

Financial institutions are required to verify the identity of customers and all beneficial owners, whether they are natural or legal persons (art. 9 of Decree-Law 317, arts. 23 and 85 of Central Bank instruction 26/2013 and art. 9 of Central Bank resolution 51/2013). The obligation to identify beneficial owners is not limited to cases of funds deposited into high-value accounts.

The concept of politically exposed persons covers domestic and foreign politically exposed persons (Central Bank circular 7/2016) and politically exposed persons working for international organizations (arts. 1–3 of Central Bank circular 4/2014). Financial institutions should (a) put in place enhanced due diligence measures for both domestic and foreign politically exposed persons (arts. 3 and 6 of Central Bank circular 4/2014 and arts. 52 and 53 of instruction 26/2013); and (b) implement measures to identify transactions or accounts that could relate to members of a politically exposed person’s family or close associate, defined as persons related to a politically exposed person either directly (up to the fourth degree of consanguinity) or by affinity, or other similar forms of association (arts. 4 and 5 of circular 4/2014). Identification and monitoring covers the establishment as a legal person of business relations in which a foreign politically exposed person participates as owner or beneficiary (art. 1 of circular 4/2014).

Financial institutions are required to implement provisional measures to prevent the handling, transfer or disposal of property at the request of the competent authorities, including by attending to and complying with orders issued by the competent authorities in order to prevent actions that could impair the capacity of the State to recover or seize property subject to confiscation (art. 9 of Central Bank instruction 26/2013). The authorities confirmed that, in relation to the obligation to submit information requested by order of the courts, prosecutors, investigators or police (sect. 41 of the Criminal Procedure Act), such an order can also be used to inform financial institutions of the identity of persons whose accounts should be subject to enhanced scrutiny.

Regulated entities must (a) keep copies of certain information for five years (art. 8 of Decree-Law 317, art. 22 of Central Bank resolution 51/2013 and art. 20 of Central Bank instruction 26/2013); and (b) record cash transactions in excess of the amounts established by the Central Bank to enable tracing of the transactions (art. 12 of Decree-Law 317).

Cuba has prohibited the establishment of correspondent relationships with shell banks (art. 55 of Central Bank instruction 26/2013), which are defined as banks that have no physical presence and are not regulated by the country’s central bank (Central Bank circular 5/2019). If financial institutions become aware that their correspondent banks are maintaining correspondent relationships with shell banks, those institutions must not continue their relationship with those correspondent banks (circular 5/2019).
The creation of financial institutions in Cuba and the establishment of representation offices by foreign financial institutions must be authorized by the Central Bank (art. 4 of Decree-Law 362). Persons interested in establishing a wholly foreign-owned financial institution under the Foreign Investment Act are required to demonstrate that they are subject to consolidated supervision (art. 24.1 of Decree-Law 362). Financial institutions are, both individually and on a consolidated basis, under the supervision of the Superintendent of the Central Bank (art. 75 of Decree-Law 362).

There are specific sworn declaration regimes for officials at the Office of the Comptroller General and the Customs Service. Comptrollers, before taking up employment, and those who work in the Customs Service are required to provide a sworn declaration of their assets and income (art. 41.3 of Act 107 and art. 1 of Customs Service instruction 1/2008). The declaration must be submitted upon assumption of duties and departure from office and must be updated every two years (arts. 2 and 3 of resolution 453/2012 of the Office of the Comptroller General) or when there is any change in the mandatory data (art. 4 of Customs Service instruction 1/2008). With regard to the declaration system of the Office of the Comptroller General, the declaration is limited in nature and may be verified upon receipt of a complaint or allegation against the official or ex officio by the Comptroller General (arts. 12, 14 and 26 of resolution 453/2012). The findings of that verification may lead to administrative or criminal penalties (art. 27 of resolution 453/2012). The authorities confirmed that the information contained in the declarations can be shared with other States through mutual legal assistance.

There is no obligation to report interest in or signature or other authority over financial accounts in a foreign country unless they yield profits, in which case they must be reported for tax purposes (arts. 19 and 35 of Act 113).

Cuba has a Directorate General for the Investigation of Financial Transactions, which performs the functions of a financial intelligence unit and is part of the Egmont Group. The Directorate, which reports directly to the President of the Central Bank, acts as a national focal point, compiles and analyses suspicious transaction reports and exchanges information with counterpart entities (art. 5 (as amended by the third final provision of Decree-Law 361) and art. 6.2 of Decree-Law 317 and arts. 3.1 and 7 of Decree 322). The Directorate, by order of the competent authorities, is obliged to freeze without delay funds, financial transactions and bank accounts connected with natural or legal persons suspected of being linked to money-laundering, terrorist financing, arms proliferation and other related offences of similar gravity (art. 10.1 of Decree 322). At the time of the country visit, the Directorate had signed 8 inter-agency memorandums and 19 memorandums of understanding for cooperation and agreements with its international counterparts for the exchange of information.

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)

The authorities confirmed that, although there had been no such instances at the time of the country visit, other States may initiate civil action in their courts to establish ownership of property acquired through the commission of an offence, on the basis of the general provision of the Civil Code that provides that an owner may initiate action against the holder and possessor of property in order to claim that property (art. 129 of the Civil Code and arts. 6, 7 and 499 of the Criminal Procedure Act).

The courts can order those who have committed offences to pay compensation or damages to those who have been harmed, and the authorities confirmed that this general rule would also apply for the compensation of other States parties (art. 70 of the Criminal Code and arts. 82, 83, 89 and 95 of the Civil Code).

4 The Cuban authorities reported that, following the country visit, Decree-Law 389/2019 was adopted, which modified the offence of money-laundering and expanded the predicate offences to cover “any offence”.

V.21-05577
The courts are also authorized to recognize a third party’s claim as a legitimate owner of property when having to decide on confiscation (art. 43 of the Criminal Code in conjunction with art. 393 of the Civil, Administrative and Labour Procedure Act). The authorities confirmed that those general provisions also applied to other States parties.

The Independent Department for International Relations of the People’s Supreme Court receives requests for international legal cooperation, including foreign confiscation orders that Cuba is requested to enforce (art. 2, methodology for processing requests for international legal cooperation and notes verbales, adopted through instruction 214/2012 of the Governing Council of the People’s Supreme Court). Before sending a foreign order to the competent court for a decision (art. 7 of the methodology), the People’s Supreme Court must gather all the necessary evidence and verify that the order does not contravene Cuban law (art. 5 of the methodology).

The authorities can order the confiscation of property of foreign origin as part of a sentence relating to a money-laundering offence or any other offence under the general rules applicable to confiscation (arts. 43 and 346 of the Criminal Code).

The Cuban system of confiscation is based on criminal conviction, as an additional penalty under article 43 of the Criminal Code. Confiscation is established under Decree-Law 232 for, inter alia, acts related to corruption, and under Decree-Law 149, in relation only to illicit enrichment and as an administrative decision of the Ministry of Finance and Pricing that is applied without prejudice to criminal liability (see summary and report of the first review cycle for further details). On the basis of those decree-laws, Cuba may respond to requests from other countries to identify, freeze, seize or confiscate assets, including requests made in relation to non-conviction-based forfeiture decisions.

Requests for seizure or freezing with or without a foreign order are received through diplomatic channels and forwarded to the People’s Supreme Court, which then forwards them to the Directorate for International Legal Cooperation and International Relations of the Office of the Prosecutor for processing (arts. 13 and 14 of resolution 6/2016 of the Office of the Attorney General). If the request is approved, Cuba issues a seizure or freezing order (art. 17 of resolution 6/2016).

In the case of a foreign arrest warrant or order relating to a criminal charge, the Office of the Attorney General may take measures to preserve property for confiscation on its own initiative.

Cuba has not yet received a request from another State regarding the confiscation of property in Cuba.

Apart from the provisions established in relation to the content of general requests for assistance (art. 15 of resolution 6/2016), there are no additional requirements for requests relating to confiscation. In theory, article 55, paragraph 3, of the Convention can be applied directly.

During the review, Cuba provided copies of its laws and regulations that give effect to article 55 of the Convention. It does not make the taking of the measures referred to in paragraphs 1 and 2 of article 55 of the Convention conditional on the existence of a relevant treaty.

If Cuba does not receive sufficient or timely evidence in order to cooperate for the purposes of confiscation, the request is returned to the requesting State so that it may provide additional information (art. 16 of resolution 6/2016 of the Attorney General). If additional information is not received or if the request is not in line with the spirit of article 16 of the Constitution, the request for cooperation may be refused.

The authorities confirmed that, in practice and in direct application of the Convention, before a provisional measure is lifted, the requesting State party has an opportunity to present its reasons in favour of continuing the measure.

There are provisions on protection of the rights of bona fide third parties (art. 43, para. 2, of the Criminal Code).
Return and disposal of assets (art. 57)

The country’s legislation does not contain an explicit provision prohibiting the return of property. Although the Convention is directly applicable (art. 8 of the Constitution), the Criminal Code, as amended by Decree-Law 310, specifically provides that confiscated property will be used in the most economically and socially useful manner and that the proceeds of its sale will be paid into the State budget (art. 43 of the Criminal Code). With regard to bona fide third parties, which the authorities confirmed can be both natural and legal persons, including foreign States, property subject to confiscation that is in the possession of or owned by non-liable third parties is subject to confiscation only when such possession or ownership are the means by which to conceal or secure such property or objects or to benefit those third parties (art. 43.2 of the Criminal Code).

In direct application of the Convention, Cuba may deduct reasonable expenses incurred by the country in investigations, prosecutions or judicial proceedings that have led to the return or disposal of property.

Cuba may conclude specific agreements for the final disposal of confiscated property; however, it has not yet done so. A number of treaties on cooperation in criminal matters (as concluded with Uruguay, for example) establish that the State that has custody of the property will dispose of it in accordance with its domestic law; those treaties also provide for the possibility to transfer the confiscated property or the proceeds of its sale to the other State, to the extent permitted by law and under the conditions deemed appropriate. A treaty with the Bolivarian Republic of Venezuela provides for similar measures.

3.2. Successes and good practices

- Every public official is obliged to report, through a sworn declaration, the origin of the money when depositing large amounts in bank accounts, above the threshold of 10,000 convertible pesos or 30,000 Cuban pesos established by the Central Bank of Cuba (art. 42 of Central Bank instruction 26/2013) (art. 52, para. 5).

3.3. Challenges in implementation

It is recommended that Cuba:

- Strengthen the requirement for financial institutions to enhance their scrutiny of accounts sought or maintained by or on behalf of legal persons that are close associates of any publicly exposed person, in addition to the existing requirement to do so in cases where the owner or beneficiary of the legal person is a foreign publicly exposed person (art. 52, para. 1).

- Consider establishing effective financial disclosure systems, not only for officials at the Office of the Comptroller General and the Customs Service, but for a wider range of officials it considers appropriate, as well as appropriate sanctions for non-compliance with the obligation to submit declarations (art. 52, para. 5).

- Consider taking measures to require appropriate public officials having an interest in or signature or other authority over a financial account abroad to report that relationship (other than reporting for tax purposes) and to maintain appropriate records related to such accounts; and consider establishing appropriate sanctions for non-compliance (art. 52, para. 6).

Cuba is encouraged to provide information to other States without prior request (art. 56).

If the judicial body does not interpret the existing provisions in such a way that property that has been confiscated is returned to the requesting State in accordance with article 57, paragraphs 1 to 3, of the Convention, legislative reform will be necessary (art. 57, paras. 1–3 and 5).
It is also recommended that Cuba:

- Consider concluding more agreements or arrangements on international cooperation, including specific agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention (art. 59).