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Convention against Corruption

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Note by the Secretariat

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II. Executive summary

Republic of Guatemala

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

Guatemala signed the Convention on 9 December 2003, and deposited the instrument of ratification on 3 November 2006.

The Convention has the status of law and can be directly applied (art. 171 (l) of the Constitution).

The legal system is a civil-law system. Criminal proceedings follow the accusatorial system, which consists of a preliminary phase, an intermediary phase and a hearing.

The main authorities in the fight against corruption include the Public Prosecutor's Office, the Comptroller-General's Office, the Presidential Committee for Transparency and Electronic Government (COPRET), the Office of the Attorney General of the Nation, the Special Verification Office (IVE) of the Banking Supervisory Authority, and the National Secretariat for the Administration of Forfeited Assets (SENABED).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active bribery of national public officials is covered by article 442 of the Criminal Code (CC).

Passive bribery is regulated in article 439 of the Criminal Code. Article 450 bis of the Criminal Code criminalizes the illegal collection of commissions or receipt of any benefit as a specific offence, which excludes the indirect commission of the offence and does not cover refraining from action on the part of public officials.

Active (art. 442 bis CC) and passive transnational bribery (art. 442 ter CC) are criminalized.

All bribery offences are related to acts by public officials within the exercise of their duties, and not to acts contrary to the duties of their office.

Article 449 bis of the Criminal Code criminalizes "trading in influence", which, together with the provisions on inducement to commit an offence (art. 36 CC), covers some of the practices established in article 18 (a). The offence of passive trading in influence covers the benefit to the person who requests or accepts it, but does not clearly cover the benefit requested or accepted for third parties with the intent that the public official or other person abuse their influence (art. 449 bis CC).

Active and passive bribery in the private sector have not been established as criminal offences.

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

The laundering of the proceeds of crime is criminalized in article 2 of the Act against the Laundering of Money and Other Assets.

Participation in incitement or conspiracy to commit money-laundering offences and attempts to commit them are governed by article 6 of the Act against the Laundering of Money and Other Assets, and the participation in and attempt to commit such offences are regulated by the general provisions of the Criminal Code (arts. 14, 37 and 63 CC). Association to commit any offence is criminalized in article 4 of the Organized Crime Act, while conspiracy is criminalized in article 3 of the Organized Crime Act.

All offences established under the Convention (hereinafter referred to as “corruption offences”) are predicate offences, including those committed abroad. The laundering of the proceeds of crime is a separate offence; so-called “self-laundering” is also an offence.

Concealment is criminalized in articles 474 and 475 of the Criminal Code.

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

Embezzlement and misappropriation are criminalized under articles 445 to 447 of the Criminal Code and relate to public funds, property or assets.

Article 418 of the Criminal Code criminalizes abuse of authority to the detriment of third parties, and article 449 of the Criminal Code criminalizes extortion.

Illicit enrichment by public officials when it stems from the exercise of the public official’s functions or from other income is criminalized in article 448 bis of the Criminal Code.

Embezzlement and misappropriation in the private sector are not criminalized.

Obstruction of justice (art. 25)

The conduct described in article 25 (a) of the Convention is criminalized in the first paragraph of article 458 bis of the Criminal Code, but does not cover acts of inducement to give false testimony. Article 9 of the Organized Crime Act contains an offence related to the obstruction of justice.

With regard to the conduct described in article 25 (b) of the Convention, article 458 bis of the Criminal Code applies to all judicial authorities and their auxiliaries, which also includes law enforcement authorities.

Liability of legal persons (art. 26)

The criminal liability of legal persons is covered in articles 38 and 57 of the Criminal Code; the maximum sanction applied to offences for which a sanction is not explicitly set forth is a fine of up to \$US 625,000; for repeat offences, the sentence is the definitive revocation of legal personality. For money-laundering offences, the criminal liability of legal persons is regulated in the Act against the Laundering of Money and Other Assets (art. 5).

Guatemala has also established the civil liability of legal persons (art. 24 CC).

Administrative liability in public procurement is established, for example, with penalties of disqualification or fines (arts. 80 to 88 of the Procurement Act, art. 54 bis of the Procurement Act regulations and articles 38 and 39 of the Organizational Law of the Comptroller-General's Office).

Participation and attempt (art. 27)

Guatemala has criminalized participation (articles 35 to 37) and attempt (articles 14, 63 and 64 of the Criminal Code), as well as conspiracy and preparation to commit certain offences (art. 17 CC and art. 3 of the Organized Crime Act).

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

The Criminal Code establishes sanctions that can be adjusted according to the gravity of the offence; all corruption offences are punishable by several years of imprisonment. Article 28, paragraph 2 of the Criminal Code provides aggravated sanctions for public officials, and article 51.7 of the Criminal Code establishes that the sentences of persons convicted for offences against the public administration and the administration of justice cannot be commuted.

Guatemala has established the right to a preliminary trial for a wide range of public officials (see, inter alia, arts. 161, 206, 258 and 279 of the Constitution). The preliminary trial may be conducted by the Congress of the Republic, the Supreme Court of Justice or the Chambers of the Court of Appeal (arts. 13 to 15 of the Preliminary Trials Act). Prior to the preliminary trial, public officials cannot be investigated or subject to precautionary measures. The authorities have confirmed that termination of ownership and interim measures on property may be implemented independently of criminal investigations.

Article 25 of the Code of Criminal Procedure (CCP) regulates the principle of discretionary prosecution, which does not apply to offences committed by public officials.

In accordance with article 259 of the Code of Criminal Procedure, preventive detention may be imposed to ensure the presence of the defendant during the trial.

Articles 44 and 80 of the Criminal Code regulate early release and parole.

The suspension of imprisoned public officials (also in preventive detention) is regulated in article 74, subsection 4, of the Civil Service Act. Furthermore, the suspension of judicial officials detained or serving alternative sentences is possible (art. 31 of the Judiciary Act; arts. 59 and 61 of the Civil Service Act of the Judiciary; and art. 45 of the General Regulations for the Civil Service (Judiciary) Act).

Reassignment is established for public officials of the executive branch (art. 60 of the Civil Service Act) and the judicial branch (art. 26 (a) of the Judicial Service Act, and art. 35 (a) of the Civil Service (Judiciary) Act).

The Criminal Code (arts. 56 to 58) provides for absolute and special disqualification, and the Act against the Laundering of Money and Other Assets (art. 7) for special disqualification, which applies to most but not all corruption offences (art. 42 CC). Article 57, subsection 2 of the Criminal Code provides for

special disqualification from exercising a profession or activity whose exercise depends upon an authorization, licence or qualification.

Criminal and disciplinary proceedings are autonomous.

The Organized Crime Act regulates the reduction of penalties, the conditional suspension of criminal prosecution and the exercise of the principle of discretionary prosecution for persons who cooperate with justice (arts. 90 to 92 of the Organized Crime Act). In practice, these benefits are not applied in corruption cases. The protection of collaborators is regulated through the Act on the Protection of Prosecuted Persons and Persons connected with the Administration of Criminal Justice. Guatemala has not concluded agreements with regard to the awarding of these benefits to persons cooperating with justice at the international level.

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

Witness protection is regulated in the Act on the Protection of Prosecuted Persons and Persons connected with the Administration of Criminal Justice, which provides for all protection measures referred to in the Convention and is enforced by the Protection Service in Guatemala. Only the prosecutor may request the protection of a person who could become a witness or expert (art. 10 of the Act on the Protection of Prosecuted Persons and Persons connected with the Administration of Criminal Justice). At the time of the visit, Guatemala was protecting 540 persons, of whom 10 per cent were abroad, but few of the protected persons were connected with corruption cases.

Guatemala has not concluded any agreements with other States for the international relocation of witnesses.

Article 5 of the Code of Criminal Procedure recognizes the right of victims to effective judicial protection, and article 117 of the Code of Criminal Procedure obliges the Prosecutor's Office to hear their opinions during the proceedings.

The legislative framework does not provide for protection measures for persons who report acts of corruption, except for acts of passive bribery (art. 439 CC). At the time of the country visit, an initiative on the issue was before Congress.

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

Guatemala regulates both confiscation as a criminal sanction (arts. 60 of the Criminal Code and 198 of the Code of Criminal Procedure, art. 8 of the Act against the Laundering of Money and Other Assets) and termination of ownership, which is of a jurisdictional and real nature and applies to most, but not all, offences established under the Convention (Termination of Ownership Act). Confiscation applies to proceeds and instrumentalities used in the commission of the offence, but not to those intended to be used; termination of ownership applies to all proceeds and instrumentalities of the offence.

Precautionary measures are regulated in article 22 of the Termination of Ownership Act, and in articles 198, 200 and 278 of the Code of Criminal Procedure and 73 to 87 of the Organized Crime Act.

The National Secretariat for the Administration of Forfeited Assets administers seized property and property subject to termination of ownership. Property seized

through criminal proceedings is put in the custody of the judicial requisitions warehouse, and the confiscated property is placed in a judicial fund.

The proceeds of crime which have been transformed or converted into other property, or which have been intermingled with property acquired from legitimate sources, may be subject to termination of ownership (art. 4 of the Termination of Ownership Act), but not to criminal confiscation. The same applies to income or other benefits derived from the proceeds of crime or from property into which such proceeds have been transformed or converted, or the property with which such proceeds have been intermingled.

Article 198, together with article 308 of the Code of Criminal Procedure, allows for the seizure of original copies of bank documents with legal authorization.

Guatemala reverses the burden of proof for termination of ownership (art. 6 of the Termination of Ownership Act).

The Termination of Ownership Act (art. 10) and the Criminal Code (art. 60) provide for protection of the rights of bona fide third parties.

In accordance with article 308 of the Code of Criminal Procedure and article 63 of the Act on Banks and Financial Groups, an order from a judge is required to lift bank secrecy. Article 17 of the Termination of Ownership Act establishes the obligation to provide information to the prosecutor, without requiring a court order.

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

The statute of limitations is regulated by articles 107 to 111 of the Criminal Code; articles 79 and 80 of the Code of Criminal Procedure establish the offence of failure to appear in criminal proceedings. In the case of public officials, offences are prescribed double the term of the sentence provided for in the Criminal Code (art. 107 of the Criminal Code, para. 6 and art. 155 of the Constitution).

International reoffending is not regulated.

Jurisdiction (art. 42)

Guatemala has established jurisdiction over crimes committed in its territory and on board national vessels or aircraft (arts. 4 and 5 CC).

Guatemala has established jurisdiction over any offence which is punishable in Guatemala, which covers all mandatory offences under the Convention (art. 5 CC).

For non-mandatory offences, jurisdiction has been established over offences committed against a Guatemalan national where there is any accusation by the party concerned or the Public Prosecutor's Office and the accused person is present in Guatemala; and over offences committed by officials abroad; and by Guatemalans abroad who have been denied extradition (art. 5 CC). No jurisdiction has been established in cases where Guatemala does not extradite a person. Article 5 of the Criminal Code establishes jurisdiction in respect of some but not all offences committed against the State. Guatemala has not established jurisdiction over crimes committed abroad by stateless persons who have their habitual residence in Guatemala.

The Guatemalan authorities are not obliged to consult with the authorities of other States parties when they are acting in respect of the same acts.

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

In accordance with article 37 of the Procurement Act, State agencies may withdraw from the negotiation of a contract at any stage before it is signed. The rescinding of contracts after signing is possible to the extent foreseen by the general rules of private law (art. 103 bis of the Procurement Act, arts. 1579 to 1586 of the Civil Code). Article 37 of the Procurement Act provides that international conventions and treaties be applied in a complementary manner.

Under article 95 of the Procurement Act, concessions may be revoked; the law does not specify the criteria for their revocation. The Municipal Code establishes relevant causes for revoking municipal public service concessions (art. 77).

During hearings, entities or persons suffering damage as a result of an act of corruption may initiate legal action against those responsible in order to obtain compensation (arts. 116, 117 and 121 CCP, and arts. 76 and 88 of the Organized Crime Act). The Office of the Attorney-General of the Nation represents the State (art. 252 of the Constitution, and art. 13 of Decree No. 512 of the Congress of the Republic).

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

The Public Prosecutor's Office has an Anti-Corruption Division. The Judiciary, the Comptroller-General's Office and the International Commission against Impunity in Guatemala also play a role in combating corruption through law enforcement.

Several laws provide for the obligation of the authorities to cooperate, including the Organized Crime Act, and several inter-agency memorandums of understanding have been signed to strengthen cooperation.

The Act against the Laundering of Money and Other Assets requires various private sector institutions to submit reports of suspicious transactions confidentially and exclusively to the Financial Intelligence Unit (art. 26). To encourage its citizens to denounce cases of corruption, Guatemala has established a telephone line and a website to receive reports, but the low number of reports in corruption cases is considered one of the country's most prominent challenges.

2.2. Successes and good practices

Criminalization and law enforcement:

- The increase in the level of expenditure and the cancellation of debts that cannot be reasonably justified by a public official are criminalized; illicit enrichment also applies in the case of public officials who commit the offence for the benefit of other persons, as well as in some cases of former public officials (art. 20);
- The Act against the Laundering of Money and Other Assets criminalizes the conversion or transfer of property (art. 2 (a)), as well as the concealment of the true nature, origin, location, destination, movement or ownership of property (art. 2 (c)) by persons who, on the basis of their position, employment, office

or profession, are required to know that that such property constitutes the product or proceeds of an offence, or originated in the commission of a offence (art. 23, para. 1 (a), (i) and (ii));

- Guatemala can provide protection to journalists who are at risk because of their duties (art. 32);
- The Procurement and Acquisitions Information System of the State of Guatemala (GUATECOMPRAS) has been established and enables information on purchasing processes to be obtained (art. 34).

2.3. Challenges in implementation

Criminalization and law enforcement:

It is recommended that Guatemala:

- As a priority, strengthen its regulatory and investigative bodies in the fight against corruption, particularly their effectiveness and independence (general observation);
- Amend its legislation to ensure that in all passive bribery offences the indirect commission of the offence and refraining from acting are criminalized (art. 15 (b));
- Amend its legislation to cover bribery committed in order to secure any act, as well as acts contrary to the duties of public officials (arts. 15 and 16, para. 1), and consider the same amendment for transnational passive bribery (art. 16, para. 2);
- Include all categories of private property in offences of embezzlement and misappropriation of property (art. 17);
- Consider establishing a specific offence regulating the promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or other person abuses their actual or presumed influence to obtain from an administration or authority of the State party an undue advantage that will benefit the original instigator of the act or any other person (art. 18 (a));
- Consider including benefits requested or accepted by third parties with the purpose that the public official or other person abuses their influence (art. 18 (b));
- Consider removing the requirement that abuse of authority be detrimental to the public administration or third persons (art. 19);
- Consider criminalizing bribery (art. 21) and the embezzlement or misappropriation of property in the private sector (art. 22);
- Amend its legislation to criminalize inducement to give false testimony beyond the scope of the Organized Crime Act; and examine whether specifically regulating the means of obstruction of justice referred to in article 25 (a) could support the implementation of this provision (art. 25 (a));
- Review the system of criminal sanctions for legal persons to ensure that penalties are proportionate to the gravity of the offence; and consider

establishing administrative sanctions beyond public procurement cases and the Organizational Law of the Comptroller-General's Office (art. 26);

- If its domestic law so permits, Guatemala could consider criminalizing the preparation to commit a corruption offence at the individual level (art. 27, para. 3).

Law enforcement

It is recommended that Guatemala:

- Ensure that pretrial proceedings are conducted effectively, and allow that public officials be investigated and precautionary penal measures taken prior to the preliminary trial (art. 30, para. 2);
- Consider adopting measures entailing suspension or dismissal with regard to all public officials accused of corruption offences (art. 30, para. 6);
- Consider establishing disqualification from holding public office for all corruption offences, and disqualification from holding offices in State-owned enterprises which do not depend on authorization, licence or qualification (art. 30, para. 7);
- To the extent permitted by its domestic legal system, amend its legislation so that the Termination of Ownership Act includes all corruption offences, or so that its legislation includes the criminal confiscation of instrumentalities intended for use in the commission of corruption offences (art. 31, para. 1);
- Continue its efforts to register immovable property in order to obtain a national register of all immovable property (art. 31, para. 2);
- Recognizing that is regulated in the Termination of Ownership Act, explicitly introduce the criminal confiscation of the proceeds of crime which have been transformed or converted into other property; of property up to the estimated value of the combined product when the proceeds of crime have been intermingled with property acquired from legitimate sources; and of the income or other benefits derived from the proceeds of crime or from property into which such proceeds have been transformed or converted, or the property with which such proceeds have been intermingled;
- Study the possibility of facilitating applications for protection from witnesses and experts and strengthen the Protection Service (art. 32, para. 1);
- Consider entering into agreements with other States for the international relocation of witnesses (art. 32, para. 3);
- Consider, as a priority, measures to protect reporting persons, promoting the existing draft law (art. 33);
- Regulate the criteria for annulling or terminating a contract or revoking a concession (art. 34);
- Strengthen the Anti-Corruption Division of the Public Prosecutor's Office and its investigative capacity (art. 36);
- Consider extending to all offences established under the Convention the legal benefits granted to persons cooperating with justice (art. 37, paras. 1 to 3);

- Ensure that persons cooperating with justice in corruption cases are afforded the same protection as witnesses, experts and victims (art. 37, para. 4);
- Consider entering into agreements in accordance with article 37, paragraph 5;
- Strengthen cooperation between its public authorities and its authorities responsible for investigating and prosecuting criminal offences (art. 38);
- Strengthen its cooperation with the private sector (art. 39, para. 1);
- Consider adopting additional measures to encourage people to report acts of corruption, for example, by accepting anonymous reports (art. 39, para. 2);
- With regard to the non-mandatory offences of the Convention, Guatemala could establish its jurisdiction over crimes committed abroad:
 - o Committed against a Guatemalan national, without prejudice to the required presence of the accused for the proceedings (art. 42, para. 2 a));
 - o Committed by Guatemalan nationals when their extradition has not been requested, and committed by stateless persons who have their habitual residence in Guatemala (art. 42, para. 2 b));
 - o Committed against the State (art. 42, para. 2 (d));
 - o When Guatemala does not extradite the alleged offender (art. 42, para. 4);
- Guatemala is encouraged to coordinate its actions with other States parties where several States exercise their jurisdiction (art. 42, para. 5).

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

Guatemala has indicated that the following types of technical assistance would assist in the implementation of the Convention:

- (a) Capacity building (arts. 15, 16, 31, 32, 33, 34 and 35);
- (b) Summary of good practices (arts. 17, 18, 20, 21, 32, 33, 34 and 36);
- (c) On-site assistance by a relevant expert (arts. 17, 19, 20, 21, 32, 34 and 37);
- (d) Model legislation (arts. 17 and 22);
- (e) Supporting materials for staff (art. 18);
- (f) Legislative drafting (art. 37).

The United States Agency for International Development has been providing technical assistance related to the implementation of the Convention.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

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

Extradition continues to be regulated by the Constitution, the six bilateral treaties and several multilateral treaties on the matter, and, in a subsidiary manner, the Criminal Code and the Regulatory Act on Extradition Proceedings (Decree No. 28-2008). Instruction 04/2013 of the Public Prosecutor's Office establishes internal procedure. Guatemala has presented examples of extradition cases, including in cases of corruption.

Guatemala requires a treaty as a legal basis for extradition and considers the Convention a legal basis.

The extradition process in Guatemala follows a mixed judicial and administrative system. The judiciary decides exclusively on the extradition of foreigners; a governmental agreement issued by the President of the Republic is required for the extradition of Guatemalan nationals.

Extradition requires dual criminality.

Nationals may be extradited, unless extradition is prohibited in bilateral treaties; the "extradite or prosecute" principle is regulated in article 10 of the Regulatory Act. There are no provisions regulating the serving of sentences imposed abroad.

In a majority of treaties, extraditable offences are those which are punishable by a minimum sentence of one year or more, and include all offences established under the Convention. Some treaties contain lists of extraditable offences which do not cover all these offences. Guatemala does not consider corruption offences to be political crimes.

The Act contains procedures and time frames (arts. 12, 15 to 18 and 23 of the Regulatory Act) and an accelerated procedure when the person in question consents to the request (arts. 3 and 4). Guatemala may allow extradition if there is evidence that the legal requirements are met, without proof that the offence was committed. Extradition on discriminatory grounds and in cases which also involve fiscal crime are regulated in some treaties. The Regulatory Act establishes that Guatemala may request additional information (art. 27) but does not provide for consultations with the requesting State.

The person sought for extradition may be detained (arts. 13 to 15 of the Regulatory Act).

Guatemala has concluded three bilateral agreements and one multilateral treaty on the transfer of sentenced persons.

Guatemala has no legislation on the transfer of criminal proceedings, but could conduct them on the basis of the Convention.

Mutual legal assistance (art. 46)

Mutual legal assistance is regulated in the three bilateral treaties and five multilateral treaties to which Guatemala is a party, and appears in article 158 of

the Code of Criminal Procedure and article 34 of the Act against the Laundering of Money and Other Assets. Instruction 03/2013 of the Public Prosecutor's Office regulates internal procedure.

Guatemala does not keep any statistical records of mutual legal assistance cases, and could not identify any instances of mutual legal assistance with respect to the offences set forth in the Convention.

Guatemala can provide assistance on the basis of the Convention or the principle of reciprocity.

Guatemalan legislation does not take a position on dual criminality, and treaties have different positions on the issue.

Guatemala may provide assistance through a wide range of measures, including with regard to offences for which a legal person may be held liable. The voluntary appearance of persons in the requesting State party may pose a challenge owing to a lack of resources for travel, and taking statements from persons who have been accused in absentia in the requesting State is not possible. Guatemala has not yet submitted information voluntarily and applies general restrictions on confidentiality to information received that was not solicited (art. 278 CCP).

The central authority under the Convention is the Public Prosecutor's Office. Central authorities can communicate directly but in practice often prefer diplomatic channels. In urgent circumstances, applications may be accepted by e-mail and orally.

Procedures are carried out in accordance with Guatemalan law: for example, an order from the competent judge is required for the disclosure of information protected by bank secrecy (see art. 40 above). Guatemala can execute a request in accordance with the procedures specified in the request, provided this does not contravene Guatemalan law. Guatemala makes frequent use of videoconferencing.

Guatemala has no legislation on issues such as the principle of speciality, the obligation to consult with the requesting State before refusing to provide assistance, safe conduct or costs; however, it may apply the Convention directly on such matters.

At the time of the visit, Guatemala was working towards the signing of a treaty within the framework of the Central American Integration System (SICA).

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

Law enforcement authorities cooperate at the international level through organizations such as INTERPOL and the Egmont Group. Although the authorities participate in networks such as the Ibero-American Network for International Legal Cooperation, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition, the Focal Point Initiative for Asset Recovery supported by StAR and INTERPOL, the Network of Prosecutors against Organized Crime (REFCO) or the Inter-Agency Asset Recovery Network of the Financial Action Task Force of South America against Money Laundering (RRAG), it seems that they do not normally use them in corruption cases.

At the time of the visit, Guatemala was in the process of designing a programme for seconding national police liaison officers to authorities abroad. The Guatemalan authorities have concluded memorandums of understanding with their foreign counterparts. Guatemala also directly uses the Convention as a legal basis for law enforcement cooperation.

Guatemala provides for the creation of joint investigative teams in articles 3 to 11 of the Organized Crime Act. It may establish such teams under its existing law enforcement cooperation agreements, including on the basis of the Convention. It has established such teams in organized crime cases.

Guatemala has regulated the special investigative techniques referred to in the Convention within the scope of the Organized Crime Act (arts. 20 to 71 of the Organized Crime Act, art. 4 of the Act on the General Directorate for Civil Intelligence).

3.2. Successes and good practices

- Guatemalan law contains clearly established and relatively short time frames for the different steps of an extradition procedure, and an accelerated procedure when the person sought consents to the extradition (art. 44, para. 9).

3.3. Challenges in implementation

With regard to international cooperation, it is recommended that Guatemala:

- Guatemala could allow extradition in the absence of dual criminality and for offences related to corruption that do not meet the minimum penalty requirements, based on the direct application of the Convention (art. 44, paras. 2 and 3);
- Consider each of the offences established under the Convention to be included as extraditable offences in extradition treaties which follow a list-based approach (art. 44, para. 4);
- Consider applying the Convention directly to enforce a sentence or the remainder of a pending sentence in the case of nationals (art. 44, para. 13);
- Pursuant to the Convention, refuse extradition if there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on discriminatory grounds, and not refuse extradition on the sole ground that the offence is also considered to involve fiscal matters (see art. 27 para. 2 of the Constitution and art. 1 of the Regulatory Act) (art. 44, paras. 15 and 16);
- Before refusing extradition, consult the requesting State party to provide it with ample opportunity to present its views (art. 44, para. 17);
- Consider whether the creation of more specific legislation on mutual legal assistance could contribute to its effectiveness. Such legislation could regulate issues not currently covered (for example, the required procedures, direct processing between central authorities, the principles of speciality and confidentiality, dual criminality etc.) (art. 46);

- Establish a statistic records system for mutual legal assistance requests, disaggregated by the offence, the duration of the process, and the measure requested, as well as grounds for refusal, if applicable (art. 46);
- Without prejudice to domestic law, consider submitting information voluntarily, and ensure that it could comply with the requirement of a State party that sends information voluntarily to maintain confidentiality for the person accused (art. 46, paras. 4 and 5);
- Use the Convention as a legal basis, including for providing mutual legal assistance which does not involve coercive measures in the absence of dual criminality; Guatemala could consider providing more comprehensive assistance (art. 46, para. 9);
- Strengthen the capacity and the proactive role of its central authority and direct processing between central authorities, and analyse the possibility of receiving requests, in urgent circumstances, through INTERPOL (art. 46, para. 13);
- Ensure that mutual legal assistance is not refused on the sole ground that the offence is also considered to involve fiscal matters (art. 46, para. 22);
- Consider concluding more bilateral and multilateral mutual legal assistance treaties (art. 46, para. 30);
- Use international networks more actively in corruption cases and continue to make efforts for the secondment of national police liaison officers to authorities abroad (art. 48, para. 1);
- Endeavour to cooperate with other States parties in order to respond to corruption offences committed using modern technology (art. 48, para. 3);
- If necessary, conclude further agreements or arrangements with other States parties to enable the creation of joint investigative teams, or in appropriate cases, conclude them on the basis of the Convention (art. 49);
- Regulate special investigative techniques for investigations of all offences established under the Convention, and the use of such techniques at the international level (art. 50).

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

Guatemala has expressed interest in receiving the following technical assistance:

- Summary of good practices, on-site assistance provided by an expert, capacity-building programmes and legal advice (art. 45);
- Summary of good practices, configuration and management of databases or information-sharing systems and other technical areas, on-site assistance by an expert, capacity building programmes. Guatemala receives assistance from INTERPOL and the United States (Merida Initiative) in this area (art. 48);
- Summary of good practices, on-site assistance by an expert, capacity-building programmes (art. 49);

- On-site assistance by an expert; regarding telephonic surveillance, strengthening of the responsible entities, in particular with respect to specialization and training programmes (art. 50).
-