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

Executive summary

Note by the Secretariat

Addendum

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* CAC/COSP/IRG/2021/1.



II. Executive summary

Plurinational State of Bolivia

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

The implementation by the Plurinational State of Bolivia of chapters III and IV of the Convention was reviewed in the third year of the first review cycle and the executive summary of that review was published on 8 December 2014 (CAC/COSP/IRG/II/3/1/Add.16). The full report of the review is available on the website of the United Nations Office on Drugs and Crime.¹

The country's legal system is based on civil law. Under article 257 of the Constitution, ratified international treaties form part of the domestic legal system and have the status of law. Accordingly, the Convention is part of the Bolivian legal system.

The legislation implementing chapters II and V of the Convention includes acts and administrative measures 004, 341, 393, 974, 1178 and 2027, the Criminal Code, the Code of Criminal Procedure and the administrative decisions of the Financial Investigations Unit.

The main institutions involved in preventing and combating corruption are the Ministry of Justice and Institutional Transparency, the Financial Investigations Unit, the Office of the Comptroller General, the Office of the Attorney General, the Office of the Counsel General and the National Council against Corruption, Illicit Enrichment and Money-Laundering.

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)

The Plurinational State of Bolivia has a national policy on transparency and the fight against corruption, which was approved through Supreme Decree 0214. The policy provides for four areas of action (art. 4): (a) the strengthening of citizen participation; (b) the strengthening of transparency in public administration and the right of access to information; (c) measures to eliminate corruption; and (d) mechanisms for institutional strengthening and coordination. Those areas of action are implemented through, inter alia, the National Anti-Corruption Plan 2017–2022, approved through Decision 002/2017 of the National Council against Corruption, Illicit Enrichment and Money-Laundering (art. 7, para. 2, of Act 004). The National Anti-Corruption Plan is evaluated by the Council on an annual basis (art. 8 of Act 004).

The National Council against Corruption, Illicit Enrichment and Money-Laundering, which is the highest anti-corruption authority, was established under article 6 of Act 004, as amended by article 12, paragraph I, of Act 915, and is composed of: (a) the Ministry of Justice and Institutional Transparency; (b) the Ministry of the Interior; (c) the Public Prosecution Service; (d) the Office of the Comptroller General; (e) the Financial Investigations Unit; (f) the Office of the Counsel General; and (g) representatives of civil society organizations. The Council is mandated to propose, oversee and monitor public policies aimed at preventing acts of corruption and punishing those who commit such acts and to evaluate the implementation of the National Anti-Corruption Plan (art. 7 of Act 004), among other functions. The Ministry of Justice and Institutional Transparency was created through the merging of the Ministry for Institutional Transparency and the Fight against Corruption and the Ministry of Justice (Supreme Decree 3058). The Ministry of Justice and

¹ <http://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=BOL>.

Institutional Transparency is responsible for, inter alia, developing and implementing policies related to transparency and the fight against corruption (art. 84 bis of Supreme Decree 29894, as amended by Supreme Decree 3058) and for instituting policies to prevent and combat corruption in the long term, with a focus on education (art. 80 of Supreme Decree 29894, as amended by Supreme Decree 3058).

The National Council against Corruption, Illicit Enrichment and Money-Laundering, the Ministry of Justice and Institutional Transparency and the transparency units are the main bodies responsible for preventing and combating corruption. The Ministry of Justice and Institutional Transparency reports to the President. The Council, being composed of the Ministry of the Interior and the Ministry of Justice and Institutional Transparency and chaired by the Minister of Justice and Institutional Transparency, is not an independent body. State entities, departmental, regional and municipal autonomous entities, decentralized entities and departmental, regional and municipal public enterprises are required to have transparency and anti-corruption units (art. 7 of Act 974). These units are responsible for handling reports of acts of corruption and implementing transparency and anti-corruption policies (art. 10 of Act 974), among other tasks. At the time of the country visit, 400 transparency units had been created. Each transparency unit must coordinate with the authority responsible for managing and/or administering the public entity in question (the “highest authority”, art. 5, para. 3, of Act 974) in the performance of transparency and prevention functions (art. 10, para. III, of Act 974); the head of the unit is appointed and dismissed by the highest authority for each public entity or enterprise, by the minister exercising oversight or by the highest authority for the executive body of the autonomous entity (art. 11 of Act 974).

The Plurinational State of Bolivia has informed the Secretary-General of the United Nations that the Presidential Office for Transparency and Public Integrity may assist other States parties in developing and implementing specific measures for the prevention of corruption.²

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

The Act on the Statute Governing Public Officials (Act 2027) and the Basic Rules on the Staff Administration System, approved through Supreme Decree 26115, establish that career officials are to be hired on the basis of merit (art. 24 of the Act and art. 18 of the Rules). The recruitment process (art. 18 of the Rules) can take place by direct invitation or a public call for applications, which involves a competitive selection process (art. 56 (b) of the Rules). The promotion, rotation, transfer and retirement of public officials are regulated in articles 29, 30, 31 and 32 of the Rules, respectively. Positions considered especially vulnerable to corruption have not been identified.

The requirements for the performance of public functions include “not facing a criminal charge or having an enforceable criminal conviction” (art. 234 of the Constitution). The Plurinational State of Bolivia has established grounds for ineligibility to hold elected public office (art. 238 of the Constitution).

The country has established a salary scale (art. 13, para. III, of the Basic Rules on the Staff Administration System) and a training programme (part III, chapter IV, of Act 2027) for public officials.

Political parties are funded by private capital, subject to certain restrictions, and public subsidies (art. 69 of Act 1096). Article 71 of Act 1096 lists a series of restrictions on funding, including the prohibition of political parties from accepting donations from public entities or enterprises or from natural or legal persons who own gambling businesses, anonymous donations or donations of illicit origin. Those restrictions also apply to candidature for elected public office (art. 71, para. III, of Act 1096). Public funding consists of indirect subsidies provided during election

² Following the country visit, the Bolivian authorities indicated that the authority designated pursuant to article 6, paragraph 3, of the Convention was to be changed.

campaigns to enable parties to carry out campaign advertising in the print and other media (art. 73 of Act 1096). The Plurinational Electoral Bureau is responsible for political party oversight (art. 82 of Act 1096). Political parties must report on their accounts to their members at least once a year (art. 88 of Act 1096). Article 85 of Act 018 established the Technical Monitoring Unit as part of the Supreme Electoral Court for the purpose of monitoring the assets of political parties.

All public officials must submit sworn declarations of property and income upon taking up and leaving their positions and during their tenure (art. 235, para. 3, of the Constitution and art. 53 of the Act 2027). Article 14 of Act 2027 prohibits the acceptance by public officials of any gift or other offering. Articles 10 and 11 of the Act set out certain activities that are incompatible with the exercise of a public function. However, officials are not required to declare potential conflicts of interest or report outside work or projects after taking up their position. With the exception of freely appointed high-level public officials (art. 130 of Supreme Decree 29894), the Plurinational State of Bolivia has not established any general rules prohibiting former public officials from engaging in professional activities or taking up employment in the private sector where such activities or employment relate directly to their former functions.

All public entities must adopt codes of ethics (art. 13 of Act 2027). At the time of the country visit, 96 public entities had adopted such codes. All public officials are obliged to report acts of corruption (art. 286 of the Code of Criminal Procedure).

Judicial independence is provided for (arts. 12 and 178 of the Constitution). Judges of the Supreme Court, the Agricultural and Environmental Court, the Council of the Judiciary and the Plurinational Constitutional Court are elected by universal suffrage (arts. 182, 188, 194 and 198 of the Constitution) from a list of candidates preselected by the Plurinational Legislative Assembly (arts. 20 and 169 of Act 025 and art. 19 of Act 027 as amended by Act 929). The system of prohibitions and incompatibilities applicable to public officials also applies to the aforementioned judicial officers (arts. 182, para. VII, 188, para. II, 194, para. II, and 201 of the Constitution).

Act 025 and the regulations on the judicial profession (Agreement 053/2018) govern entry into the judicial profession and promotion (art. 215 of Act 025). Part I, chapter IV, of the Act sets out the requirements for, and grounds for ineligibility to apply for, any position in the ordinary and agricultural and environmental courts (arts. 18 and 19 of Act 025), while article 208 establishes the sanctions for disciplinary offences. The Supreme Court has adopted the Ibero-American Model Code of Judicial Ethics, which applies to all members of the judiciary (Plenary Chamber Agreement 36/2018). The Council of the Judiciary is responsible for exercising disciplinary control over members, judges and administrative and support staff of the judiciary (art. 195, para. 2, of the Constitution).

The Attorney General is appointed by a two-thirds vote of the members of the Plurinational Legislative Assembly present, a prior public call for applications and an open competition being required (art. 227 of the Constitution). Part II of Act 260 establishes the general requirements, impediments, incompatibilities and prohibitions relating to the position of prosecutor; part VI, chapter II, establishes the disciplinary regime. Prosecutors are selected through an open competition (art. 94 of Act 260). There is a Code of Ethics for the Public Prosecution Service. The Disciplinary Regime Directorate is the body responsible for the internal disciplinary regime applicable to prosecutors (art. 130 of Act 260).

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

Supreme Decree 0181 approving the Basic Rules on the System for the Administration of Goods and Services, as amended by Supreme Decree 3548, establishes public procurement modalities (art. 13 as amended by art. 2 of Supreme Decree 3548). Those modalities include small-scale procurement (from 1 to 50,000 bolivianos), national production and employment support (from 50,000 to 1,000,000 bolivianos), public bidding (from 1,000,000 bolivianos) and procurement under exceptional

circumstances, procurement in relation to disasters and emergencies and direct procurement of goods and services (with no limits in the cases listed in arts. 65, 67 and 72). The highest authority for each public entity is responsible for all procurement procedures (art. 32 of the aforementioned Goods and Services Rules). There is no central body responsible for conducting or monitoring public procurement. The transparency units may request information on procurement procedures and ask the highest authority to immediately suspend a procurement procedure that is in progress (arts. 14 and 26 of Act 974).

The Goods and Services Rules establish, inter alia, the public nature of the evaluation and recommendation report (art. 22), general selection and award methods (art. 23), prohibitions to which participants in a procedure are subject (art. 40), impediments to participation in procurement procedures (art. 43) and provisions on the prevention of conflicts of interest (art. 44).

The Plurinational State of Bolivia has an electronic procurement platform (SICOES) on which certain information must be published in the case of procurement contracts with a value of more than 20,000 bolivianos (art. 49 of the Goods and Services Rules). Participation in public procurement is open to all and related documents and information are publicly accessible (art. 3, paras. (i) and (k), of the Goods and Services Rules).

Administrative appeals may be filed only in relation to public bidding procedures and procurement relating to national production and employment support where the contract value is more than 200,000 bolivianos. In such cases, the appellant must provide a guarantee of 1 per cent of the reference price (arts. 90 and 95 of the Goods and Services Rules). No independent central appellate authority has been established. Appeals are heard and resolved by the highest authority provided that that authority is not responsible for the procurement procedure (art. 92 of the Goods and Services Rules). The decision of the highest authority cannot be appealed.

The Plurinational Legislative Assembly is responsible for approving the draft general budget submitted by the executive branch (art. 321, para. III, of the Constitution). Any amendment to the budget requires approval through an act, supreme decree, multiministerial decision or biministerial decision, depending on the type and scope of the amendment (arts. 8 to 16 of Supreme Decree 3607).

Supreme Decision 222957 of 4 March 2005 establishes the Basic Rules on the Integrated Accounting System. The Rules lay down the obligation to record every transaction with the relevant supporting documentation and to file that documentation (art. 18). The falsification of public documents is a criminal offence (arts. 198 and 199 of the Criminal Code).

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

Access to information is governed by the Constitution (art. 21, para. 6, and art. 24), the Administrative Procedure Act (Act 2341) of 23 April 2002 and Supreme Decree 28168 of 17 May 2005 and the strengthening of that access is one of the priorities of the national policy on transparency and the fight against corruption (area of action 2).

As a general principle, access to information may be denied only in exceptional circumstances (art. 7 of Supreme Decree 28168). Any limitation or exception with respect to information must be specific and must be governed by an express legal provision or decision by an administrative authority (art. 18, para. II, of the Administrative Procedure Act).

Supreme Decree 28168 governs the procedure for obtaining information, the classification of information, related time frames and appeal (arts. 11, 15 and 19). Each entity must adopt administrative measures relating to access to information (art. 20 of the Decree). Appeals may be lodged with a higher authority, with the Ombudsman or through court proceedings (arts. 16 and 19 of the Decree).

The country promotes the simplification of administrative procedures through initiatives such as the e-Government Implementation Plan.

Article 10 of the Decree sets out the minimum information that each entity must publish on its website; that information does not include periodic reports on corruption risks.³ The transparency units support the highest authority in the public accountability process and ensure access to public information (art. 10, para. I (5) and (6), of Act 974).

The Plurinational State of Bolivia provides information on relevant anti-corruption bodies through awareness-raising workshops.

The country has implemented a number of initiatives to facilitate access to information, including a platform for access to public information known as “Mi Plataforma”, which is an information technology tool that centralizes and publishes information on priority projects carried out by public entities and enterprises.

Act 341 of 5 February 2013 establishes the right of social participation and oversight, which encompasses the right to participate in the design, formulation and development of public policies and the right to monitor and evaluate State administration (art. 8).

Private sector (art. 12)

The Commercial Code (Decree-Law 14379) stipulates that every trader must maintain adequate accounts and keep its books and supporting documents in good order (art. 36) for a period of at least five years (art. 52). Generally accepted accounting principles were approved through Administrative Decision SEMP 370/2008 and the Business Supervisory Authority is responsible for supervising the application of financial and accounting standards (art. 6 (c) of Act 685). Under article 200 of the Criminal Code, it is an offence to forge private documents.

There are no specific initiatives for promoting cooperation between law enforcement agencies and relevant private entities. The Plurinational State of Bolivia has not established any standards that encourage the private sector to adopt codes of ethics.

According to the government authorities, the tax deductibility of expenses that constitute bribes is not possible because Act 843 does not allow scope for such deductibility. However, there is no specific provision preventing tax deduction in such cases.

Measures to prevent money-laundering (art. 14)

The Financial Investigations Unit (see below (article 58)) is the entity responsible for regulating the regime for combating money-laundering and the financing of terrorism, in consultation with the Ministry of Economic Affairs and Public Finance and the supervisory authorities, and for designating the regulated entities that must comply with such regulations (art. 495 of Act 393 (the Financial Services Act); art. 18 of Supreme Decree 24771). Regulated entities include any natural or legal person that carries out activities relating to (a) financial intermediation and auxiliary financial services or (b) intermediation in the securities market and activities related to that market; insurance companies; intermediaries; and insurance auxiliaries (arts. 3 and 23 of Supreme Decree 24771; art. 3 (ttt) of the Manual of Operating Procedures for the Detection, Prevention, Monitoring and Reporting of Money-Laundering, Financing of Terrorism and/or Predicate Offences on the Basis of a Risk Management Approach (hereinafter “the Manual”), approved through administrative decision 001/2013 of the Financial Investigations Unit). At the time of the country visit, lawyers and accountants were not considered to be regulated entities.

³ The authorities reported that the Ministry of Justice and Institutional Transparency had approved, through Ministerial Decision 156/2018 of 7 December, a technical manual of content for the evaluation and monitoring of institutional websites.

Regulated entities are required, inter alia, to (a) know their customers, including financial beneficiaries, and apply due diligence procedures for that purpose (chapters III and V of the Manual); (b) exercise particular vigilance with respect to certain operations (art. 27 of Supreme Decree 24771; chapter IV of the Manual); (c) report suspicious transactions (art. 30 of Supreme Decree 24771; art. 38 of the Manual); and (d) keep records, for a period of not less than 10 years, of documentation concerning their customers and the operations they carry out (art. 22 of the Manual). The Plurinational State of Bolivia requires regulated entities to apply a risk-based approach to the combating of money-laundering (chapters VI and VII of the Manual).

In accordance with article 495, paragraph III, of the Financial Services Act, the bodies responsible for supervising the regulated entities include the Financial System Supervisory Authority (art. 8 of the Financial Services Act), the Pensions and Insurance Regulatory and Monitoring Authority (arts. 167 and 168 of Act 065), the Gaming Regulatory and Monitoring Authority (art. 26 of Act 060 of 25 November 2010) and the Financial Investigations Unit where there is no designated supervisory body for the regulated entity.

The Plurinational State of Bolivia has adopted measures to detect and monitor the cross-border movement of cash. With regard to the physical transfer of currencies, (a) sums below \$50,000 require registration through a form issued by the Central Bank; (b) sums between \$50,000 and \$500,000 require prior authorization by the Central Bank; and (c) sums exceeding \$500,000 require prior authorization by the Ministry of Finance (art. 3 of Supreme Decree 29681 of 20 August 2008). The regulations referred to do not cover the cross-border movement of negotiable instruments.

The country has not established specific provisions governing the electronic transfer of funds.

2.2. Successes and good practices

- The Youth Network for Transparency comprises 74 networks at the national level and more than 2,600 young people who are working to foster and promote a culture of transparency and integrity and are involved in the formulation of public policies on corruption prevention (art. 13).

2.3. Challenges in implementation

It is recommended that the Plurinational State of Bolivia:

- Grant the preventive anti-corruption bodies the necessary independence (art. 6, para. 2).
- Ensure that the recruitment of all public officials, including those recruited by direct invitation, is based on objective criteria (art. 7, para. 1 (a)).
- Endeavour to adopt systems for the declaration and management of potential conflicts of interest (art. 7, para. 4) and for the identification of public positions considered especially vulnerable to corruption, and to adopt adequate procedures for the selection and training of individuals for such positions and, where appropriate, the rotation of such persons (art. 7, para. 1 (b)).
- Consider extending the scope of the prohibition of freely appointed high-level public officials from occupying senior positions in private companies whose activities relate to those officials' former functions so that that prohibition (a) covers any former public official; and (b) includes any professional activity or employment in the private sector that relates directly to the functions held or supervised by those public officials during their tenure (art. 7, para. 4, and art. 12, para. 2 (e)).
- Continue its efforts to achieve the adoption by all public entities of codes of ethics or conduct (art. 8, para. 2).

- Establish objective and predetermined criteria for public procurement decisions; increase the scope of the procurement challenge mechanism to include all public procurement modalities and reassess the requirement that persons wishing to file an administrative challenge provide a guarantee in order to do so, as that requirement may discourage or significantly reduce such challenges; consider establishing a mechanism whereby appeals may be submitted to an independent entity that was not involved in the appealed decision; and consider taking measures to regulate matters regarding the integrity of personnel responsible for procurement (art. 9, para. 1).

The Plurinational State of Bolivia may wish to include periodic reports on corruption risks in the minimum information that each entity must publish on its website (art. 10 (c)).

It is also recommended that the Plurinational State of Bolivia:

- Strengthen the prevention of corruption in the private sector, in particular by reinforcing cooperation between law enforcement agencies and private entities and promoting the formulation of ethics or integrity standards for the private sector (art. 12, para. 1).
- Explicitly disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Expand the list of regulated entities to cover other sectors that are particularly susceptible to money-laundering, including lawyers and accountants (art. 14, para. 1).
- Consider establishing the requirement to report cross-border transfers of appropriate negotiable instruments (art. 14, para. 2).
- Consider requiring that forms for the electronic transfer of funds and related messages include accurate and meaningful information on the originator, that such information be maintained throughout the payment chain and that enhanced security be applied to transfers of funds that contain incomplete information on the originator (art. 14, para. 3).⁴

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

The Plurinational State of Bolivia indicated that it needs technical assistance in relation to the exchange of experience and training (arts. 6 and 7), risk management and public procurement (art. 9), e-government and open data policy (art. 10) and the prevention of corruption in the private sector (art. 12).

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)

All cooperation is based on articles 138 et seq. of the Code of Criminal Procedure, which governs mutual legal assistance in general and states that the greatest possible assistance shall be provided in response to requests from foreign authorities. The Plurinational State of Bolivia does not have a specific law on asset recovery.

With the support of the Stolen Asset Recovery (StAR) Initiative, the country has established an inter-agency working group on asset recovery (StAR GIRA), which

⁴ The authorities indicated that with the entry into force, through Administrative Decision UIF/063/2019, of the Compliance Directive for Financial Intermediation Entities with a Risk Management Approach in Relation to Money-laundering, Financing of Terrorism and Predicate Offences, some of these aspects have already been addressed through relevant regulations (art. 44).

brings together national authorities for the purposes of promoting, coordinating and carrying out, within the framework of each entity's specific regulations, actions and activities aimed at the recovery of assets abroad that are derived from acts of corruption and corruption offences.

The Plurinational State of Bolivia can exchange information without prior request through its contact points (the Financial Investigations Unit and the Public Prosecution Service), which interact through the Asset Recovery Network of the Financial Action Task Force of Latin America. Similarly, the Financial Investigations Unit exchanges information with its foreign counterparts through the Secure Web system of the Egmont Group.

While the country has not concluded any specific bilateral or multilateral agreements to enhance the effectiveness of international cooperation undertaken pursuant to chapter V of the Convention, some of its bilateral treaties on mutual legal assistance contain provisions on asset recovery. Its bilateral treaty with Peru contains a provision on asset allocation.

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

The Plurinational State of Bolivia has established the obligation of regulated entities (arts. 3 and 23 of Supreme Decree 24771) to identify customers and verify their identity according to their risk level (arts. 11 and 30 to 32 of the Manual and specific directives for each sector).

There is no definition of high-value accounts. Regulated entities must ensure that they know the identity of the financial beneficiary, which may be a natural or legal person, regardless of the value of the account (arts. 3 (g), 18 and 19 of the Manual).

Politically exposed persons and their associates are defined in the Manual (art. 3, paras. (qq), (ss) and (e)). Associates include family members and legal entities in which a politically exposed person holds a position of administrative control, is a shareholder or has a financial interest.

Regulated entities are required to draw up lists of national and foreign politically exposed persons and their associates (art. 67 of the Manual) and to implement enhanced due diligence measures in respect of such persons (chapter X of the Manual, in particular art. 66).

The Financial Investigations Unit has developed a book of typologies as guidance on the factors that should lead to greater scrutiny by financial institutions.

There is no mechanism enabling the authorities to notify financial institutions of the identity of persons whose accounts should be subject to enhanced scrutiny.

Financial institutions must keep copies of all information and documentation supporting their operations and concerning complementary financial services for 10 years (art. 470 of the Financial Services Act). Regulated entities engaged in financial intermediation and the provision of auxiliary financial services must keep documents relating to the operations carried out and business correspondence for 10 years and documents relating to the identity of their customers and observations regarding unusual operations for five years following the cessation of relations with the customer (art. 29 of Supreme Decree 24771). The Manual requires regulated entities to keep records of the documentation concerning their customers and the operations they carry out for a period of not less than 10 years. In the case of information relating to public officials, the non-applicability of the statute of limitations period to offences committed by such officials where those offences harm State property and cause serious economic damage must be taken into account (art. 112).

The establishment of banks that have no physical presence and that are not affiliated with a regulated financial group is not prohibited. The Manual establishes that due diligence procedures must enable the regulated entity to identify any relationships with shell banks or with entities that maintain correspondent relationships with shell

banks and to ensure that no such relationships are established (art. 36 (i)). The continuation of such correspondent relationships is not prohibited. There is no definition of a “shell bank” and the definition of “shell company” (art. 3 (sss) of the Manual) is more restrictive than the fact of having no physical presence and not being affiliated with a regulated financial group.⁵

The financial disclosure system provides for the submission by all public officials of annual declarations (art. 235 of the Constitution; art. 53 of Act 2027; and art. 5, paragraph I, of Supreme Decree 1233). The submission of a false declaration and failure to submit a declaration are punishable (art. 33 of Act 004; art. 149 of the Criminal Code; art. 17 of Act 2027; and art. 29 of Act 1178).

A summary of each declaration is published on a dedicated website and there is a mechanism for verifying the declarations (art. 23, para. II, of Act 004). No further details can be shared with other States.

Public officials are not required to report any interest in or signature or other authority over a financial account abroad except for accounts belonging to the public official, which must be declared on the basis of the principle of the universality of declarations (art. 54 of Act 2027). The Plurinational State of Bolivia has a financial investigations unit that was established pursuant to article 185 ter of the Criminal Code and is part of the Egmont Group. The Financial Investigations Unit may freeze funds only in cases related to the financing of terrorism (art. 2 of Act 262). At the time of the country visit, the Financial Investigations Unit had signed 20 inter-institutional agreements with various entities, including the Public Prosecution Service, the National Customs Authority, the Ministry of the Interior and the Directorate General for the Registration, Control and Administration of Seized Property, and 14 memorandums on information exchange with its counterparts at the international level.

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)

Other States cannot initiate civil action in the Plurinational State of Bolivia to establish title to or ownership of property acquired through the commission of an offence.

The authorities confirmed that the Bolivian courts may order those who have committed offences to pay compensation or damages to another State party that has been harmed by such offences (arts. 36, 37, 76, 154 (para. 3), 324, 382 and 386 of the Code of Criminal Procedure) and that, when deciding on confiscation, the courts may recognize another State party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention.

The authorities cannot give effect to a foreign confiscation order.

The authorities can order the confiscation of property of foreign origin by adjudication of an offence of money-laundering or any other offence, in accordance with the general rules applicable to confiscation (arts. 71 and 71 bis of the Criminal Code).

The current regulatory framework does not provide for confiscation without a criminal conviction except in respect of property of illicit origin where that property is derived from or linked to the traffic in controlled substances. Consequently, the country cannot confiscate property on the basis of a foreign confiscation order without

⁵ After the country visit, the authorities provided the information that a definition of “shell bank” had been included in the annex to the Directive for Financial Intermediation Entities approved through Administrative Decision 063/2019 of 22 August 2019. The Directive defines a shell bank as “... a bank which has no physical presence (that is, no central management as such) in the country in which it has been incorporated and licensed, and which is not part of any financial group that is subject to effective consolidated supervision.”

a criminal conviction for a corruption offence established in accordance with the Convention.

After initial consideration of the request by the Supreme Court (art. 38, para. 8, of Act 025), the examining judge decides whether, on the basis of a request for seizure or freezing with or without a foreign order, the requested provisional measure can be taken (art. 497, I and II, of the Code of Civil Procedure in relation to art. 54, para. 8, of the Code of Criminal Procedure).

In the case of a foreign arrest warrant or criminal charge, the courts may take measures to preserve property for confiscation on their own initiative (arts. 253 and 253 bis of the Code of Criminal Procedure).

The Plurinational State of Bolivia has not yet received any requests from other States for the confiscation of property situated in its territory. Therefore, the implementation of paragraphs 1 and 2 of article 55 of the Convention cannot be assessed.

Beyond the requirements established with respect to the content of general requests for assistance, no additional requirements apply to requests related to confiscation except in the country's treaty with Italy (art. 8), which requires that such a request be accompanied by certain documents and information.

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

In practice, if the country did not receive sufficient and timely evidence for the purposes of cooperation in relation to confiscation, a deadline for providing additional information would be imposed on the requesting State. If the additional information was not received within that deadline, the request for cooperation would be considered withdrawn.

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

There are provisions on protection of the rights of bona fide third parties (arts. 255 of the Code of Criminal Procedure).

Return and disposal of assets (art. 57)

While in the legislation there is no obstacle to the return of property to a requesting State party, there are also no specific provisions establishing the obligation to return property in the cases provided for by the Convention.

In direct application of the Convention, reasonable expenses incurred by the Plurinational State of Bolivia in investigations, prosecutions or judicial proceedings leading to the return or disposition of property may be deducted.

The Plurinational State of Bolivia has not concluded any specific agreements for the final disposal of confiscated property. Its bilateral cooperation treaty with Peru provides for the sharing of confiscated property or the proceeds of its sale in equal parts (art. 1 (f)).

3.2. Successes and good practices

- The establishment of StAR GIRA in order to foster inter-institutional coordination for asset recovery purposes (art. 51).
- The preparation of a guide on drawing up requests for legal assistance in criminal matters relating to corruption offences, with the aim of standardizing and improving the quality of active requests, including in the area of asset recovery (art. 51).

- The dedicated process of verification of the information contained in sworn declarations of property and income and the fact that a summary of the information contained in each declaration is published on a dedicated website (art. 52, para. 5).

3.3. Challenges in implementation

It is recommended that the Plurinational State of Bolivia:

- Include in its definition of “associates” legal persons in which the politically exposed person does not hold a position of control but which are clearly linked to the politically exposed person (art. 52, para. 1).
- Notify financial institutions of the identity of particular natural or legal persons to whose accounts enhanced scrutiny should be applied (art. 52, para. 2 (b)).
- Prohibit the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group; define “shell bank” in accordance with the requirements of the Convention; and consider requiring its financial institutions to refuse to continue existing correspondent relationships with banks that have no physical presence and are not affiliated with a regulated financial group (art. 52, para. 4).
- Consider taking measures to require appropriate public officials having an interest (other than ownership) in or signature or other authority over a financial account abroad to report that relationship and to maintain appropriate records related to such accounts; and consider establishing appropriate sanctions for non-compliance (art. 52, para. 6).
- Take measures to permit other States Parties to initiate civil action in their courts to establish title to or ownership of property (art. 53 (a)).
- Monitor the application of its legislation in order to ensure that that legislation is interpreted in a manner that enables the courts to order those who have committed offences to pay compensation or damages to another State party that has been harmed by such offences (art. 53 (b)) and in order to ensure that its courts or competent authorities, when having to decide on confiscation, recognize another State party’s claim as legitimate owner of property acquired through the commission of an offence established in accordance with the Convention (art. 53 (c)). Should the judiciary not interpret the law in this way, legislative reform will be necessary.
- Take measures to permit its competent authorities to give effect to a foreign confiscation order (art. 54, para. 1 (a)).
- Consider taking measures to allow the confiscation of property without a criminal conviction in the cases referred to in article 54, para. 1 (c).
- Ensure that in practice, before a provisional measure is lifted, the requesting State party is given an opportunity to present its reasons in favour of continuing the measure. If this does not happen in practice, legislative reform will be necessary (art. 55, para. 8).
- Adopt measures for the return and disposal of confiscated property in accordance with article 57, paragraphs 1 to 3, of the Convention, taking into account the rights of bona fide third parties (art. 57, paras. 1–3) and ensure that confiscated property is returned to the requesting State party in accordance with article 57, paragraph 3, of the Convention, including in cases in which bilateral or multilateral treaties provide otherwise (art. 57, paras. 3 and 5).
- Assess whether the power of the Financial Investigations Unit to freeze funds could be extended to offences established under the Convention – a matter that could be addressed, for example, in a future law on combating money-laundering (art. 58).

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

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

The Plurinational State of Bolivia requires capacity-building with respect to the tracking and tracing of property abroad and the recovery and final disposal of property (arts. 51, 55 and 57).
