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

Executive summary

Note by the Secretariat

Addendum

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* [CAC/COSP/2017/1](#).



II. Executive summary

Tuvalu

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

Tuvalu acceded to the United Nations Convention against Corruption on 4 September 2015 and deposited its instrument of ratification with the Secretary-General on the same date. The Convention entered into force for Tuvalu on 4 October 2015.

Tuvalu gained independence on 1 October 1978. The Constitution, which took effect on 1 October 1978, is the supreme law of Tuvalu and the other laws of the country have effect subject to its provisions. Other sources of law include statutory law, customary law, the common law of Tuvalu and imperial enactments.

Tuvalu is a constitutional monarchy with a parliamentary democracy. The Head of State is Queen Elizabeth II, who is represented by the Governor-General. The Head of Government is the Prime Minister. The Cabinet is appointed by the Governor-General on the recommendation of the Prime Minister and is collectively responsible to Parliament for the performance of the Executive functions of the state. The judiciary comprises the Sovereign in Council, the Court of Appeal, the High Court and such other courts and tribunals as provided for under Acts of Parliament.

A number of institutions are responsible for the fight against corruption, including the Attorney-General, the Police Force, the Ombudsman, the Auditor-General, the Public Service Commission and the Central Procurement Unit. Tuvalu's three financial institutions are the National Bank of Tuvalu, the Tuvalu National Provident Fund and the Development Bank of Tuvalu.

Tuvalu became an observer to the Asia/Pacific Group on Money Laundering in 2014. Full membership would be beneficial to enhance the country's implementation of the Convention.

2. Chapter III: Criminalization and law enforcement

The absence of comprehensive case examples and statistics affects the review of the implementation of the chapter by Tuvalu, insofar as it was not possible to reach a determination of the effective application of the legislative framework in practice.

2.1. Observations on the implementation of the articles under review

The term "person employed in the public service" as defined in section 4 of the Penal Code does not cover all categories of public officials enumerated in article 2 of the Convention.

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

Section 85 of the Penal Code (Cap. 10.20) criminalizes the active and passive bribery of persons employed in the public service; however, it must be done "corruptly". The term "corruptly" is undefined in the Penal Code. Further, section 85 does not refer to acts of indirect bribery, although these are specifically mentioned in other legislation.

Apart from public officials, section 24 of the Leadership Code Act (Cap. 4.12) criminalizes passive bribery by leaders, and offers of bribes by leaders. However, the offence is limited to bribes solicited in order to influence the Leader or another officer "to act or refrain from acting in the performance of his or her official duties in order to obtain or retain business".

Tuvalu has not criminalized bribery of foreign public officials and officials of public international organizations.

Tuvalu relies on the bribery provisions, section 367 of the Penal Code, on corrupt practices, and provisions in the Leadership Code Act, to pursue cases of trading in influence. These provisions do not extend to all public officials, nor is the concept of abuse of “real or supposed influence” clearly covered.

Tuvalu has (partially) criminalized bribery in the private sector (part XXXVIII, Penal Code). The offence in section 367 of the Penal Code extends to acts or omissions involving agents “in relation to [a] principal’s affairs or business”, which does not cover all private sector actors. The offence is classified as a misdemeanor.

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

Money-laundering is criminalized in section 13 of the Proceeds of Crime Act (PCA) (Cap. 10.25). However, the offence is limited to certain specified acts or transactions, which do not clearly cover all elements of the Convention.

Money-laundering is limited to the proceeds of a “serious offence”, defined as an offence punishable by 12 months’ imprisonment or longer or an offence against the law of another country that, if the relevant act or omission had occurred in Tuvalu, would be punishable by 12 months’ imprisonment or more (section 4, PCA). This does not clearly cover all Convention offences. Foreign predicate offences are covered, subject to the serious offences threshold.

Participatory acts to money-laundering are partially criminalized through the application of the Penal Code and the PCA. The relevant provisions cover only attempts (part XXXIX, Penal Code) and conspiracy (part XL, Penal Code). The legislation does not address self-laundering.

There has only been one money-laundering investigation, which revealed limited mechanisms in place for detecting money-laundering. The absence of an operational financial intelligence unit and specialized training to financial institutions to detect and report suspicious transactions were noted.

The concealment of property reasonably suspected of being proceeds of crime is criminalized (section 14, PCA). Pursuant to section 14 (3), a person cannot be convicted of both money-laundering and possession of criminal proceeds because of a single act or omission.

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

Larceny, embezzlement and conversion by specified persons are criminalized (part XXVII, Penal Code). In particular, section 266 of the Penal Code criminalizes embezzlement by persons “employed in the public service”. However, only certain types of property are covered (sections 250-251 and 266, Penal Code).

Section 90 of the Penal Code criminalizes abuse of office by persons employed in the public service. The offence is limited to “arbitrary acts prejudicial to the rights of another”. The prior sanction of the Attorney-General is required to launch a prosecution for abuse of office. Frauds and breaches of trust are covered (section 121, Penal Code). Specific provisions apply in relation to public procurement officers under the Procurement Code.

Tuvalu has not criminalized illicit enrichment.

Part XXVII of the Penal Code covers larceny, embezzlement and conversion, with the same limitations as for embezzlement in the public sector. Section 252 of the Penal Code further criminalizes stealing and embezzlement by co-partners.

Obstruction of justice (art. 25)

Conspiracy to defeat justice and interference with witnesses is criminalized (section 110, Penal Code). Section 110 also covers acts to dissuade, hinder or

prevent witnesses from appearing and giving evidence and broadly criminalizes the obstruction or interference with any legal process. The use of physical force, threats or intimidation and the bribery of witnesses are not specified. The offence is classified as a misdemeanour.

Section 110 of the Penal Code broadly criminalizes the obstruction or interference with any legal process, civil or criminal. Section 115 creates a number of offences in relation to judicial proceedings, and Tuvalu criminalizes obstruction of court officers (section 120, Penal Code).

Liability of legal persons (art. 26)

Tuvalu's legislation applies equally to legal and natural persons by virtue of provisions in the Interpretation and General Provisions Act (Cap. 1.04), the Penal Code, the Companies Act and the PCA. Accordingly, legal persons can be held criminally liable for offences under Tuvalu's legislation. However, the law does not specify the applicable punishments for offences committed by legal persons, except for specific offences such as money-laundering under the PCA.

Participation and attempt (art. 27)

Tuvalu's legislation covers conspiracy and accessories after the fact (parts XL and XLI, Penal Code), as well as soliciting or inciting others to commit offences (section 374, Penal Code), but does not clearly cover other forms of complicity or assistance. The attempt to commit an offence is criminalized (sections 371-373, Penal Code; section 158, Criminal Procedure Code (CPC) (Cap. 10.05)). The preparation of an offence is not established as a criminal offence.

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

Although criminal sanctions generally take into account the gravity of the offences, certain Convention offences are classified as misdemeanours. Further, section 26 of the Penal Code allows for the conversion of a sentence into the payment of a fine. There are no sentencing guidelines in Tuvalu.

There are no criminal immunities accorded to Tuvaluan public officials, including the Governor-General. Members of Parliament have functional immunity from civil or criminal suit in the exercise of parliamentary functions, and also enjoy jurisdictional privileges. Other public officials, like the Ombudsman and Commissioners, enjoy functional immunity for bona fide acts or omissions in the course of their duties. The procedure for waiving immunity of parliamentarians is described in the Rules of Procedure of Parliament.

The Attorney-General has broad discretion to institute, take over or discontinue prosecutions (art. 79, Constitution). The CPC (section 74) and the Police Powers and Duties Act are two laws which guide the work of the prosecution. However, no prosecution guidelines have been developed. Breaches of the Leadership Code Act are prosecuted by the Ombudsman before the Leadership Tribunal (section 66, Leadership Code).

Bail is regulated (sections 106-116, CPC). The granting of bail takes into account the need to ensure the presence of the defendant at subsequent criminal proceedings.

Provisions on parole are found in the Constitution, articles 22 (9), 80 and 102. These measures take into account the gravity of the offences concerned. However, there is no law or regulation on parole.

Public Service Commission Rule 55 provides for the possibility of suspending public officers if disciplinary proceedings for dismissal are being taken or are about to be taken, or if criminal proceedings are to be instituted. The provision only applies where the public official was convicted of a criminal charge. Additional measures on disqualification and suspension from office exist under the Leadership

Code Act. Tuvalu has not adopted measures on the reassignment of public officials accused of offences.

A previous criminal conviction does not disqualify an applicant from holding public office, unless the person has served a prison sentence following the conviction (Rule 23 (4), Public Service Commission Rules). Disqualification from serving in a public enterprise is established for convicted persons for a term of 2 years or more (section 15, Schedule 3, Public Enterprises (Performance and Accountability) Act, 2009).

Under Public Service Commission Rules, the criminal and disciplinary procedures run in parallel. No disciplinary punishment may be imposed until the conclusion of the criminal proceedings and judgment in any appeal has been given (Public Service Commission Rule 48).

The Rehabilitation of Offenders Act (Cap. 7.56) does not provide any mechanisms which actively promote the reintegration into society of convicted persons.

Tuvalu does not provide immunity from prosecution to cooperating defendants. Plea bargaining and reduced sentences may be applied in specific cases, although there are no regulations in place.

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

Limited provisions to protect witnesses are established (sections 108 and 110, Penal Code).

No mechanisms are in place for the protection of reporting persons.

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

Section 22 of the PCA provides for discretionary confiscation of property in relation to a person's conviction of a "serious offence", defined in section 4 as an offence punishable by a maximum penalty of imprisonment of 12 months or longer, subject to dual criminality when the offence was committed against the law of another country. Section 22 provides for applications for forfeiture orders or pecuniary penalty orders upon conviction. Instruments "used in or destined for use in offences" are covered as "tainted" property subject to confiscation.

Limited measures are in place to enable search and seizure (sections 44 and 45, PCA and section 101, CPC). Part 2, Division 2 of the PCA outlines the Transaction Tracking Unit's functions and powers, including to search the premises of financial institutions or cash dealers and to inspect records.

Sections 49 and 50 of the PCA entitle the Commissioner of Police to administer frozen or seized property in accordance with a court order.

Property into which criminal proceeds are converted or transformed, as well as income and other benefits, constitute proceeds of crime (sections 7 (1) (a) and (b), PCA). If proceeds of crime are intermingled with other property, that proportion constituting the original proceeds will be taken to be proceeds of crime (section 7 (2), PCA).

Section 36 (3) of the PCA provides a presumption that property is taken to be tainted property if it is held at the time of, and for a specified period of time prior to, the filing of a pecuniary penalty order, unless the contrary is proven.

Third-party rights are protected (sections 27, 29, 32, 46, 53, 58, 62, 71, 75 and 80, PCA).

Tuvalu has not adopted appropriate mechanisms to overcome bank secrecy restrictions.

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

There is no statute of limitations for criminal offences. However, inordinate delay has been considered a mitigating factor at sentencing (see *Crown v Ielemia SM*, HAC 190/2014).

A previous foreign conviction may be used as prima facie evidence of all facts stated therein (section 125 (3), CPC).

Jurisdiction (art. 42)

Section 5 of the Penal Code extends jurisdiction to every place within Tuvalu or its territorial limits, including territorial waters, airspace, and all civil vessels and aircrafts registered in Tuvalu (art. 2, Constitution).

Tuvalu has not established the active and passive personality principles or the state protection principle, nor does the legislation clearly regulate jurisdiction over foreign participatory acts to money-laundering.

Tuvalu may assert jurisdiction where the extradition of nationals is refused, subject to the discretion of the Attorney-General (section 58 (4), Extradition Act).

There is no mechanism for investigating and judicial authorities to coordinate proceedings with their foreign counterparts.

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

Regulation 70 of the Public Procurement Regulations allows for suspending of contracts and debarment of bidders by the Central Procurement Unit.

Persons who have suffered damages from corruption may initiate legal proceedings against those responsible under common law principles in order to obtain compensation.

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

There is no single anti-corruption institution in Tuvalu. The anti-corruption mandate is spread across several bodies, including the Attorney-General, the Police Force, the Ombudsman, the Auditor-General, the Public Service Commission and the Central Procurement Unit.

The legal framework concerning appointments, remuneration and oversight of anti-corruption bodies establishes a level of independence of anti-corruption bodies. There is a need for adequate capacity and resources for the specialized law enforcement agencies.

Tuvalu has not adopted measures to encourage cooperation between public officials and investigating and prosecuting authorities.

Part 5 of the PCA outlines the reporting obligations of financial institutions and cash dealers, including customer due diligence (section 99) and reporting suspicious transactions (section 101). Informal coordination mechanisms between national authorities and the private sector are provided through the Tuvalu National Private Sector Organization.

2.2. Successes and good practices

- Retroactive application of section 85 (a) of the Penal Code to bribes solicited after the fact, once the public official has altered his or her conduct.
- The presumption of corrupt practices in section 369 of the Penal Code.

2.3. Challenges in implementation

It is recommended that Tuvalu:

- Continue to strengthen its case management systems to allow it to generate statistics on investigations and prosecutions.
- Amend the definition of “person employed in the public service” in line with article 2 of the Convention.
- With respect to active and passive bribery, remove the additional element that the bribe must have been given or received “corruptly”, explicitly cover acts of indirect bribery and ensure that active and passive bribery involving Leaders is fully criminalized (art. 15).
- Criminalize the bribery of foreign public officials and officials of public international organizations, and consider establishing the passive version of the offence (art. 16).
- Adopt a comprehensive offence of embezzlement, misappropriation and diversion of property in line with the Convention (art. 17).
- Consider specifically criminalizing trading in influence (art. 18).
- Consider expanding the offence of abuse of office in line with the Convention and eliminate the requirement in section 90 (2) and other parts of the Penal Code of a prior sanction from the Attorney-General to commence prosecutions (art. 19).
- Consider criminalizing illicit enrichment (art. 20).
- Consider adopting a more comprehensive offence of bribery in the private sector (art. 21).
- Specify its legislation to more clearly cover the elements of article 23, paragraph 1 (a), eliminate the additional element of a “transaction” and address the possibility of self-laundering (art. 23, para. 2 (e)).
- Expand its legislation to cover all forms of participation, association, aiding, abetting, facilitating and counselling the commission of money-laundering (art. 23, para. 1 (b) (ii)).
- Amend the PCA to ensure that all Convention offences qualify as predicate offences for money-laundering (art. 23, para. 2 (a) and (b)).
- Enhance verification mechanisms for detecting money-laundering: specifically, enhance specialized capacity of law enforcement authorities to investigate suspicious transactions; operationalize a financial intelligence unit and consider establishing a permanent, specialized financial intelligence unit; and provide specialized training to financial institutions to detect and report suspicious transactions (art. 23).
- Swiftly accede to full membership of the Asia/Pacific Group on Money Laundering (art. 23).
- Consider eliminating the restriction that a person cannot be convicted of both money-laundering and possession of criminal proceeds arising from a single act or omission (art. 24).
- Consider more clearly covering the elements of obstruction of justice to interfere in the giving of testimony or the production of evidence (art. 25, para. (a)).
- Amend its legislation, in particular the Penal Code, to specify punishments for offences committed by legal persons (art. 26).
- Specify its legislation to cover participation in the form of complicity or assistance (art. 27).

- Ensure that criminal penalties take into account the gravity of the offences by: revisiting the classification as misdemeanors of certain offences, like obstruction of justice (section 115, Penal Code) and bribery in the private sector (section 367, Penal Code); eliminating section 26 of the Penal Code, which allows for the imposition of a fine in lieu of imprisonment; and considering the adoption of sentencing guidelines (art. 30, para. 1).
- Consider adopting prosecution guidelines, for example, criteria for withholding prosecutions (art. 30, para. 3).
- Consider adopting a law on parole (art. 30, para. 5).
- Consider adopting measures on the removal and reassignment of public officials accused of corruption-related offences (art. 30, para. 6).
- Amend the law to provide for the disqualification of convicted persons from holding public office (art. 30, para. 7).
- Strengthen measures to actively promote the reintegration into society of person convicted of offences (art. 30, para. 10).
- Amend its legislation with a view to eliminating the permissive nature of confiscation and ensuring that proceeds of crime cover all Convention offences; strengthen measures to identify, trace, freeze and seize property (art. 31, paras. 1 and 2).
- Adopt measures, within existing means, to effectively protect witnesses, experts, victims and, as appropriate, their relatives from potential retaliation or intimidation, including, to the extent feasible, measures to encompass their physical protection and related evidentiary rules, and ensure the adequate enforcement of these measures (art. 32); and extend such protections to cooperating defendants (art. 37).
- Consider adopting measures and systems for the effective protection of reporting persons (art. 33).
- Continue to invest in capacity-building and ensure adequate resources for the specialized law enforcement agencies, in particular the police and the Chief Ombudsman's office; and ensure that the office of the Commissioner of Police is filled (art. 36).
- Strengthen the independence of prosecutions, by separating the office of the Director of Public Prosecutions from the Attorney-General's office; the independence of the Transaction Tracking Unit should also be ensured (art. 36).
- Consider adopting provisions on plea bargaining and strengthening measures to encourage the cooperation of offenders with law enforcement authorities (art. 37).
- Adopt measures to strengthen cooperation between public officials and investigating and prosecuting authorities (art. 38).
- Adopt appropriate mechanisms to overcome obstacles arising out of the application of bank secrecy laws (art. 40).
- Consider establishing the active and passive personality principles (art. 42, para. 2 (a) and (b)), the state protection principle (art. 42, para. 2 (d)) and jurisdiction over foreign participatory acts to money-laundering (art. 42, para. 2 (c)).
- Consider extending jurisdiction where the extradition of persons other than nationals is refused (art. 42, para. 4).
- Adopt measures to ensure that investigating and judicial authorities coordinate proceedings with their foreign counterparts (art. 42, para. 5).

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

Tuvalu identified a need for model legislation, drafting or advisory support to the Attorney-General's Office and the main stakeholders, as well as civil society. Tuvalu also requested capacity-building for the law enforcement authorities and to strengthen its capacity to detect money-laundering.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

Extradition is governed by the Extradition Act (Cap. 7.24), which applies to Commonwealth and treaty countries, as well as any other country certified by the Prime Minister or designated by regulation (section 7). To date, no countries have been so designated. Tuvalu is party to 37 extradition treaties (Schedule 3) and the London Scheme for Extradition within the Commonwealth. Tuvalu does not make extradition conditional on the existence of a treaty. In principle, Tuvalu could apply the Convention as a legal basis, although it has not done so to date.

Extradition offences are offences punishable by death or imprisonment for 1 year or more, subject to the dual criminality requirement (section 5, Extradition Act). While this includes fiscal offences (section 5 (4)), it excludes Convention offences that Tuvalu has not criminalized. The dual criminality requirement is strictly applied for extradition cases.

Tuvalu does not consider Convention offences as political offences (section 4 (1), Extradition Act). Extradition proceedings are conducted in the same manner and subject to the same safeguards as criminal proceedings (section 15). The fundamental rights and due process protections enshrined in articles 11 and 22 of the Constitution are also applicable.

Section 6 (2) of the Extradition Act provides for an objection to an extradition request made for purposes of discrimination on the grounds of sex, race, religion, nationality, political opinions or for a political offence; ethnic origin is not covered. The issues of fair treatment or discriminatory purpose have not been invoked to date.

Tuvalu recognizes conditions and grounds for refusal, subject to the terms of its treaties. Section 6 of the Extradition Act outlines grounds upon which Tuvalu may refuse extradition. There is no legislative requirement to consult prior to refusing extradition. Tuvalu has never refused an extradition request to date.

The Prime Minister is the central authority for extradition. There are no measures in place to simplify and streamline procedures and evidentiary requirements.

Tuvalu does not extradite its citizens (section 58). While Tuvalu would prosecute a national whose extradition is refused (sections 58 (3)-(6)), prosecution of nationals is subject to the discretion of the Attorney-General (section 58 (4)).

There has only been one extradition case to date (*R. v Starcel Soloseni*), involving the successful extradition of a national to Tuvalu in a matter not related to corruption.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)

There is no law or practice on the transfer of sentenced persons, apart from the Scheme for the Transfer of Convicted Offenders with the Commonwealth.

There is no law or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Mutual legal assistance is governed by the Mutual Assistance in Criminal Matters Act (MACMA) (Cap. 7.40), which applies to all foreign countries (section 4). Tuvalu has not entered into any mutual legal assistance treaties, but is party to the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth. In principle, Tuvalu could use the Convention as a legal basis, although it has not yet done so. Tuvalu requires dual criminality (parts 4 and 7, MACMA) and the Attorney-General has discretion to refuse assistance where dual criminality is not met (section 12, MACMA).

The Attorney-General is the central authority for mutual legal assistance. There are no regulations or procedures that guide the execution of mutual legal assistance requests in a time-bound manner, nor has Tuvalu adopted measures to simplify and streamline procedures and evidentiary requirements. Tuvalu has not notified the United Nations of its central authority or acceptable language(s) for mutual legal assistance.

Requests must be made in writing (section 8), although Tuvalu would accept an urgent request made orally, through INTERPOL or direct law enforcement communication channels. MACMA does not address the possibility of applying procedures specified by the requesting country. Sections 17 and 55 provide for the use of video link, though there have been no such cases.

There is no law enabling spontaneous information-sharing with foreign countries.

MACMA provides discretionary grounds for refusing mutual legal assistance, including on the basis that the provision of assistance would impose an excessive burden on the country's resources, or taking into account all circumstances of the case (section 12 (g) and (h), MACMA). Fiscal matters are not listed as grounds for refusal, although the Attorney-General retains discretion to refuse assistance (section 12, MACMA). Tuvalu has not taken legislative measures to ensure that mutual legal assistance is not refused on the grounds of bank secrecy.

Tuvalu has never postponed assistance due to an ongoing domestic investigation. The law does not provide that Tuvalu would consult with a requesting State before refusing or postponing assistance, or provide reasons for refusing mutual legal assistance.

A limitation on the use of information received through mutual legal assistance is provided (sections 63 and 64, MACMA). However, the law does not specify that the requesting State shall be notified prior to a disclosure of exculpatory information, nor does the law require Tuvalu to inform the requesting State if Tuvalu cannot comply with the requirement of confidentiality.

The temporary transfer of prisoners for mutual legal assistance is regulated (sections 32-34, MACMA), but not all the conditions of transfer are covered.

The costs of mutual legal assistance are not addressed in MACMA.

There have been two mutual legal assistance requests to date, one incoming and one outgoing (not related to corruption). Tuvalu has not refused a mutual legal assistance request to date.

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

Law enforcement cooperation is carried out through formal agreements or arrangements, and on a case-by-case, informal basis. Tuvalu is an observer member of the Pacific Transnational Crime Network (PTCN), and a member of the Pacific Islands Chiefs of Police and the Pacific Islands Forum Secretariat. Tuvalu cooperates with INTERPOL through the Australian federal police.

Tuvalu is not a member of the Egmont Group of Financial Intelligence Units or the Association of Pacific Island Financial Intelligence Units, nor has it signed any cooperation agreements with other financial intelligence units.

Tuvalu's law enforcement authorities engage in the periodic exchange of law enforcement personnel with other countries.

Tuvalu has had no experience in the application of this Convention as a legal basis for law enforcement cooperation.

Tuvalu has not entered into any agreements that provide for joint investigations.

While the police could in principle conduct special investigative techniques, the matter is not spelled out in the Police Act (Cap. 20.24) and there could be challenges to admitting such evidence in court.

3.2. Successes and good practices

- Failure to comply with the format and content requirements for mutual legal assistance requests (section 8 (2), MACMA) is not a ground for refusing mutual legal assistance, but for postponement (art. 46, para. 21).

3.3. Challenges in implementation

It is recommended that Tuvalu:

- Criminalize the mandatory offences under this Convention and consider also criminalizing the non-mandatory offences, to satisfy the dual criminality requirement for extradition (art. 44, para. 7).
- Consider adopting measures to simplify and streamline procedures and evidentiary requirements on extradition (such as internal guidelines and/or a request management system) in order to allow extradition requests to be dealt with efficiently and effectively (art. 44, para. 9).
- Amend its legislation to ensure that prosecutorial discretion cannot be exercised to inhibit the domestic prosecution of nationals whose extradition is refused (art. 44, para. 11).
- Include ethnic origin among the discriminatory purposes for which extradition will be refused (art. 44, para. 15).
- Adopt a legislative requirement to consult prior to refusing extradition (art. 44, para. 17).
- Consider simplifying and streamlining procedures and evidentiary requirements in order to allow for mutual legal assistance to be dealt with efficiently and effectively; and adopt legislative or other procedures that guide the execution of mutual legal assistance requests in a time-bound manner (art. 46, paras. 1 and 24).
- Consider granting explicit legal authority to the competent authorities to proactively transmit information to foreign competent authorities without a prior request, where such information could assist in the overseas investigation or prosecution (art. 46, paras. 4 and 5).
- Introduce legislative provisions that stipulate that Tuvalu will not decline to render mutual legal assistance on the ground of bank secrecy (art. 46, para. 8).
- Adopt legislative measures to ensure that MLA involving non-coercive measures is provided in the absence of double criminality; and consider alleviating the dual criminality requirement for purposes of mutual legal assistance (art. 46, para. 9).
- More closely address the conditions of temporary prisoner transfer for purposes of mutual legal assistance (art. 46, paras. 11 and 12).

- Notify the United Nations of its central authority and acceptable language(s) for mutual legal assistance (art. 46, paras. 13 and 14).
 - Consider providing information on Tuvalu's mutual legal assistance requirements on its website to guide requesting countries (art. 46, paras. 15 and 16).
 - Consider including a provision in MACMA to address the possibility of applying procedures specified by the requesting country (art. 46, para. 17).
 - Specify in the MACMA that the requesting State shall be notified prior to a disclosure of exculpatory information (art. 46, para. 19).
 - Adopt a legislative provision to inform the requesting State if Tuvalu cannot comply with the requirement of confidentiality (art. 46, para. 20).
 - Reconsider the discretionary grounds of refusal spelled out in section 12 (g) and (h), whereby mutual legal assistance may be refused if the provision of assistance would impose an excessive burden on the country's resources, or mutual legal assistance should be refused under all the circumstances of the case (art. 46, para. 21).
 - Provide that Tuvalu will not decline to render mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters (art. 46, para. 22).
 - Specify in MACMA that reasons be given for refusing mutual legal assistance (art. 46, para. 23) and that Tuvalu will consult with the requesting State before refusing or postponing mutual legal assistance (art. 46, para. 26).
 - Specify the matter of costs of mutual legal assistance in line with the Convention (art. 46, para. 28).
 - Consider adopting a law on the transfer of criminal proceedings (art. 47).
 - Continue to strengthen law enforcement cooperation at the international level, including by building out membership in INTERPOL and becoming a full member of the Asia/Pacific Group on Money Laundering and the Egmont Group. Tuvalu should also continue its cooperation with other countries through staff exchanges for training and capacity-building (art. 48).
 - Introduce special investigative techniques, as necessary and within existing resources, including by adopting corresponding legislation, providing the corresponding training to law enforcement personnel and ensuring that evidence derived therefrom is admissible (art. 50).
-