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

Executive summaries

Note by the Secretariat

Addendum

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* CAC/COSP/IRG/2011/1 and Add.1 and Corr.1.



II. Executive summaries

Mongolia

Legal system

Article 10 paragraph 3 of the Constitution of Mongolia states that “[t]he international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession”. UNCAC therefore ranks high among the laws of Mongolia, constituting an integral part of its domestic legislation.

The President is the Head of State in Mongolia. The Prime Minister, in consultation with the President, submits his or her proposals on the nomination of the cabinet members to the legislature (the State Great Khural). Mongolia has a unicameral legislature consisting of the State Great Khural. The Supreme Court is the highest judicial organ. The President appoints judges of the Supreme Court upon their presentation to the State Great Khural by the General Council of Courts, and appoint judges of other courts based on the proposal of the General Council of Courts.

In 2006, the new Anti-Corruption Law created the Mongolian Independent Authority Against Corruption (IAAC), which is Mongolia’s primary anti-corruption agency. The Criminal Law was revised in 2002 and amended in 2008, introducing offences under the Chapter on Malfeasance Crimes over which the investigators of IAAC have investigation powers. The Criminal Procedure Law was also passed by Parliament in 2002 and amended in 2007 to define the investigation mandate of IAAC investigators over offences subjected to criminal liability. IAAC is a special independent government body whose functions are limited to raising anti-corruption public awareness, education and corruption prevention activities, under-cover operations, inquiries and investigations in detecting corruption crimes, and reviewing and inspecting the assets and income declarations of those required by law, but do not include the authority to prosecute.

Overall findings

Since ratifying the United Nations Convention against Corruption (UNCAC) on 11 January 2006, Mongolia has made a significant commitment towards fighting corruption and implementing the requirements of the Convention in its domestic legal and institutional framework. Annex 1 refers to the provisions under review that have been fully, partially and not implemented.

Mongolia recently conducted its first national corruption index (the Mongolian Corruption Index 2009) in order to measure the extent of corruption and develop targeted interventions for the fight against corruption. The index, which was compiled by IAAC with the assistance of the Statistical Committee of Mongolia and foreign experts, focuses on ministries and agencies in the public sector and the 21 provinces of Mongolia to assess corruption levels and trends. The results are used for planning and policy formulation, and publicly distributed. The index enables benchmarking, comparison and monitoring with future periods (the next index is to be conducted in 2011).

An action plan on UNCAC implementation was approved by Parliament in 2009, and an ad hoc working group on UNCAC implementation has been established, which includes representatives of academia and civil society. The level of cooperation between various Government agencies, the private sector and civil society towards the fight against corruption is commendable. A parliamentary resolution further provides for the alignment of Mongolia's anti-corruption legislation with UNCAC and strengthens the punishment for official white collar crimes.

Criminalization and law enforcement

Criminalization

The Criminal offences in Mongolia are primarily criminalized in the Criminal Law, though provisions relevant to corruption offences can also be found in the Constitution, the Criminal Procedure Law, the Anti-Corruption Law, the Combating Money Laundering and Terrorism Financing Law and the Law on the Prosecutor Office.

There have been a number of amendments to Mongolia's criminal laws in recent years to more closely align them with international standards. For example, money-laundering, which had only been criminalized implicitly in accordance with the United Nations Convention on Transnational Organized Crime, was expressly recognized as a criminal offence in 2008 through amendments to the Criminal Law. Following recommendations by international and regional organizations, including the Asia/Pacific Group on Money Laundering, the Government of Mongolia subsequently amended the Criminal Law to expand the number of predicate offences from five predicate offences (drug trafficking, human trafficking, counterfeiting, arms dealing, and terrorist financing) to cover also corruption offences.

A number of legislative amendments have been introduced recently, including a draft bill developed in consultation with relevant regional and international bodies to amend the Criminal Law in order to widen the range of UNCAC offences criminalized in Mongolia. A draft bill has also been pending in Parliament since early 2010, which covers a wide range of areas for the protection of witnesses, experts and victims, including in the areas of money-laundering, human trafficking, transnational organized crime, human rights and access to justice.

While noting the active approach Mongolia has taken to amend its existing legislation in accordance with international standards, the review concluded that in certain areas improvements could be made. As a result, it is recommended that Mongolia adopt appropriate measures for the purpose of:

- Amending its bribery legislation to eliminate the distinction of acts within and outside a public official's duties;
- Amending domestic legislation on passive bribery to cover the solicitation of bribes by a public official;
- Foreseeing more severe penalties for the act of receiving a bribe than for giving a bribe, in order to discourage the solicitation of bribes by public officials and to encourage the reporting of bribery incidents, or enhancing the penalties for both active and passive bribery;

- Lowering the existing threshold in the Mongolian Criminal Law, whereby acts of bribery involving amounts below this threshold are currently investigated by the police and not IAAC, so as to widen the jurisdiction of IAAC over bribery offences, in accordance with its mandate to investigate corruption offences;
- Criminalizing active bribery of foreign public officials and officials of public international organizations.

With regard to the optional UNCAC provisions, Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- Criminalizing passive bribery of foreign public officials and officials of public international organizations; trading in influence in both the active and passive forms; and bribery in the private sector;
- Criminalizing illicit enrichment, preceded by an advisory opinion of the Supreme Court on its constitutionality, if appropriate. If there are Constitutional impediments, at a minimum asset forfeiture provisions should be adopted;
- Eliminating the threshold for the offence of abuse of functions, whereby abuses involving amounts below the threshold are not criminalized, but are dealt with administratively.

Law enforcement

Provisions relevant to law enforcement can be found in the Constitution, the Criminal Law, the Criminal Procedure Law, the Anti-Corruption Law, the Combating Money Laundering and Terrorism Financing Law, the Law on the Police, the Law on the Prosecutor Office, the Law on the Court Decision Enforcement Agency, the Law on the Courts and the Law on the Intelligence Organization.

The General Prosecutor's Office of Mongolia has a Constitutional mandate to carry out prosecutions in follow-up to all investigations conducted by the Police and IAAC. The working relationship between IAAC and the General Prosecutor's Office is regulated by the Criminal Procedure Law. IAAC conducts investigations and refers cases to the General Prosecutor's Office, which has a supervisory role over such investigations and can reject or accept IAAC's cases. Moreover, the General Prosecutor's Office can call for further investigative measures or make other recommendations to IAAC in corruption cases, and the agency is required under the Criminal Procedure Law to implement those recommendations. Criminal investigations involving officials in law enforcement, the Police, the National Security Council, the General Prosecutor's Office and judges are conducted either by a special investigating unit or IAAC. Moreover, the General Prosecutor's Office appoints prosecutors specialized in anti-corruption matters to prosecute IAAC matters.

The working relationship between the different law enforcement agencies, including IAAC, the Police, and prosecution, as well as FIU, State Audit Office and Ministry of Justice, among others, is cordial and conducive to effective cooperation. IAAC has concluded memoranda of understanding with a number of law enforcement counterparts, including the Police, General Prosecutor's Office and the National Security Council regarding the cooperation activities among their respective

institutions and there are generally good cooperative relationships among the organizations. IAAC could take advantage of its cooperative relation with the police to make use of the nation-wide police infrastructure in the enforcement of its mandate.

As a way to further streamline the work of its law enforcement authorities in matters related to corruption offences, it is recommended that Mongolia adopt appropriate measures for the purpose of:

- Assessing whether the privileges and jurisdictional immunities afforded under Mongolian law go beyond the protections necessary for public officials to perform their official functions;
- Enacting comprehensive legislation on the protection of experts, witnesses and victims and, in the interim period, continuing the use of special techniques to afford adequate protections to vulnerable categories of witnesses and sensitizing law enforcement;
- Furnishing copies of its anti-money-laundering laws to the Secretary-General of the United Nations, pursuant to the provisions of UNCAC article 23 subparagraph 2 (d).

With regard to the optional UNCAC provisions, Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- Establishing regional offices for IAAC in each of the 21 provinces;
- In the interim period, ensuring that the police have the authority to investigate corruption offences in the provinces where IAAC does not have a presence;
- Providing political support, adequate resources and relevant capacity-building in the form of specialized training for management and technical staff, particularly for investigators and prevention officers, noting that IAAC is a fairly new agency and there are presently nearly 160,000 public servants in Mongolia;
- Giving IAAC the full mandate to investigate all offences under the Convention, including specifically money-laundering and embezzlement where, in both cases, the predicate offence relates to corruption, as well as corruption offences related to elections;
- As a means to reduce room for interference by political, business and other interests in the operation of IAAC, establishing criminal sanctions to prevent undue influence in its operation;
- Developing a single law enforcement database linking the different law enforcement institutions for the better tracking of case outcomes and sentencing;
- Establishing special anti-corruption courts that are staffed by judges given specialized training on matters related to corruption, to the extent that this is consistent with the Criminal Code of Mongolia, pursuant to which corruption-related crime are considered to be criminal acts and therefore are brought to and decided by the Criminal Court;

- Establishing a means to resolve requests to competent bodies to suspend immunities and privileges of officials where such requests have been unanswered, and ensuring that any such decisions are made by persons who are independent from the suspect under investigation;
- Amending the provisions in articles 144 and 163 of the Criminal Procedure Law that require the signature of victims and witnesses who give testimony in criminal cases;
- Enacting comprehensive legislation on whistleblower protection;
- Enacting legislation on political parties and freedom of information;
- Reviewing the existing law on elections that requires the reporting of financial contributions to political parties in excess of a certain threshold;
- Issuing a specific legal mandate to the responsible public institutions for receiving, analyzing and verifying the information contained in the assets and income declarations of public officials and for passing this information to IAAC;
- Applying stricter sanctions, such as forfeiture of undeclared property, for violating the assets and income declaration requirements;
- Taking appropriate measures to establish a Parliamentary Accounts Committee, a Parliamentary Investments Committee, and internal audit units in public ministries.

International cooperation

Extradition

Mongolia relies on its Criminal Procedure Law and Criminal Law for extradition. However, it notified the Secretary-General of the United Nations on 7 August 2008 that UNCAC can be used as a legal basis for extradition. The Government held preliminary trainings on how to use UNCAC as a legal basis for extradition, and to date, one such request has been sent.

In principle, UNCAC offences are extraditable offences in Mongolian law, subject to the concept of dual criminality. Nonetheless, as Mongolia has not criminalized some UNCAC offences, its requirement of dual criminality renders some UNCAC offences not extraditable.

Pursuant to its Constitution, Mongolia will not extradite its own nationals. However, where requests for extradition have been denied, Mongolian law provides for domestic prosecution. The law further allows for the collection of evidence from abroad, in particular from interrogations, examinations, searches, experiments, seizure of property or other actions of inquiry, investigation and judicial hearing.

With regard to the optional UNCAC provisions, Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- Establishing expedited extradition procedures and simplified evidentiary requirements;
- Denying a request for extradition where there are substantial grounds to believe that the request was made to prosecute or punish a person because of

their sex, race, religion, nationality, ethnic origin or political opinions or other related prejudice.

Transfer of sentenced persons and criminal proceedings

The Criminal Procedure Law of Mongolia regulates the transfer of sentenced persons. Mongolia has also concluded such bilateral treaties with Kazakhstan and India.

With regard to the optional UNCAC provisions, Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- Adopting a practice, policy or arrangement that regulates the possibility of transferring criminal proceedings.

Mutual legal assistance

Mongolia relies predominately on its Criminal Procedure Law for mutual legal assistance, as well as the bilateral agreements it has entered into. During the country visit, it was confirmed that Mongolia has concluded 28 mutual legal assistance agreements with 20 countries. There is no domestic provision on the requirement of dual criminality for mutual legal assistance. In practice, it was held that mutual legal assistance can be provided in the absence of dual criminality and non-corruption-related examples were referred to. In 2009, Mongolia provided mutual legal assistance 59 times.

Mongolia notified the Secretary-General of the United Nations on 11 September 2008 that the Ministry of Justice and Home Affairs is the designated central authority for mutual legal assistance. The Secretary-General has not been notified by Mongolia that UNCAC can be used as a legal basis for mutual legal assistance and no such request has been made. However, during the country visit it was noted that UNCAC could be considered as the legal basis for mutual legal assistance.

It is recommended that Mongolia adopt appropriate measures for the purpose of:

- Ensuring that a request contains the subject matter and nature of the investigation, prosecution or judicial proceedings to which the request relates, and the name and functions of the authority responsible;
- Ensuring that mutual legal assistance can be granted for executing the following: providing information, evidentiary items and expert evaluations; providing relevant documents and records; identifying or tracing proceeds of crime; identifying, freezing and tracing proceeds; and the recovery of assets;
- Ensuring that the executions of mutual legal assistance requests conform to the procedures of investigation, prosecution or judicial proceedings of Mongolia's jurisdiction;
- Providing for mandatory consultation with the requesting State party before refusing a request and before postponing its execution;
- Giving protection to witnesses, experts and other persons who consent to give evidence in a requesting State party so that they are not subject to investigation, prosecution or judicial proceedings in the territory of the requesting State party;

- Addressing the confidential nature of information received, and the conditionality imposed in Mongolia's Banking Law, as a way to ensuring that mutual legal assistance would not be declined on the ground of bank secrecy;
- Complying with the rule of speciality, by introducing a provision for disclosing the purpose for which evidence, information or action is sought and only allowing the evidence to be used for that purpose;
- Notifying the Secretary-General of the United Nations of the language(s) acceptable to Mongolia, according to UNCAC article 46, paragraph 14.

With regard to the optional UNCAC provisions, Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- Using UNCAC as a legal basis for mutual legal assistance and notifying this to the Secretary-General of the United Nations;
- Establishing a comprehensive legal framework allowing for the transfer to and from Mongolia of persons whose presence is requested for identification, testimony or otherwise providing assistance in obtaining evidence, according to article 46, paragraph 10 of UNCAC;
- Permitting a hearing to take place by video conference, if it is not possible or desirable for the individual in question to appear;
- Enabling the inquiry officer, investigator, procurator or court in Mongolia to exercise their discretion of providing to the requesting State party copies of Government records, documents or information that are not available to the general public;
- Producing a practice paper on the handling of mutual legal assistance requests in respect of the timelines.

Law enforcement cooperation

Mongolia relies on its Anti-Corruption Law, Criminal Procedure Law, mutual legal assistance agreements and memberships (i.e. to the International Association of Anti-Corruption Authorities) for law enforcement cooperation.

It is recommended that Mongolia adopt appropriate measures for the purpose of:

- Enhancing its law enforcement cooperation under article 48 of UNCAC, including the exchange of information concerning specific means and methods used to commit UNCAC offences.

With regard to the optional UNCAC provisions, Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- Providing for direct cooperation between Mongolian and foreign law enforcement agencies.

Joint investigations and special investigative techniques

Mongolia relies on mutual legal assistance agreements and in the absence of such agreements, case-by-case arrangements to carry out joint investigations. To date, Mongolia has made four requests for joint investigations abroad. One request was also received for a joint investigation to take place in Mongolia, and the foreign

investigators were required to abide by Mongolian law and could not carry out the investigation themselves, as it had to go through their Mongolian counterparts.

The Law of Undercover Operations, Anti-Corruption Law and Criminal Procedure Law of Mongolia provide for Mongolia's use of special investigative techniques.

With regard to the optional UNCAC provisions, Mongolia may consider taking the following steps to enhance the effectiveness of its domestic measures:

- Entering into agreements or arrangements on the use of special investigative techniques, and factor in who is to bear such costs on the international level;
- In the absence of such agreements or arrangements, providing for the use of special investigative techniques on a case-by-case basis.

Training and technical assistance

A number of law enforcement agencies and members of the judiciary could benefit from further training on UNCAC. An appropriate body, such as the Ministry of Foreign Affairs, in consultation with international experts, as required, should take the necessary measures to organize this substantive training for relevant ministries and agencies.

Preliminary UNCAC-related trainings, such as under the Government's initiative on how to use the Convention as a legal basis for extradition, were deemed a good practice, but these could be further extended.

Noting that the official translation of UNCAC into Mongolian was observed to contain significant translation errors that impede its usefulness, the Ministry of Foreign Affairs should grant authorization for a re-translation of UNCAC into Mongolian and the Ministry of Justice could facilitate this translation.

Mongolia has requested a wide range of technical assistance for the implementation of many provisions of Chapters III and IV of UNCAC. The categories of assistance most frequently requested were legal advice, a summary of good practices and lessons learned, followed by on-site assistance by an anti-corruption expert.

Uganda

1. Legal system and reform efforts

Uganda signed the Convention on 9 December 2003 and deposited its instrument of ratification with the Secretary-General on 9 September 2004. Treaties ratified by Uganda are not self-executing but need to be implemented by legislation in order to be translated into domestic law (Article 123 of the Constitution and The ratification of Treaties Act Section 2). Uganda has a common law system.

In 2004, President Y. K. Museveni declared a Zero Tolerance Policy towards Corruption. Uganda has a National Anti-Corruption Strategy (2008-2013) which covers the activities of the public and private sectors and civil society. It is the fourth National Anti-Corruption Strategy since 1999. Uganda has carried out a number of administrative and legislative reforms in relation to the fight against corruption. The Anti-Corruption Act (ACA) entered into force in 2009; it is the main implementation law for the Convention. It contains provisions on the

criminalization of corruption, on the powers of the Inspector General of Government and the Director of Public Prosecutions and on jurisdiction, restraint and confiscation. The law has been under constitutional challenges since it does not contain a saving clause that would ensure its applicability to cases brought under those sections of earlier laws that were repealed and replaced by the respective sections of the Anti-Corruption Act. On 1st March 2011, however, the Court of Appeal sitting as a Constitutional court resolved this lacuna and decided that the Anti-Corruption Act applied to such cases that had been brought under the repealed provisions.

Further legislation on corruption includes the Inspectorate of Government Act (2002) and the Leadership Code Act (2002). The constitutionality of some provisions of the Act have been challenged before the Supreme Court and the Supreme Court decided that a Leadership Code Tribunal must be established. Legislation for its establishment is being developed.

The most important laws on criminal and criminal procedure matters are the Penal Code Act (1950), the Criminal Procedure Code Act (1950), the Magistrates Courts Act (1971), the Evidence Act (1909) and the Extradition Act (1964).

Draft legislation is under development in a number of areas. An Anti-Money Laundering Bill has been developed by the Ministry of Finance and the Bank of Uganda in consultation with other Ministries. It was tabled before the Parliament on 2 September 2010 and passed the first reading; the responsible committee of the Parliament has reported its comments back to the Plenary. Ugandan authorities expressed the hope that it could be adopted after the elections of 2011. The bill contains regulations on the criminalization of money-laundering, on the establishment of a Financial Intelligence Authority and the determination of obliged subjects, the seizure, freezing and forfeiture of assets in relation to money-laundering and international cooperation. The Directorate for Ethics and Integrity is developing the principles of a law on proceeds of crime that are currently under study. When the Cabinet approves the principles, a bill will be drafted and has to be approved by the Cabinet before it is presented to Parliament for enactment. Principles of a witness protection law are pending approval by the Cabinet and the application of an abbreviated legislative procedure is under discussion. Further, a law on international cooperation in criminal matters (which includes amendments to the Extradition Act), amendments to the Procurement and Disposal of Assets Act, and a law on plea bargaining are under development.

2. Observations and recommendations

(a) Chapter III. Criminalization, articles 15-25

Criminal offences in Uganda are contained in both the Anti-Corruption Act (ACA) and the Penal Code Act.

Active and passive bribery of national officials are addressed in Sections 2 (b) and (a) ACA. Article 5 (b) ACA provides a specific regulation with regard to public tenders.

Active bribery of foreign public officials and officials of public international organizations according to article 16 paragraph 1 of the Convention is addressed by the same provisions. The Anti-Corruption Act does not contain a definition of the

term “public official”. According to the Ugandan authorities, the term was defined in accordance with the term “public body” in article 1 ACA. However, as regards foreign officials, this concept covers explicitly only the officials of the East African Community. While Ugandan authorities stated that the concept of “public official” could also cover foreign public officials and officials of public international organizations, this interpretation has not been confirmed by the courts. It was further stated that no cases have yet been brought before the courts, and Ugandan authorities stated that awareness of the criminal nature of such behaviour among the private sector was very rare. No legislation is in place to cover passive bribery of foreign public officials and public international organizations.

The sections of the ACA on embezzlement, misappropriation or other diversion of property by a public official cover a number of the elements contained in the Convention; however, Section 2 (c) and 6 ACA do not cover those instances when private property entrusted to the custody of public officials belongs to an organization (such as a foundation). Ugandan authorities stated that according to Ugandan law, such funds are usually transferred into the property of a public entity. Section 19 covers further elements but does not mention “for his or her benefit or for the benefit of another person or entity”.

Sections 2 (e) and 8 of the ACA cover all elements of trading in influence under the Convention; Section 11 of the ACA implements all requirements of the Convention on abuse of office. Also Section 31 of the ACA regarding illicit enrichment was found to fully cover all requirements of the Convention.

Bribery in the private sector is criminalized under Section 2 (d) of the ACA, and embezzlement under section 19 of the ACA. It was noted that no prosecution has yet been undertaken based on article 2 (d).

With regard to money-laundering, Uganda has so far only implemented minor parts of the requirements foreseen in the Convention. The fraudulent conversion or transfer of proceeds of crime is not criminalized. The acquisition and possession of proceeds of crime are partly addressed in section 314 of the Penal Code Act, but the use of “such proceeds” is not covered. Section 2 (f) ACA covers part of the conduct addressed by the concepts of “acquisition”, “use” and “concealment”, however, only the concealment of the property itself, not the concealment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property. With regard to predicate offences, section 2 (f) ACA applies only to predicate offences contained in section 2 ACA, while Section 314 of the Penal Code Act applies to property that had been obtained by all felonies or unlawful acts. Predicate offences committed outside the jurisdiction of Uganda are not considered predicate offences neither under the ACA nor under the Penal Code Act. If foreigners committed corruption offences outside the territory of Uganda and then laundered money in Uganda this could only lead to their extradition. Uganda is in the process of adopting relevant legislation for the implementation of this UNCAC provision through the draft Anti-Money-Laundering Act and the future Act on proceeds of crime.

With regard to concealment, Section 2 (f) of the ACA widely covers the requirements of the Convention, although it only refers to the predicate offences regulated in section 2 ACA.

Ugandan legislation covers the conduct described in the Convention as obstruction of justice (article 25) in sections 39 (b) and (c) ACA as well as 103 (b) and 103 (c) of the Penal Code Act. Section 103 (c) of the Penal Code Act is in fact more comprehensive than Article 25 (b) of UNCAC since it covers any action intended to obstruct justice.

While noting that Uganda has already undertaken efforts to bring its criminal law in line with the Convention, important areas for legislative improvement remain. As a result, it is recommended that Uganda should

- (1) Amend the definition of public official or public body to cover foreign public officials and officials of public international organizations;
- (2) Clarify the legislation on embezzlement and misappropriation to ensure that it covers private funds entrusted to a public official as well as embezzlement for the benefit of another person or entity;
- (3) Enact, as a matter of priority, legislation for the criminalization of money-laundering and concealment as foreseen in article 23 and 24 of the Convention; such legislation should explicitly cover all conducts described in the Convention and ensure that money-laundering and concealment apply to the whole range of predicate offences;
- (4) Consider in case of a review of the Anti-Corruption Act the explicit inclusion of all forms of obstruction of justice described in article 25 of the Convention.

With regard to the non-mandatory provisions of the Convention on criminalization, it was concluded that Uganda should consider establishing as a criminal offence the passive bribery of foreign public officials and officials of public international organizations.

(b) Chapter III. Law enforcement, articles 26-42

Ugandan law contains a limited concept of criminal responsibility of legal persons which applies to all contexts where the property of a legal person is in question (section 2 (t) of the Penal Code Act, article 257 (10) of the Constitution). The understanding of the concept of “person” to include legal persons was held to be of general use in Ugandan law, but it has not been generally agreed upon or clarified by the courts. No case has yet been brought to court against a legal person, and Ugandan authorities reported of a general perception that bribery was not a problem of the private sector but rather of public officials.

Ugandan law contains the administrative liability of legal persons, particularly blacklisting pursuant to the Public Procurement and Disposal of Assets (PPDA) Act. However, blacklisting is related only to the infringements of the PPDA Act and not to all the offences established in accordance with this Convention.

Ugandan law contains all elements required by the Convention on participation, intent and preparation of corruption offences (sections 2 (g), 3 and 52 (b) and (c) ACA, as well as section 19 of the Penal Code Act). Evidence of intention may be circumstantial, as long as it is direct evidence; indirect evidence (such as hearsay) is not admissible. Uganda has no statute of limitations for corruption offences in place.

Corruption offences carry appropriate sanctions. Most offences under the ACA have sanctions of imprisonment not exceeding ten years or a fine not exceeding

two hundred and forty currency points or both for a number of offences including bribery and embezzlement. Immunities are limited, in accordance with the Ugandan Constitution, to the President of the Republic.

Prosecution is discretionary. Bail and early release are regulated in different pieces of legislation (sections 75 and 76 of the Magistrates Court Act, Section 14, 15 and 16 of the Trial on Indictments Act, Section 40 of the Criminal Procedure code Act, sections 88 and 89 of the Prisons Act Cap 304).

Each competent authority has disciplinary powers contained in the Public Service Regulations and the Leadership Code Act 2002. Conditional release of public officers pending judicial procedures is foreseen in The Uganda Public Service Standing Orders 2010 and Reg. 38 of the Public Service Commission Regulations 2009. Disqualification as a sanction for corrupt conduct was foreseen for public officials under section 46 ACA; however, this provision does not fully cover enterprises owned by the State.

With regard to confiscation and freezing of proceeds and instrumentalities of crime, the Anti Corruption Act in its sections 63-65 provides for the confiscation of proceeds of crime derived from the offences listed in the law. Ugandan law opts for conviction-based *in personam* confiscation, as opposed to non conviction-based *in rem* confiscation; it further foresees the principle of object confiscation, not value confiscation. The confiscation of instrumentalities of the crime is not foreseen in current legislation. The current legislation does also not provide for detailed rules on identification and tracing of proceeds or instrumentalities of crime. The Inspectorate-General of Government and the police (CID) have seizure and freezing powers, however, it was reported that the tracing of assets presented major problems in practice and that the standard of proof requested resembled in practice the presentation of a *prima facie* case, which was difficult to reach at the initial stage of investigations. No comprehensive regulation on the management of assets was in place, and insufficient mechanisms and capacity lead to challenges in the management of seized assets. Although no specific provision foresees the seizure and confiscation of transformed, converted or intermingled property, it is considered possible when a direct link to the property that is proceeds of crime can be established. The confiscation of property representing the value of the proceeds of crime is not possible under Ugandan law. Uganda has implemented provisions for the protection of bona fide third parties in the confiscation of proceeds of crime under section 62 (6) and 66 of the ACA.

With regard to witness protection, Ugandan authorities stressed the absence of a witness protection system as one of the major weaknesses in the country's system to fight corruption. Uganda has recently enacted a Whistler Blowers Act which entered into force in May 2010, however, no regulations have been enacted yet for implementing the Act.

As a consequence of corruption, contracts can be rescinded in accordance with the Public Procurement and Disposal of Assets Act, but a regulation on concessions is missing. Concerning the compensation of damages on the basis of corruption, Article 35 ACA covers part of the cases foreseen in the Convention but is not a general regulation of compensation of damages. There is further no legal provision stating the rules and procedures for the court to order the compensation of the victim from the restrained property.

It was noted that in the prosecutorial competence there was a certain overlap of functions between the Inspectorate of Government responsible for offences under the ACA, and the Department of Public Prosecution (DPP) responsible for all offences. Further, both mentioned institutions voiced concerns about appropriate levels of staffing, training and expertise of staff and the retaining of trained staff. Some institutions voiced concerns on political interference with corruption investigations.

Currently there is no mechanism to encourage offenders to cooperate with law enforcement authorities. On the other hand, the discretionary powers of the DPP and the IGG allow the possibility to grant immunity from prosecution to a perpetrator who cooperates substantially with the law enforcement authorities, and the judiciary can take into account the cooperation by the defendant by lowering the sanctions. Ugandan legislation does not provide for the protection of the collaborators of justice. A draft law on plea bargaining is being developed.

Public authorities in Uganda have broad authorities to cooperate and share information with law enforcement authorities, but it was noted that information sharing was not a standing practice in many public bodies. Similarly, Uganda has no specific and established policies to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, although at a case to case basis, case meetings with private sector entities or civil organizations were held.

Ugandan law does not contain bank secrecy laws that would impede the provision of any evidence or document by banks in criminal investigations.

The Ugandan legislation does not allow for the possibility to take into consideration the previous convictions recorded in a criminal record of another country as having legal consequences against a defendant subject to criminal proceedings in Uganda.

With regard to the jurisdiction in corruption cases, Uganda has established jurisdiction over offences committed in its territory, but not over offences committed on board a vessel that is flying its flag or an aircraft registered under its laws. Outside its territory, Uganda extends its jurisdiction only in cases relating to certain sections of the Penal Code Act including treason and terrorism, not for corruption offences.

Therefore the review concluded with the following recommendations:

- (1) Ugandan legislation should be amended with a view to regulating the confiscation of instrumentalities of crime. Specific provisions should cover the tracing and identification of proceeds or instrumentalities of crime, as well as the management of assets. The law should be amended to create a solid legal basis for the seizure and confiscation of transformed, converted and intermingled property;
- (2) Capacity should be strengthened, and officials should receive appropriate training on identification, tracing and seizure of goods as well as on the administration of seized assets (cf. below on training and technical assistance);
- (3) Witness protection legislation and an operational system to this effect should be developed; it should also contain provisions on the position of the victim in the trial;

- (4) While a certain overlap between the competences of the IGG and the DPP was solved in a spirit and standing practice of cooperation, Uganda may wish to consider focusing further the designation of responsibilities of both authorities. Further, priority should be given to improving the staffing and training of the institutions (cf. below on training and technical assistance);
- (5) The physical protection of the collaborators of justice should be addressed in future legislation;
- (6) It is recommended to further strengthen the cooperation and information-sharing mechanisms between national public and law enforcement authorities and to conclude cooperation agreements or any other forms of measures to ensure cooperation with private sector agencies;
- (7) Uganda should establish its jurisdiction over offences committed on board a vessel that is flying its flag or an aircraft registered under its laws.

With regard to the non-mandatory requirements of the Convention on law enforcement, it was recommended that

- (8) A specific amendment to the ACA should clarify the law so that the concept of a “person” would cover in all contexts also legal persons;
- (9) Disqualification as a sanction for corrupt conduct should be foreseen for all persons employed by all enterprises owned by the State;
- (10) Uganda may wish to consider the possibility to reverse the burden of proof with regard to the lawfulness of the property acquired by a person suspected of having committed a corruption offence or any other offence;
- (11) Regulations for implementing the recent Whistle Blowers Act should be enacted. It was further considered that the Act could benefit from a regulation on the protected disclosure to a lawyer or leader of a faith-based organization; from a provision for back pay for lost wages and similar issues to eliminate the direct and indirect effects of victimization; and from an obligation on employers to sensitize employees on the Act. It was further recommended to carry out programmes to raise awareness of the population of the importance of disclosing acts of corruption, and of the means of protection available to whistle-blowers;
- (12) Legal provisions on the rescission of concessions tainted by corruption should be created. It may be considered whether legal provisions should state the rules and procedure for a court to order the compensation of the victim of corruption from restrained property;
- (13) Ugandan authorities may wish to consider to create the possibility to take into consideration the previous convictions recorded in a criminal record of another country as having legal consequences against a defendant subject to criminal proceedings in Uganda;
- (14) Uganda may wish to consider extending its jurisdiction outside of its territory in certain cases as foreseen in article 42 paragraph 2 of the Convention.

(c) Chapter IV. International cooperation

(i) Extradition

Uganda has an Extradition Act Cap 117 that provides the legal rules according to which Uganda can provide or request extradition. Uganda makes extradition dependent on the existence of a treaty.

Apart from the international cooperation in the East African Community, extradition is granted based on bilateral treaties and taking UNCAC as a legal basis. However, the Secretary-General has not yet been notified to this effect. Some bilateral agreements have been concluded, mostly within the region. Requests for extradition to Uganda have to be made through the diplomatic channels. After receiving a request, it is transmitted through the Ministry of Justice and decided upon by the competent judge.

Extradition is subject to the dual criminality rule. All offences are extraditable that are contained in the Schedule to the Extradition Act (section 28 of the Extradition Act), which are those crimes which, if committed within the jurisdiction of Uganda, would be an indictable offence described in the Schedule to this Act. The schedule can be amended by the Minister through a statutory instrument. The schedule contains currently, inter alia, bribery, embezzlement and offences relating to embezzlement, fraudulent conversion, threats and intimidation. The schedule refers to the Penal Code, but according to the Interpretation Act section 13 (1) could also apply to the ACA.

The extradition of nationals is possible under Ugandan law.

Ugandan law does not contain any specific provisions on the expedition and simplification of extradition procedures and on refusals on the grounds of discrimination, and no case law to this effect was available.

(ii) Mutual legal assistance

Uganda has currently no domestic legislation on mutual legal assistance (MLA). A law on international cooperation is being initiated. In the absence of legislation, MLA was provided in accordance with a number of principles established in practice. Uganda is party to a very limited number of mutual legal assistance treaties. It could not be clarified by Ugandan authorities whether dual criminality was a requirement for the provision of MLA.

Mutual legal assistance is not made conditional on the existence of a treaty; it was provided under bilateral and multilateral treaties, including the Harare scheme, UNCAC as a legal basis, and on reciprocity.

The Inspectorate of Government was designated as the central authority, and English was designated as the language for mutual legal assistance. At the time of finalizing the report, the notification had not yet been received.

Uganda agrees that, in urgent circumstances, requests for mutual legal assistance and related communications be addressed to it through the International Criminal Police Organization.

(iii) Law enforcement cooperation

Law enforcement cooperation is carried out through Interpol and through ARINSA, a CARIN-style network of police and prosecution services in which operational case information can be exchanged. Further, the Department of Public Prosecution cooperates with OLAF, UK-SFO and ICAR.

Joint investigations have not yet been carried out corruption cases, nor has information on bilateral or multilateral agreements or arrangements to this effect been submitted.

Uganda has no specific provision on special investigative techniques in its legislation, and international cooperation to this effect has not been undertaken.

The review concluded with the following recommendations with regard to international cooperation:

- (1) While recognizing that many of the issues on extradition required in the Convention are covered in Ugandan legislation and case law practice, the upcoming legislative reform in the international cooperation law should be taken as an opportunity
 - to insert into the law provisions on the treatment of extradition requests with regard to several separate offences, at least one of which is extraditable;
 - to clarify the law with a view to ensuring that all corruption offences are extraditable;
 - to notify the Secretary-General about the possibility to use UNCAC as a legal basis for extradition under Ugandan law;
 - to create specific provisions with a view to expediting and simplifying extradition procedures;
 - to specifically regulate the refusal of extradition on the grounds of discrimination;
 - to create provisions on consultations with the requesting State Party before refusing a request;
 - Uganda may also consider taking measures to implement the non-mandatory provisions of the Convention with regard to extradition in the absence of dual criminality;
- (2) Uganda may wish to consider entering into bilateral or multilateral agreements on the transfer of sentenced persons;
- (3) The elaboration of legislation on mutual legal assistance should be considered a priority. In this legislation, all requirements of article 46 should be taken into account;
- (4) Uganda should consider to take measures to ensure the possibility of transferring to another jurisdiction proceedings for the prosecution of a corruption offence in cases where such transfer is considered to be in the interests of the proper administration of justice;

- (5) Uganda may wish to broaden its law enforcement cooperation and should consider to include provisions on the use of special investigative techniques in corruption cases within its legislation, and to conclude international agreements or arrangements or allow for case by case decisions to this effect.

3. Training and technical assistance

Throughout the review, Uganda specified a number of training and technical assistance needs, specifying that a number of agencies could benefit from further training on the Convention. An appropriate body in consultation with international experts, as required, should take the necessary measures to organize this substantive training for relevant ministries and agencies. While Ugandan authorities considered that legislative amendments could be achieved widely without legislative assistance, it was concluded that the following areas should be prioritized:

- (1) Training in law enforcement, investigation and prosecution of corruption cases. Such training should cover financial investigations, specifically the tracing, seizing and confiscation of assets as well as the management of seized assets. It should address at least the police (CID), the prosecution services (DPP) and the Inspectorate of Government. Such training should also address the use of modern information technology with a view to full implementation of existing legislation;
- (2) Capacity-building should be provided on international cooperation (extradition, mutual legal assistance, law enforcement cooperation), and on informal interaction with counterparts in other countries and networking;
- (3) Awareness-raising should be supported on anti-corruption legislation in general, particularly on reporting of corruption incidents and protection provided under the Whistle-Blower Act.