



**Conference of the States Parties  
to the United Nations  
Convention against Corruption**

Distr.: General  
22 January 2019

Original: English

---

**Implementation Review Group  
Tenth session  
Vienna, 27–29 May 2019  
Item 2 of the provisional agenda\*  
Review of implementation of the United Nations  
Convention against Corruption**

**Executive summary**

**Note by the Secretariat**

**Addendum**

Contents

	<i>Page</i>
II. Executive summary . . . . .	2
Botswana . . . . .	2

---

\* [CAC/COSP/IRG/2019/1](#).



## II. Executive summary

### Botswana

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

Botswana acceded to the Convention on 27 June 2011. The Convention entered into force for Botswana on 27 July 2011.

The implementation by Botswana of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was published on 28 May 2014 ([CAC/COSP/IRG/I/4/1/Add.1](#)).

Botswana has a dual legal system, comprising customary law and received (or common) law, which consists of English and Roman Dutch law, as amended by the statutes and developed through case law by the High Court and the Court of Appeal, the highest court in Botswana.

The national legal framework against corruption includes, principally, the Corruption and Economic Crime Act (as amended) (CECA), Proceeds and Instruments of Crime Act (as amended) (PICA), Financial Intelligence Act (FI Act), Public Service Act, Electoral Act, Public Finance Management Act (PFMA), Penal Code, Whistleblowing Act, Mutual Assistance in Criminal Matters Act (MACMA), and related government regulations, orders, circulars and instructions.

Relevant authorities in preventing and countering corruption include the Directorate on Corruption and Economic Crime (DCEC), Directorate of Public Service Management (DPSM), Office of the Ombudsman, Independent Electoral Commission, Office of the President, Auditor General, Public Procurement and Asset Disposal Board (PPADB), Ministry of Finance and Economic Development (MFED), Financial Intelligence Agency (FIA), Bank of Botswana, Botswana Unified Revenue Services (BURS), Non-Banking Financial Regulatory Authority (NBFIRA), Police Service, Administration of Justice, Directorate of Public Prosecutions (DPP), Attorney General's Chambers and Competition Authority.

#### 2. Chapter II: preventive measures

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

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

Botswana has not adopted a written national anti-corruption strategy. At the public sector level, a Public Service Anti-Corruption Strategy (2010) exists, which was developed by DPSM in collaboration with DCEC. Further, public institutions have policy statements on anti-corruption. At the national level, a draft National Anti-Corruption Policy for the country has been prepared (December 2015) under the leadership of DCEC through consultations with stakeholders, including the private sector and civil society. In the context of coordination, the draft proposes to establish a new National Anti-Corruption Commission, among other critical objectives, with monitoring and evaluation of the policy to be done by the Government through DCEC.

A Presidential Directive requires all ministries and independent departments to mainstream corruption prevention, report performance on anti-corruption indicators to the President's office twice yearly, and establish corruption prevention committees to conduct risk assessments and sensitize personnel. Integrity monitoring is also carried out by anti-corruption units established in 17 government departments, which conduct preliminary investigations, monitor transactions and contribute to implementing recommendations arising from audits and corruption assessments.

DCEC is Botswana's lead agency in the prevention and fight against corruption. It conducts corruption audits in public institutions, reviews methods of work in public bodies, identifies corruption opportunities and devises corruption mitigation measures. DCEC coordinates all anti-corruption initiatives through corruption prevention committees, anti-corruption units, and partnerships. It also promotes public awareness-raising and educational programmes in schools, colleges and villages.

Provisions on the independence of DCEC are established in CECA (sections 3 and 4). The Act does not elaborate on the tenure of the Director-General. The necessary material resources and specialized staff are provided for, although continued capacity-building and development of skilled personnel emerged as a priority.

Botswana reviews and revises laws, regulations and administrative measures against corruption, as required. The Revision of the Laws Act No. 16 of 2002 provides for the periodic revision of the laws of Botswana.

Botswana is a member of and participates in the activities of the Southern African Development Community (SADC), Southern African Forum against Corruption (SAFAC), African Union, Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG), Asset Recovery Inter-Agency Network for Southern Africa (ARINSA) and International Criminal Police Organization (INTERPOL). Botswana is a member of the Commonwealth and hosts the Commonwealth Africa Anti-Corruption Centre. DCEC and other institutions also collaborate with foreign countries on staff exchanges, training and capacity-building.

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

The recruitment, retention, promotion and retirement of civil servants are regulated mainly in the Public Service Act No. 30 of 2008, General Orders of 1996 and circulars and directives. The appointment, discipline and termination of public officers is provided for in the Constitution, PSA and relevant regulations. Training is available to public officials commensurate with their duties of service, including on integrity and anti-corruption. Pay scales, which are publicly available, are determined by DPSM.

For public positions deemed vulnerable to corruption, the recruitment procedure is the same, though additionally background and integrity checks are conducted for some positions.

There is a system for the periodic promotion of public officials to other positions. However, there does not exist a government-wide structured system for periodic rotation. Some public bodies, such as PPAD and anti-corruption units at some ministries, have established rotation requirements. A draft transfer policy on the rotation of public servants is under development.

The Constitution contains provisions on candidatures for and election to public office. Civil servants cannot stand for elections to public office, and the provision of false information is an offence under the Penal Code. Apart from this and the general offence under CECA, section 19, there are no provisions on conflicts of interest of candidates for office.

The Electoral Act No. 38 of 1968 contains provisions on electoral expenses, including the declaration of expenses. Failure to declare or declaration of false information may constitute serious misconduct. Otherwise, there is no requirement for elected officials to declare their assets. A blueprint on political party funding is under development by DCEC, and a Bill on Declarations of Assets and Interests (circulated to all ministries for comment in 2016) is also before parliament, which would consolidate a disclosure requirement for all public officials, appointed or elected.

Botswana promotes integrity, honesty and responsibility among its public officials primarily under the framework of the Public Service Charter, which defines the basic

principles of public service, and the Public Service Anti-Corruption Strategy, although its principles are not enforceable.

While there is no central code of ethics for public servants, some ministries and departments have established internal standards. A draft code of ethics for the Botswana Public Service, prepared by DPSM in 2009, has not yet been adopted.

Botswana has established mechanisms to facilitate the reporting of complaints and assist in dealing with corruption in public bodies, including through DCEC, Office of the Ombudsman, as well as corruption prevention committees and anti-corruption units. The Whistleblowing Act contains provisions to protect those reporting acts of corruption through designated channels.

Judicial appointments of High Court Judges are made by the President on the recommendation of the Judicial Service Commission (Constitution, section 96), except the appointment of the Chief Justice and the President of the Court of Appeal (section 100). The Administration of Justice has developed a Judicial Code of Conduct; however, no specific integrity or ethics training is provided for.

All cases, unless it is specifically stated otherwise, are heard in open court and court judgments are accessible to the public. Moreover, a Court Records Management System allows for a random automatic assignment of cases. There is one judge specialized to hear corruption cases.

DPP is appointed by the President and is subject to administrative supervision by the Attorney-General (Section 51A, Constitution). Section 113 of the Constitution provides for the removal of the Attorney-General, but not DPP. The Public Service Act governs the appointment and removal of prosecutors.

An anti-corruption unit, staffed by specialized prosecutors, is established in the office of DPP. A Code of Conduct for Prosecutors has also been finalized. All prosecutors attend an induction training programme, while ethics and integrity training is also available.

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

Section 26 of the PPADB Act provides that public procurements shall be based on the principles of accountability, transparency, integrity and fairness. The Act prescribes the functions and powers of PPADB and establishes procurement principles, such as competition and fair treatment.

Botswana promotes transparency in public procurement through procurement procedures (including selection and award criteria and conditions of participation) contained in the PPADB Act, PPADB Regulations and PPADB Circulars published on the PPADB website. Detailed information, including standardized bidding packages, forms, pricing guides, bidding manuals, PPADB decisions and annual reports, are available online. Tender notices are published weekly in Botswana's Daily News, the government gazette, and on the government website, pursuant to PPADB Regulations, 2006.

PPADB conducts tender audits, contract audits and performance audits (section 52, PPADB Act). An administrative complaints review procedure is also established under Part X of the Act and subsidiary regulations. Contractors may challenge procurement decisions to an Independent Complaints Review Committee established under the Act, with further possibility of appeal to the courts, including the High Court of Botswana.

The Integrated Procurement Management System (IPMS) automates Botswana's public procurement procedures, with the objective to improve public procurement processes and improve service delivery.

The recruitment and selection of PPADB personnel is done through IPMS. Members of the PPADB Board are subject to conflict of interest requirements and an obligation to disclose potential conflicts of interest (section 88, PPAD Act). Procurement

personnel who fail to follow the procurement laws and regulations may be subject to disciplinary action under the PSA.

Botswana's Constitution provides for procedures on the adoption of the national budget. In practice, MFED is responsible for coordinating the preparation of the annual budget and the budget speech.

Accountability in the management of public finances is provided through a system of financial management, control and expenditure, pursuant to provisions in PFMA, the Financial Instructions and Procedures and other regulations. The Government Accounting and Budgeting System (GABS) centralizes all payments and records, including budgeting.

Botswana institutes risk-based internal and external audits and has developed a national risk policy and a medium to long-term implementation plan, following piloting in six public organizations in 2017. The Public Audit Act No. 15 of 2012 establishes a system of auditing standards and related oversight.

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

In line with its *Vision 2036: Prosperity for all*, access to information is a priority for Botswana. Anti-corruption information is shared using various methods and media, while administrative procedures are available through General Orders and Government directives.

Information on government processes is mainly accessible through the Government gazette, Daily News (a government newspaper), Hansard (a government publication), national radio, television and Department of Broadcasting services, and the Government portal ([www.gov.bw](http://www.gov.bw)).

While DCEC conducts corruption risk assessments and audits, identifies systemic weaknesses and recommends procedural reforms, its Strategic Report identifies a lack of tools for measuring corruption and inadequate research on corruption. DCEC, like other agencies, publishes annual reports summarizing its operations. A draft Access to Information Bill is pending.

*Private sector (art. 12)*

A number of measures have been taken to encourage ethical business practices and promote cooperation with the private sector in the fight against corruption. For example, DCEC and Business Botswana developed a Code of Conduct for the Private Sector, and PPADB developed a Code of Conduct for Contractors. DCEC also signed a Memorandum of Understanding with Business Botswana and the University of Botswana in 2015 to promote good corporate governance and enhance knowledge and skills in business ethics. DCEC conducts workshops on anti-corruption in sectors such as construction, IT and procurement. Nonetheless, officials report that there is inadequate participation by private sector entities in anti-corruption programmes.

A number of laws govern the conduct of private sector professionals, including legal practitioners, engineers, accountants and quantity surveyors. The DPSM 2013 Guidelines on Declaration of Interest restrict the activities of former public officials in terms of their employment by the private sector.

Botswana's FI Act, Part IV provides for financial record-keeping, while the Companies Act, Part XIII stipulates requirements for accounting records, audits and disclosures by companies. These laws establish sanctions for companies that do not register in the commercial register or fail to maintain proper books and accounts. Criminal provisions on forgery and falsification of documents, fraud and false accounting in the Penal Code also apply. The Botswana Institute of Chartered Accountants (BICA) regulates the activities of accountants, while the Botswana Accountancy Oversight Authority (BAOA) sets auditing and financial standards.

Under Botswana's Income Tax Act, an expense, to be tax-deductible, must be "wholly, exclusively and necessarily incurred" in the production of income (section 39).

However, neither the Act nor related legislation specify the non-deductibility of unlawful expenses such as bribes.

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

Botswana has taken steps towards establishing a domestic regulatory and supervisory regime for banks and non-bank financial institutions (NBFIs). However, there are a number of significant deficiencies in the legal and regulatory framework, which the authorities are in the process of addressing. In particular, the FI Act and regulations have major deficiencies arising from the absence of risk-based requirements and the limited scope of the obligations. The deficiencies include beneficial ownership identification (including by persons and entities involved in the formation and registration of legal persons and for cross-border electronic transfers), Customer Due Diligence (CDD), politically exposed persons (PEPs), record-keeping, correspondent banking and new technologies. Sanctions under the FI Act appear also to be low. Botswana is yet to adequately license money-value transfer providers (MVTs) and monitor the sector for compliance. Botswana adopted the Financial Intelligence (Amendment) Act in June 2018, to address the above deficiencies.

While the FI Act and its regulations have expanded the list of specified parties (financial institutions and designated non-financial businesses and professions/DNFBPs), awareness of these requirements seems to be low. The DNFBP sector is yet to be supervised and not all regulated entities are filing suspicious transaction reports. The reporting requirements for banks with regard to suspicious transaction reports should also be clarified.

FIA serves as the national centre for receiving, analysing and disseminating STRs and is authorized to cooperate, also through agreements, and exchange information with relevant investigatory and supervisory bodies. While NBFIRA is responsible for supervising NBFIs, the supervisory authorities for DNFBPs are not clearly specified. Moreover, supervisors do not apply a risk-based approach when conducting inspections.

Policy direction and national coordination in this area is led by MFED through the multi-agency National Coordinating Committee on Financial Intelligence (NCCFI).

In 2017, Botswana completed a National Money Laundering Risk Assessment, which resulted in a national AML/CFT Assessment Report and Action Plan (a national strategy is pending). The risk-based approach to AML/CFT activities, including risk-based supervision, is not currently implemented.

There are ongoing efforts to raise awareness of the PICA 2018 and its regulations and of the recent changes to the AML regime, as well as to provide training.

Illegal cross-border cash transactions have been identified as high-risk for money-laundering in Botswana. The movement of cash and bearer negotiable instruments is regulated under the FI Act, with records of transactions exceeding 10,000 pula being reported to BURS. The provisions of the NBFIRA Act are also relevant for NBFIs. An electronic reporting system was being piloted at the time of the country visit.

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

- The establishment of corruption prevention committees (art. 5(2)).
- Specific frameworks of the Public Service Anti-Corruption Strategy and Public Service Charter to promote integrity, honesty and responsibility among public officials (art. 8(1)).
- Efforts to establish an integrated electronic procurement system, as well as the PPADB website providing detailed and current guidance and information (art. 9(1)).
- Botswana's Court Records Management System, to enhance equity and transparency in case distribution (art. 11(1)).

### 2.3. Challenges in implementation

It is recommended that Botswana:

- Take concrete measures towards the adoption and implementation of the draft national anti-corruption policy, including through the development of implementation action plans and clarification of responsibilities, time frames and resources required, in consultation with all relevant public and non-public stakeholders; attention should be given to ensuring adequate coordination, oversight, as well as awareness-raising and the allocation of sufficient resources; and to specifying the monitoring and evaluation framework, including the proposed establishment of a new national anti-corruption commission (art. 5(1)).
- Continue to strengthen inter-agency coordination and cooperation in the implementation of anti-corruption policies and measures; and engage in outreach and consultation with relevant public and non-public stakeholders to ensure their participation in anti-corruption efforts (art. 5(1)).
- Continue to assess the effectiveness of prevention activities undertaken by DCEC and other institutions, especially in identified priority areas, in order to strengthen the effectiveness and impact of such activities (art. 5(2)).
- Take steps to strengthen the DCEC's independence, resources and operations, by addressing recommendations made during Botswana's first cycle review, including to elaborate on the tenure of the Director General in the law or regulations (art. 6(2)).
- Continue to invest in capacity-building, including through international cooperation, exchange programmes and benchmarking with other countries on best practices (art. 6(2)).
- Finalize and promulgate the draft transfer policy on the rotation of public servants and consider adopting a more structured, formalized system for the selection, training and rotation of public officials in positions considered vulnerable to corruption (art. 7(1)).
- Consider adopting legislation to regulate conflicts of interest of candidates for elected office; amend legislation to expand the definition of conflicts of interest across different laws, including CECA and the Penal Code, based on international best practices (art. 7(2), 7(4)).
- Consider adopting appropriate legislative and administrative measures on the funding of political parties, including monitoring and oversight (art. 7(3)).
- Establish a mechanism to enforce the Public Service Anti-Corruption Strategy (art. 7(4)).
- Adopt effective disclosure systems for public officials (including members of the judiciary) in respect of conflicts of interest, assets and gifts, as well as systems and mechanisms for verification and sanctions for non-compliance, based on international best practices, and provide guidance to officials in this regard (arts. 7(4), 8(5–6)).
- Adopt a code of ethics for the public service, and implement the disciplinary code for the DCEC (art. 8(1–6)).
- Continue efforts towards implementing a clearly defined, centrally developed system of risk analysis and management, devote adequate resources to risk-based audit procedures, and train officials involved in budgeting and expenditure management (art. 9(2)).
- Take steps to adopt the Access to Information Bill (art. 10).

- Continue conducting research and investing in the development of tools and systems for measuring corruption and analysing the impact of measures to address audit recommendations (art. 10).
- Continue investing in the development of specialized expertise and skills of prosecutors and members of judiciary on anti-corruption and asset recovery, and consider conducting training courses, including integrity training, for judicial officers (art. 11).
- Consider making necessary statutory amendments to ensure the independence of the post of DPP, including to clarify his removal and any disciplinary action (art. 11(2)).
- Strengthen cooperation with the private sector in preventing and countering corruption (art. 12(2)).
- Amend legislation to clearly prohibit unlawful expenses such as bribes from being tax deductible (art. 12(4)).
- Consider strengthening collaboration between DCEC and civil society on anti-corruption; take steps to implement the Whistleblowing Act and issue relevant instructions for this purpose; and continue awareness-raising of corruption and reporting channels to relevant authorities (art. 13).
- Implement the results of the 2017 National Risk Assessment (NRA), with all supervisors using its findings to promote understanding of the risks facing their regulated entities and applying risk-based supervisory frameworks commensurate with the risks identified. Supervised entities should be required to apply the risk-based approach and CDD requirements, commensurate with the risk profile. The AML obligations should be extended to all financial institutions and DNFBPs, including MVTPs. Supervisory bodies should implement sanctions for non-compliance by their regulated entities. The results of NRA should further be used to inform the development of a National AML/CFT Strategy (art. 14(1)(a)).
- Amend the FI Act to address the deficiencies on AML/CFT obligations, provide for a risk-based approach to implementing these obligations, and provide more dissuasive and proportionate sanctions (art. 14(1)(a)).
- Establish legal requirements to obtain and retain information on beneficial ownership, in particular relating to legal persons and PEPs (art. 14(1)(a)), 52(1)).
- Continue efforts to raise awareness of PICA, the FI Act and its regulations, and of recent changes introduced by the NRA, across the financial sector (art. 14(1)(a)).
- Amend the FI Act and its regulations to clarify reporting requirements for banks with regard to suspicious transaction reports and specify supervisory authorities for DNFBPs; and finalize the application for EGMONT membership (art. 14(1)(b)).
- Continue efforts by BURS towards implementing the cross-border declaration regime, including adequate sanctions for non-compliance and rollout of the electronic referral system (art. 14(2)).
- Adopt measures to adequately license or register MVTPs and monitor the sector for compliance with AML/CTF requirements; address deficiencies in the legal framework relating to cross-border electronic transfers, including by amending the FI Act (art. 14(3)).
- Continue to strengthen the capacity of FIA in areas of human resources and operations (art. 14(5)).

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

Botswana indicated that it required technical assistance in the following areas:

- Legislative assistance, inter-agency coordination (art. 5).
- Institution-building, facilitating international cooperation (art. 6).
- Developing procedures for receiving and verifying disclosures or declarations of interests, assets and gifts (art. 7).
- Training on risk-based audits (art. 9(2)).
- Developing indicators to assess the impact of audit results; developing a national corruption index (art. 10).
- Capacity-building of the judiciary and prosecution (art. 11).
- Best practices in engaging society in the fight against corruption (art. 13).
- Capacity-building of FIA (art. 14).

## 3. Chapter V: asset recovery

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

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

The provision of mutual legal assistance (MLA) by Botswana is limited to States where an arrangement has been made for mutual assistance in criminal matters (section 3, MACMA). To date, no countries have been designated under MACMA. Botswana provides assistance in the absence of a treaty to designated countries, in accordance with section 3, or on the basis of multilateral treaties, provided their provisions have been incorporated into national legislation. The process of domestication of the Convention is ongoing.

Botswana has published proposed amendments to MACMA in order to address gaps identified in the mutual evaluation conducted by ESAAMLG. Corresponding amendments have been drafted to PICA and to CECA (the latter would allow DCEC to share information without a request). Amendments were passed during the July 2018 Parliament sitting but did not form part of the review.

Botswana has never refused a request for international cooperation on asset recovery.

Botswana is a member of ESAAMLG, ARINSA and INTERPOL. It also participates in programmes run by the UNODC/World Bank Stolen Asset Recovery (StAR) Initiative and the International Association of Anti-Corruption Agencies (IAACA). Other cooperation channels include SADC, SAFAC, the African Union and the Commonwealth.

Spontaneous information-sharing is possible under SARPCCO, INTERPOL and ARINSA, as well as FI Act, section 31(3).

Botswana has ratified or acceded to several international instruments on MLA in criminal matters, notably the SADC Protocol and the Commonwealth (Harare) Scheme. No bilateral treaties on MLA have been signed.

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

Specified parties are required to verify the identity of their customers under Section 10 of the FI Act and relevant Regulations. Botswana currently does not have beneficial ownership identification requirements, except for Financial Intelligence Regulation 9 in relation to trusts. The FI Act and Regulations do not provide for enhanced due diligence on PEPs.

Although the FI Act (sections 11, 12, 15) and regulations establish record-keeping requirements for specified parties, these do not apply to beneficial owners.

There is no specific law in Botswana prohibiting the establishment or existence of “shell banks” or correspondent banking relationships with relevant entities.

Botswana does not have provisions on financial disclosures for public officials. There is no requirement for public officials to report foreign financial accounts and to maintain appropriate records.

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

Botswana does not have provisions allowing other States to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence.

Section 316 of the Criminal Procedure and Evidence Act (CP&E), read together with the definition of “person” in the Penal Code, provides a basis for the court to order an accused to pay compensation to another State party that has been harmed. However, the law does not specifically recognize the rights of foreign States as legitimate owners of property or primary claimants in confiscation proceedings.

MACMA, section 29(2) provides for the enforcement of foreign restraining orders in respect of “serious offences” (defined in section 2 by reference to the definition in PICA, as an offence punishable by a minimum fine of P2,000 or 2 years’ imprisonment, or both). The procedure is by registration of the order through the High Court. Section 31 further allows for requests to obtain the issuance of a restraining order, in accordance with provisions of PICA (the same threshold for serious offences applies). A PICA Amendment Bill would lower the threshold for serious offences, to cover offences established under this Convention.

Freezing of accounts and transactions by FIA is possible for up to 10 days (section 24, FI Act), which period may be extended by court order until the final court disposition. Other interim measures may be requested under sections 12, 30–32 of MACMA.

PICA provides for non-conviction based civil penalty orders (section 11), civil forfeiture orders (section 25) and pecuniary penalty orders (section 3).

No requests for confiscation have been received under MACMA to date, and there are no cases where the courts have ordered the enforcement of foreign confiscation orders. All requests received by Botswana relate to the restraint of property, and none of these have been refused by Botswana to-date. Authorities in Botswana consult with requesting States as a matter of practice before refusing assistance.

The preservation of property is addressed in Sections 46 and 68 of PICA and Section 58 of CP&E. Steps to enhance the preservation of assets pending confiscation are underway review through the PICA Amendment Bill.

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

Botswana’s competent authorities can return confiscated property, upon requests made by other States parties, based on CP&E in cases involving offences of theft and receiving stolen property. MACMA contains no provisions addressing the return of forfeited or confiscated property. The MACMA Amendment Bill would allow for sharing of confiscated property with foreign countries and for the return of such property to other countries.

Under PICA, confiscated property is forfeited to the Government (sections 19(1) and 22(1)). Those measures neither establish an obligation to return and dispose of assets in accordance with the Convention, nor refer to returning property to requesting States.

The law does not establish an obligation to return and dispose of assets in accordance with the Convention in cases of embezzlement of public funds or of laundering of embezzled public funds or in cases involving proceeds of offences under this Convention.

There is no law, policy or practice on the issue of costs related to asset recovery.

Botswana has not entered into any asset sharing agreements or arrangements.

### 3.2. Challenges in implementation

It is recommended that Botswana:

- Adopt the proposed amendments to MACMA and PICA, subject to the observations made under article 57(3), in order to bring the legislation more closely in line with the requirements of the Convention and to harmonize the legislation (arts. 51, 57(3)).
- Consider extending the scope of application of MACMA also to those States with which no arrangement for MLA exists (art. 51).
- Continue to invest in capacity-building to develop specialized expertise and skills of prosecutors and members of the judiciary on mutual assistance in criminal matters, as well as asset forfeiture and recovery (art. 51).
- Amend the gaps in the legislation to fully implement the requirements of article 52, including beneficial ownership identification (including by persons and entities involved in the formation and registration of legal persons), PEPs, record-keeping, correspondent banking and new technologies (arts. 14, 52(1–4)).
- Take steps to adopt effective financial disclosure systems for public officials that include systems and mechanisms for verification and sanctions for non-compliance, based on international best practices (arts. 8(5) and 52(5)). Further, consider adopting a reporting requirement for foreign financial accounts (art. 52(6)).
- Specify in the law recovery mechanisms for injured parties to establish title or ownership of property by explicitly granting legal standing to permit them to initiate civil actions in the domestic courts (art. 53(a)). Specify in the law recovery mechanisms for States parties to establish title or ownership in confiscation proceedings (art. 53(c)).
- Adopt relevant amendments to MACMA and PICA to lower the threshold for serious offences (arts. 54(1)(a-b), (2)(a-b) and 55(1–2)).
- Amend MACMA to cover non-conviction based orders and the return of assets (art. 54(1)(c)).
- Continue to strengthen mechanisms for the preservation of property pending confiscation, including through the implementation and amendment of PICA, and consider adopting comprehensive asset management guidelines (art. 54(2)(c)).
- Consider amending MACMA to allow for the provision of assistance in the absence of a treaty or regulation and continue efforts towards the full implementation of the Convention (art. 55(6)).
- Specify the consultation procedure with requesting States in the law or procedure (art. 55(8)).
- Continue to strengthen measures for the spontaneous exchange of information with foreign counterparts (art. 56).
- Take measures to enable the return of confiscated property, when acting upon the request of another State party in accordance with the Convention (art. 57(1–2)).

- Consider developing an asset recovery guide, with relevant practical guidance (art. 57(1–2)).
- Take legislative and other measures to provide for the return of property as specified in article 57(3) of the Convention.
- Clarify the matter of costs in the context of ongoing revision of the legislation (art. 57(4)).
- Consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation on asset recovery (art. 59).

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

Botswana indicated that it required technical assistance in the following areas:

- Capacity-building of the international cooperation unit in DPP (arts. 51, 54, 55).
  - Sharing of best practices (arts. 51, 54).
  - Capacity-building for law enforcement and prosecution (art. 53).
  - Facilitating international cooperation, including law enforcement cooperation (arts. 56, 59).
  - Capacity-building (arts. 57, 59).
-