

Country review report for Morocco

Review by Slovakia and South Africa
of the implementation by Morocco
of articles 15 – 42 of Chapter III. “Criminalization and law
enforcement” and articles 44 – 50 of Chapter IV.
“International cooperation” of the United Nations Convention
against Corruption for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (the Convention) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Morocco of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Morocco, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Slovakia and South Africa, by means of telephone conferences, e-mail exchanges and a country visit in Morocco, in accordance with the terms of reference, and involving Ms. Vanessa Phala and Messrs. John Makubele, Gerhard Nel for South Africa, and Ms. Hana Kovacova and Messrs. Ronald Kakas and Juraj Novocky for Slovakia.

III. Executive summary

Legal system

The Kingdom of Morocco is a constitutional, democratic, parliamentary and social monarchy. On 1 July 2011, a new Constitution, adopted by referendum, entered into force. The Constitution acknowledges the principle of the primacy of international treaties over national legislation. International treaties are approved by the Prime Minister and signed by the King. It is not necessary that the treaties be approved by Parliament to come into effect, with the exception of treaties relating to the State finances.

Morocco signed the United Nations Convention against Corruption (the Convention) on 9 December 2003, and ratified it on 9 May 2007. The Convention came into effect on 30 November 2007. Self-executing provisions of the Convention can be applied directly by the Moroccan authorities.

The main institutions which are mandated to prevent and combat corrupt practices in Morocco are: The Central Body for the Prevention of Corruption; the Financial Information Processing

Unit; the General Prosecution's office and police; the Inspectorate General of Finance; the Inspectorate General of Territorial Administration; and the Financial Courts (the Higher Council of Accounts and the Regional Councils of Accounts).

Legal instruments for the implementation of the Convention in Morocco include: the Penal Code adopted in 1962 which was amended on several occasions; the Criminal Procedure Code adopted in 2002; the Code of Financial Courts adopted in 2002; Law No. 43-05 against money laundering adopted in 2007; Law No.10-13 amending anti-money laundering legislation adopted in 2011; and, with respect to offences in the private sector, the Commercial Code and the Company Law, both adopted in 1996. A series of bilateral treaties in the area of mutual legal assistance including with France, the Netherlands, Portugal, Spain, the United States of America, are also applicable.

The criminal process in Morocco entails three phases, namely, the preliminary research and preparatory investigation stage, the investigation by a judge (the *juge d'instruction*), and the trial phase. The preliminary investigation stage involves all relevant law enforcement departments, including the judicial police supervised by the General Prosecution's office. Corruption related cases are investigated by police units responsible for economic crime. Upon completion of the first phase, the prosecution's office would submit cases that do not need further investigative action directly to the court for hearing and judgment. If additional evidence is required, the prosecution's office would refer the case for further investigation by a judge. When the investigation is completed, the case is submitted to the competent court for hearing and judgment.

Criminalization and Law Enforcement

Criminalization

Most of the offences listed in the Convention are criminalized in the Moroccan Penal Code and other legal texts, such as Law No. 43-05 on money laundering.

The most significant development in Morocco in recent years with respect to criminalization of corruption related offences is the adoption of Law No. 13-10, amending Law No. 43-05 on money laundering. A draft amendment to the Penal Code, which will bring changes also to corruption related offences, is also being discussed.

Bribery of national public officials appears to be adequately covered in Moroccan legislation, although it has been observed that the Penal Code does not make express reference to bribery committed *indirectly* or through intermediaries. On the other hand, the reviewing experts noted that an adequate specific provision criminalizing bribery of foreign public officials is not included in the Moroccan legislation and they identified the absence of such a provision as one of the challenges with respect to the implementation of the Convention by Morocco. Morocco reported that this issue is being addressed in the draft amendment of the Penal Code still under discussion.

The provisions of the Moroccan Penal Code criminalizing trading in influence do not appear to fully reflect the elements of the offence as envisaged by the Convention, as they do not put emphasis on the influence exerted. Similarly, a divergence between the text of the Convention and the relevant provisions of the Moroccan Penal Code is noted with respect to the offences of concealment and abuse of functions.

However, it is important to note that the crime of treachery constitutes a form of abuse of power, which the Moroccan legislation punishes with imprisonment of up to 5 years.

The State of Morocco has stated that it has not taken steps towards establishing illicit enrichment as a criminal offence. Furthermore, although Morocco has implemented subparagraph (a) of article 25 of the Convention by criminalizing obstruction of justice by unlawful interference with witnesses and production of evidence, Moroccan legislation does not fully comply with subparagraph (b) of article 25 of the Convention, as interference with the duties of justice or law enforcement officials is punished only if committed by other public officials. The current sanctions for obstruction of justice seem rather lenient, which raised concerns about their deterrent effect.

Although laundering of proceeds of crime is exhaustively regulated in the Penal Code and Law No. 43-05, the Moroccan legislation is not always fully in compliance with the provisions of the relevant articles of the Convention. The Moroccan legal provisions on money laundering were amended by Law No. 3-10, adopted in January 2011, which significantly expanded the range of predicate offences to money laundering, criminalized attempt of money laundering and enhanced the framework and measures for the prevention of money laundering.

Corruption and embezzlement of property in the private sector, as well as embezzlement, misappropriation or other diversion of property, are criminalized in compliance with the corresponding provision of the Convention. However, penalties for embezzlement in the private sector are lenient and their deterrent effect might be limited.

Although Moroccan criminal legislation does not specifically include a provision establishing the criminal liability of legal persons in general terms, penal sanctions and deterrent measures directed to legal persons held liable for specific offences are contained in a number of articles of the Penal Code, including provisions punishing money laundering. Therefore, the Moroccan authorities argue that its laws do recognize criminal liability in respect of legal persons.

Participation and attempt are covered by provisions governing general criminal law, applicable to all offences. The statute of limitation provided for by the Moroccan legislation is viewed to be sufficient and can be interrupted by any investigative act.

Overall, with regard to the requirements of the Convention on criminalization, the following observations were made with respect to implementation by the reviewing experts:

- To include in relevant legislative provisions a specific mention of direct and indirect commission of the offence.
- To pursue legislative processes towards criminalizing, specifically and distinctly, bribery of foreign public officials and officials of public international organizations.
- To consider amending legislation on trading in influence, concealment and abuse of functions, in order to bring it in closer conformity with the provisions of the Convention.
- To consider establishing illicit enrichment as a criminal offence, and to that end, make use of technical assistance as available.

- To amend legislation on obstruction of justice in order to include all requirements of article 25 (b) of the Convention as well as to establish more severe and dissuasive penalties.
- To review the regulation of liability of legal persons with respect to corruption related offences.

Law enforcement

In general, the sanctions applicable to corruption related offences under the Moroccan legislation could be strengthened, in order to ensure their deterrent effect and sufficiently reflect the gravity of the acts.

The new Constitution of the Kingdom of Morocco adopted in July 2011, limited the extent of immunities accorded to members of Parliament and magistrates. The requirements on release of defendants pending trial or release of convicted persons on parole are adequately covered by the Moroccan legislation, but more specific and clear measures for the removal, suspension or reassignment of public officials involved in corrupt activity, as well as for their disqualification from holding public office, are required.

There are gaps in the legislation of Morocco with respect to confiscation of proceeds of offences established in accordance with the Convention, as the legislative provisions on confiscation cited by Morocco appear to apply only to instrumentalities used in offences and not to the proceeds of crime. Also, these gaps were partially addressed by the amendments to anti-money laundering legislation, under which confiscation of all proceeds of crime in money laundering cases has become mandatory.

Equipment or instrumentalities used in offences can be confiscated without a conviction, whereas for the confiscation of proceeds of crime, where permitted, a conviction is needed. Further, freezing of alleged instrumentalities and proceeds of crime is allowed before conviction. Confiscation and freezing of assets can be ordered only by a judge. Banks and financial institutions are required to cooperate with the prosecuting authority and provide information related to alleged irregular movements of funds as requested. Moroccan law does not contain a provision that would foresee shifting the burden of proof to the defendant to show that alleged proceeds of crimes were actually of legitimate origin as provided for in the optional paragraph 8 of article 31 of the Convention.

Current Moroccan legislation establishes an adequate framework for the protection of witnesses, experts and victims, but does not include a specific and comprehensive witness protection programme. Amendments to the Penal Procedure Code are expected to enhance protection of witness, experts and reporting persons, reflecting the comprehensive regime provided for in the Convention. Anti-money laundering legislation in force already contains provisions on protection of persons making *bona fide* suspicious transaction reports.

The legal system of Morocco recognizes the right either to appear as a civil party and seek compensation in criminal proceeding or to initiate legal proceeding before civil courts to any person who has suffered damage from a criminal offence. In case a public procurement process is tainted by corruption, Moroccan legislation provides for the annulment of the tender and the exclusion of the service provider from future contracts with the public authorities.

The review process revealed that there is no established body specialized in combating corruption through law enforcement. The Central Body for the Prevention of Corruption and the Financial Intelligence Unit are important players in the fight against corruption. However, they are not vested with law enforcement functions. It was recommended to build specialized law enforcement capacity to deal with corruption offences. This was expected to be addressed by draft legislation under discussion which will put in place specialized anti-corruption teams of trained prosecutors working in partnership with officials of the Ministry of Interior, the Ministry of Finance and financial institutions.

Reference was made during the dialogue to other pieces of legislation and recent amendments, which were forwarded later on to the team, and that provide, among others for the establishment of national teams of the judicial police and regional judicial police, which are entrusted with special tasks, including research and investigation in financial and economic crimes. However their content could not be adequately reviewed during the country review process.

Moroccan legislation does not foresee a comprehensive regime of incentives to encourage cooperation with law enforcement authorities of persons that have participated in offences. Further, Moroccan law does not allow for plea and sentence agreements. Exchange of information between public authorities and law enforcement is mainly ensured through the work of the Central Body for the Prevention of Corruption and the Financial Intelligence Unit, which is empowered to solicit information from public institution and bodies. Also, the Financial Inspectorate within the Ministry of Economy and Finance notifies law enforcement of irregularities detected through controls or audits of the public sector.

Jurisdiction of the Kingdom of Morocco for criminal offences is regulated by the Criminal Procedure Code and the general provisions are in compliance with the requirements on jurisdiction set forth in paragraphs 1 to 3 of article 42 of the Convention.

With regard to the requirements of the Convention in the area of law enforcement, the following observations were made with respect to implementation by the reviewing experts:

- To encourage Morocco to consider adopting comprehensive and specific measures for the freezing, seizure and confiscation of proceeds of crime, as contemplated in article 31 of the Convention, including confiscation in value and requiring that an offender demonstrate the lawful origin of alleged proceeds of crime.
- To consider adopting more severe sanctions for corruption related crimes, in order to ensure their efficiency, proportionality and dissuasive effect.
- To review legislative amendments to ensure existence of specialized law enforcement capacity on corruption offences.

International cooperation

According to the Moroccan Penal Procedure Code, international treaties have supremacy over domestic legislation with respect to international cooperation matters. General provisions of Moroccan Penal Procedure Code (Section III of Book VII), including provisions on extradition, apply to such matters that are not regulated by bilateral or multilateral treaties. Morocco is considered to meet the main requirements set by the Convention in the area of international cooperation.

Extradition

In Morocco, the requirements and procedures of extradition are regulated in a specific chapter of the Criminal Procedure Code. Morocco has concluded a number of bilateral treaties on extradition, but does not make extradition conditional to the existence of a treaty. In the absence of applicable treaty, it can grant extradition on the basis of the provisions of the Criminal Procedure Code.

Moroccan nationals can not be extradited, but they may be prosecuted in Morocco for offences committed abroad if a foreign country requests officially the Moroccan authorities to do so (*aut dedere aut judicare*). In the same context, the Moroccan authorities would not consider enforcing a sentence imposed by a foreign authority on Moroccan citizens.

Morocco requires that the principle of dual criminality is respected in all cases, as extradition will not be granted if the act is not punishable according to Moroccan law. Morocco cannot exercise discretion to grant the extradition of a person for any of the offences of the Convention that are not punishable under national law, as provided for in paragraph 2 of article 44 of the Convention, due to the strict adherence by Morocco to the principle of dual criminality.

The offence for which extradition is sought should be punished in the requesting State with a maximum penalty of at least one year of imprisonment. Moroccan law provides for the possibility to take the sought person into custody. The number of extradition requests for corruption related offences received by Morocco appears to be limited: out of 65 extradition requests received in 2009 and 2010 only three were related to financial or money laundering offences.

Extradition is only granted on the condition that the person extradited shall not be prosecuted, tried, arrested, or subjected to any other measures which would curtail his or her personal liberty, on account of any act made prior to the date of extradition, apart from the act for which he or she is being extradited. Moreover, according to Moroccan law, extradition shall not be granted if the act for which extradition is sought is considered to be a political offence or related to a political offence.

Mutual legal assistance

Moroccan legislation does not include a specific, separate legal text on mutual legal assistance. The matter is regulated by the Moroccan Penal Code and the Moroccan Criminal Procedure Code. Also, a series of bilateral agreements have been concluded by Morocco in the area of mutual legal assistance, which include treaties with the Netherlands, Portugal, Spain, Turkey and the United States of America. These agreements deal with several features of international judicial cooperation and are not limited to a particular area. The reviewing experts noted with appreciation the significant number of treaties concluded by Morocco in the field of mutual legal assistance, and encouraged the conclusion of similar agreements with additional States in order to further strengthen cooperation.

The central authority designated by the Kingdom of Morocco for receiving requests of mutual legal assistance is the Ministry of Justice. The Secretary-General of the United Nations has been notified of this designation. According to the Moroccan legislation, mutual legal assistance requests have to be submitted through diplomatic channels. However, some bilateral agreements, such as the one with Portugal, allow submission directly to the central authorities. Moreover, Morocco agrees that in urgent circumstances requests be submitted

through INTERPOL. As far as the languages are concerned, Morocco has reported that as a rule, a translation of incoming mutual assistance requests in Arabic, the official language of Morocco, was required.

Mutual legal assistance requests for corruption-related offences are not frequently submitted to Morocco: In 2009, the Moroccan judicial authorities received 241 requests for legal assistance, of which four were related to money laundering, one to illegal currency trade and two to embezzlement of public funds. In 2010, the Moroccan judicial authorities had received 24 requests for legal assistance relating to money laundering, and two related to bribery.

A wide range of purposes for which mutual legal assistance may be requested, have been included in Morocco's national legislation and the applicable bilateral treaties. However, the reviewing experts noted that mutual legal assistance for the purpose of asset recovery, as foreseen in paragraph 3 (k) of Article 46 of the Convention, appeared not to be adequately covered.

Morocco does not decline to render mutual legal assistance on the ground of bank secrecy. This principle is expressly set forth in applicable bilateral treaties, but has also been adhered to in the practice by Moroccan judicial authorities, which respond to requests for disclosure of bank records as long as those requests are submitted in the context of judicial investigations.

On average, Morocco requires three months to respond to a request for mutual legal assistance, but would consider requests to speed up procedures in case of urgent circumstances in the requesting State. Moroccan legislation does not provide for grounds of refusal other than those included in the Convention: Requests for legal assistance will not be implemented if they do not fall within the jurisdiction of the Moroccan judicial authorities, or if their implementation would compromise the sovereignty, security, *ordre public* or other essential interests of the Kingdom of Morocco. The requesting State is always notified of refusal of its request and the reasons thereof are provided.

Law enforcement cooperation

Morocco reported the existence of an extended network of law enforcement cooperation with international counterparts. Morocco is a member of INTERPOL and is party to a series of international conventions, bilateral and multilateral agreements, which provide for technical cooperation, cooperation in the field of security and exchange of information. These instruments include memoranda of understanding concluded at the level of governmental departments and national public administrations.

Morocco also reported that it makes full use of the channels of communication available among INTERPOL members. As the Financial Intelligence Unit became a member of the Egmont Group on 13 July 2011, communication and information sharing through the secure database of the Egmont Group is expected to develop.

A number of liaison officers are posted to Moroccan embassies in other countries. Their functions include fostering cooperation and engaging in joint technical assistance programmes with counterparts in the host States.

With respect to joint investigations, a draft amendment of the Penal Procedure Code would introduce the possibility for the competent judicial authorities, subject to prior agreement with the Minister for Justice and at the discretion of the State Party or Parties concerned and within

relevant judicial guidelines at the national level, to form joint investigative teams to carry out complex and large-scale search proceedings in other countries, in relation to crimes that require concerted and centralized action.

Although controlled delivery was not regulated in national law until January 2011, Morocco has responded to several requests for judicial cooperation involving controlled deliveries in 2009 and 2010 within the context of implementation of the [United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#).

Technical assistance

A number of technical assistance needs in the implementation of the provisions of the Convention were identified by Morocco throughout the review. These needs include provision of summaries of good practices and lessons learned, best practices, model legislation, assistance in legislative drafting and legal advice for incorporating in domestic law the provision of the Convention

Morocco noted that in order to assess compliance with chapters III and IV of the Convention, it would require programmes for the evaluation of application measures, as well as and assistance in identifying and distributing appropriate computer equipment to collect relevant statistical data.

In the area of protection of witnesses, victims and reporting persons, Morocco expressed a need for training workshops, capacity-building programmes and on-site assistance by anti-corruption experts. Also, in order to better implement the provisions of the Convention on international cooperation, Morocco noted that programmes to enhance the capabilities of competent authorities would be of assistance.

IV. Implementation of the Convention

A. Ratification of the Convention

The United Nations Convention against Corruption was signed on 9 December 2003. It was ratified by the government assembly of Morocco on 2 March 2006. It came into effect by Dahir No. 1.07.58 published on 30 November 2007 in the Official Gazette No. 5596, page 133. The documents approving the Convention were lodged with the Secretary-General of the United Nations in New York on 9 May 2007.

B. Legal system of Morocco

1. The Moroccan Constitution

Morocco is a constitutional, democratic, parliamentary and social monarchy. A new Constitution was adopted by referendum in June 2011, and entered in force on 1 July 2011. A series of important principles are contained in the Constitution. All human rights as well as the applicable mechanisms and enforcement guarantees are enshrined in the Constitution, and especially the presumption of innocence and guarantees for a fair trial. The Constitution also upholds the freedom of the press and the expression of opinion. The independence of the judiciary is confirmed. The Constitutional Council has been elevated to the rank of a

Constitutional court, with powers to checking the constitutionality of international conventions and ruling on disputes between the State and the regions. The Constitution provides for the establishment of a national institutional system in order to strengthen good governance, integrity in the public sector and the fight against corruption.

The principle of the primacy of international treaties and conventions over the national law is also enshrined in the new Constitution, which entered in force on 1 July 2011. In case of uncertainty, international law prevails. International treaties are approved by the Head of Government and in order to give status thereto they are signed by the King. It is not necessary that the treaties be approved by the Parliament, with the exception of those relating to the State Finances. The new Constitution also promotes transparency and the fight against corruption and narrows the scope of the immunities of members of Parliament. Moreover, article 36 of the new Constitution provides for the establishment as a constitutional entity of a national authority for probity and fight against corruption.

Morocco has a monist legal system regarding the signing and ratification of treaties (with the exception of treaties relating to State Finances). These treaties include Extradition and Mutual Legal Assistance in Criminal Matters. On the other hand, extradition and mutual legal assistance are also regulated in the Moroccan Penal Code.

The Court of Cassation is the highest judicial authority in Morocco. The Constitutional Court has jurisdiction over constitutional matters.

2. The legislative, executive and judiciary branches

The Parliament is composed of two chambers: the House of Representatives and the House of Councillors. Their members hold their mandate from the Nation. Their right to vote is personal and cannot be delegated.

The Government comprises the Head of Government and the Ministers. The Head of Government is appointed by the King, from the political party which came out first in the election of members of the Parliament. At the Head of Government's proposal, the King appoints the other members of the Government. The King may terminate the services of the Government either on his own initiative or because of the resignation of the Government.

The Government is accountable to the King and the Parliament. After the appointment of Government members by the King, the Head of Government appears before each of the two Houses to submit the governmental programme to be carried out. This programme must define the guidelines for action that the Government proposes to follow in the various sectors of national activity, especially in areas relevant to economic, social, cultural and foreign policy. This programme is the subject of a debate in each House. In the House of Representatives, the debate is followed by a vote.

Members of the Government shall be criminally responsible for crimes committed in the exercise of their functions. They can be impeached by both Houses of Parliament and referred to the High Court.

The judiciary is independent from the legislative and executive powers. The Moroccan judicial system comprises courts of first instance, appellate courts and the Court of Cassation.

Law No. 58,11 concerning the Supreme Council enacted by Dahir [royal decree] No. 1,11,170 issued on 27 Zul Qa'dah 1432 (25 October 2011)). The criminal process in Morocco develops as follows:

3. The criminal process in Morocco

In general there are three stages of handling a penal case:

- firstly, the preliminary investigation stage;
- secondly, the preparatory investigation by a judge (the *juge d'instruction*); and
- thirdly, the final trial, possible conviction and sentence stage.

In the first stage, the objective is to collect all necessary evidence to take the matter to the investigation judge or court. The judicial police, under the supervision of the Prosecution, conduct the preliminary investigation.

When the preliminary investigation is deemed completed, the case is referred to the Prosecution for decision. The Prosecution may refer the case back to the judicial police for further investigation or to clarify certain issues. The communication between the judicial police and the Prosecution forms part of the prosecution process. In some cases, expert evidence is required in the investigation process.

Once the preliminary investigation stage is over, the Prosecution has, in general, two options. In the first instance, where it is a clear cut case not involving complex evidentiary issues, the case may be prosecuted. Secondly, where there are complex issues, the Prosecution may refer the case to an investigation judge for consideration and decision. The Prosecution may submit pleas to the investigation judge. The Prosecution and the defence may also appear before the investigation judge and present arguments so as to enable the investigation judge to make a final decision.

The process in terms of which a case is referred to an investigation judge, guarantees a fair trial. There is also the advantage that the accused can be kept in custody for a longer period so as to finalise outstanding investigating issues.

Having received all the relevant information, the investigation judge may decide to refer the case to the court for trial and decision. The decision of the investigation judge is appealable.

Apart from the prosecution, a case may also be submitted to an investigation judge by a private person who has an interest in the matter (direct complaint).

In case of felonies, in other words where a sentence of less than 5 years' imprisonment may be imposed, the case is referred to a lower court. In case of a crime (sentence is more than 5 years of imprisonment), the case is referred to a higher court.

The third stage is where the case is referred to the trial court for a hearing.

The Minister of Justice is responsible for the prosecuting authority, whereas the Minister of Interior is responsible for the Police. However, the investigating members of the judicial police perform their functions under the supervision of the Prosecution. In case of lack of evidence, the Prosecution refers the matter to the investigating judge.

The Moroccan Judicial Police have jurisdiction in the whole of Morocco and they are responsible for control and supervision over information of the local administration. Non-complex cases are examined at the level of the regional units. Financial cases are investigated by specialized units (financial crimes sections).

The Judicial Police may investigate any corruption case, and the policy of the Government is to prosecute all corruption cases. Where a case of corruption is involved, the investigation will be conducted by the police unit dealing with financial matters. Corruption investigations are managed by the prosecutor and the judicial judge. It is also possible to involve other institutions so as to get expert assistance.

Furthermore, the Judicial Police may investigate a case at the request of the prosecution. The Judicial Police may investigate cases where they receive specific requests from the judiciary. This can be done without having received a complaint or response from a civil party.

The Moroccan legislation classifies the criminalized acts established and punished under criminal law into “*felonies*”, “*misdemeanours*” and “*offences*”. Each category of these criminalized acts is classified on the basis of the penalty provided for in the legislation. For example, criminalized acts punished with imprisonment of more than 5 years are qualified as “*felonies*”, whereas criminalized acts punished with imprisonment between 1 month and 5 years are classified as “*misdemeanours*”. In the same vein, the term “*offence*” refers to the least serious criminalized acts, punished with imprisonment of less than one year or merely a fine.¹

4. The Central Authority for the Prevention of Bribery

Morocco has established the Central Authority for the Prevention of Bribery, in accordance with Article 6 of the Convention against Corruption. This entity is an independent institution, separate from other state institutions, functioning under the authority of the Prime Minister. It was created by Decree dated 13 March 2007 and became operational on 6 January 2009. The organs of the authority are the Chairman, the Secretary General, the General Assembly and the Executive Committee. The Authority deals with prevention and is responsible for coordinating national anti-corruption policies, supervising the implementation of these policies, developing anti-corruption strategies, and collecting and sharing data on corruption. The Authority also organizes training in the area of anti-corruption, in collaboration with the Ministry of Education. It has no law enforcement responsibilities.

This authority was constitutionalized by virtue of article 36 of the Constitution which provided for the creation of a national body on integrity, and on preventing and combatting bribery. Also, article 167 provided that this authority shall undertake in particular the tasks of initiative, coordination and supervision, as well as the follow-up of anti-corruption policies, the collection and dissemination of relevant information, contributing to ethics in public life and upholding the principles of good governance, the culture of public service and civic values.

¹Translator’s note: In the following paragraph, and elsewhere, the translator followed some of the changes made. For example, “corruption” and “bribery” were used interchangeably. It should also be noted that some changes in Arabic are irrelevant in the English version.

V. Implementation of selected articles of the Convention

Article 15. Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of article 15

Morocco has provided the text of articles 251, which deals with the so-called active bribery, and 248, which deals with the so-called passive bribery, of the Moroccan Penal Code with regard to articles 15 (a) and 15 (b) of the Convention respectively. It has also provided article 224 of the Penal Code, which defines the term of “public officials” for the purposes of the implementation of penal legislation. It has further cited relevant provisions of law No. 78.00 relating to the Charter of the Communes, as well as summaries of decision no. 1159 year 22 of 5 July 1979, and a judgement issued on 17 May 1983, Misdemeanour Case 15144

Article 224 of the Penal Code:

Public officials for the purposes of criminal law are considered to be any persons who, in whatever capacity and to any extent, are carrying out a function or task be it temporary, paid or without payment, and participate as such, in serving the state, public bodies, municipalities, or public or public interest organisations.

The quality of public servant is appreciated at the date of the offence, but it nevertheless remains after leaving service if it facilitated or permitted the commission of the offence.

Article 251 of the Penal Code:

Whoever has used violence or threats, or made promises, offers, gifts or presents, or any other benefit, or responded to an offer of a bribe, even if it did not take the initiative, to obtain the commission or omission of an act, or an advantage or benefit indicated in Articles 243 to 250, shall be punished with the same sanctions as those provided for in those articles, whether the coercion or bribery has a result or not.

Article 248 of the Penal Code:

One guilty of bribery is one who solicits or accepts offers or promises or requests or receives a donation, gift or other benefits in order:

- As magistrate, public official or person invested with an electoral mandate, to perform or abstain from doing an act of his function, lawful or otherwise, but not subject to compensation, or an act which, although outside his personal powers, is, or could be, facilitated by his office;
- As arbitrator or expert appointed either by administrative or judicial authority or by the parties, to give a decision or opinion in favour of or against a person;
- As magistrate, juror or officer of the Court, to be partial either in favour of or against one of the parties;

- As a physician, surgeon, dentist, or midwife, to certify falsely the presence, or otherwise, of a disease or disability or pregnancy or to provide false information on the origin of a disease or infirmity or cause of death.

Statistical data made available to the reviewing experts indicate that prosecutions in the field of giving or taking bribes have been recorded as follows on the national level:

2005: 3948 cases recorded from 4166 prosecutions.

2006: 5891 cases recorded from 5862 prosecutions.

2007: 7258 cases recorded from 7290 prosecutions.

2008: 6548 cases recorded from 6746 prosecutions.

2009: 6983 cases recorded from 7035 prosecutions.

Additional relevant information and clarifications with regards to the implementation of article 15 of the Convention were given to the reviewing experts as follows:

- Regarding the requirement of the element of intention, the reviewing experts were referred to article 133 of the Penal Code, which provides that offences qualified as felonies (punishable with imprisonment of over five years) are punishable, whereas criminalized acts qualified as misdemeanours (punishable with imprisonment between one month and five years) committed by negligence are punishable only if explicitly stated in the law. This distinction applies to all criminalized acts, included corruption-related acts which, if qualified crimes, are punishable only if committed intentionally.

- With regard to the absence of reference to the terms “directly or indirectly” in articles 251 and 248, Morocco noted that the provision of article 249 of the Penal Code, dealing with bribery in the private sector and explicitly incriminating indirect solicitation or acceptance of bribes, has to be regarded as a general principle applicable to similar offences such as those established in articles 251 and 248.

- The reviewing experts were further advised that Moroccan legislation makes no difference whether the advantage is given to the official himself or another person or entity, as in both cases the act would be punishable.

- The experts were also informed that all advantages of whatever nature are covered, and were referred to article 248 of the Moroccan Penal Code, which covers “donations, gifts or other benefits”. The same broad range of advantages is covered in article 251 of the Penal Code.

(b) Observations on the implementation of article 15 of the Convention

Article 251 (active bribery) and article 248 (passive bribery) of the Moroccan Penal Code criminalize the bribery of public officials. Article 224 of the Penal Code succinctly defines “public officials”. The Penal Code thus covers sufficiently the requirements of articles 15(a) and 15(b) of the Convention. It is noted, however, that articles 251 and 248 of the Moroccan Penal Code do not contain the phrase “directly or indirectly”, as stipulated in both articles 15(a) and 15(b) of the Convention. The phrase “directly or indirectly” seeks to place emphasis on the fact that it is not only direct bribery which is sought to be penalized, but also indirect bribery, for example, through an intermediary. Morocco explained that punishment of all

forms of indirect bribery is implied by the wording of article 249, dealing with bribery in the private sector, which should be regarded as reflecting a general principle. It is recommended, however, that Morocco makes express mention of punishment of indirect aspects of bribery in its national legislation

The reviewers noted that it would have been interesting if Morocco had provided concrete, practical and actual examples of the successful use of the criminalization of the bribery of national public officials, including specific cases which were prosecuted and finalized, either with conviction or acquittal, and the relevant statistical data in respect of each category were given.

Article 16 Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of article 16

Implementation of the provisions by means of:

Articles 224, 249 and 251 of the Moroccan Penal Code, Dahir No. 1.59.413 of 26 November 1962 approving all the criminal laws (Official Gazette No. 2640 dated 5 June 1963, page 1253).

Given that Moroccan criminal law does not explicitly enshrine the concept of the foreign public official or public international organizations, the articles referred to above with a view to the domain of the criminal law in Morocco can be applied to these two categories.

Please attach the text(s)

Morocco stated that it has partially implemented article 16 of the Convention and has provided the text of articles 224, 248, 249 and 251 of the Penal Code (see text above under article 15 of the Convention). It has further explained that given that although Moroccan criminal law does not explicitly enshrine the concept of the foreign public official or public international organizations, these articles, given the scope of the criminal law in Morocco, can also be applied to these two categories. Morocco also cited article 10 of the Penal Code, which indicates that all persons found on the territory of the Kingdom, citizens, foreign or stateless, except as otherwise provided by domestic general law or international law, are subject to Moroccan criminal law.

The experts were also made aware that Morocco had a project underway to bring about reform so as to also explicitly criminalize the offences of article 16, and that it was considered to include in the criminal legislation a definition of “*foreign public official*”. The relevant provision to be amended is article 707 of the Penal Procedure Code

(b) Observations on the implementation of article 16

According to Morocco’s response, article 16 of the Convention has been adopted and is implemented *in part* and reference was made to article 224 of the Penal Code. Article 224, however, does not specifically deal with the bribery of foreign public officials and/or officials of public international organizations. It is more of a definition clause, namely the definition of “public officials”, than a criminalization clause. Article 251 of the Penal Code does not cover, and appears not to be intended to extend to foreign public officials and officials of public international organizations. Article 10 of the Code, which brings all persons found on the territory of Morocco under the criminal jurisdiction of the Kingdom, is clearly not intended to apply to persons outside the territorial jurisdiction of Morocco. Article 249 of the Penal Code does not seem to be applicable either. The Moroccan authorities declared that the current definition of public officials covers both categories (national and foreign), but this statement is considered imprecise in practice, as the judicial authorities may give a different interpretation.

While article 16 of the Convention requires the creation of the offence of the bribery of foreign public officials and officials of public international organizations, separate and distinct from the bribery of national public officials, Morocco does not appear to have adequate domestic legislation which criminalizes the bribery, both active and passive, of foreign public officials and officials of public international organizations. The absence of specific provisions on bribery of foreign public officials is one of the main challenges facing the legal system in Morocco. Legislative efforts towards criminalizing, specifically and distinctly, the bribery of foreign public officials and officials of public international organizations, which would allow to comply fully with the provisions of the Convention, in particular article 16 (a), should be welcomed and encouraged. It is proposed that Morocco implement the proposed legislation, namely, article 707 of the Penal Procedure Code as soon as possible.

c) Technical assistance needs for article 16

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Legislative drafting
3. Legal advice

None of these forms of technical assistance has been provided in the past.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of article 17

Morocco has provided the texts of article 1 of the Annual Financial Law; articles 241, 242 and 244 of the Moroccan Penal Code, articles 54 to 56, 66 and 111 of Law No. 62.99 concerning the Code of Financial Courts, articles 1 and 6 of Law No. 61-99 concerning the responsibilities of those authorising expenditure, public auditors and accountants, and article 26 of the Royal Edict No. 66.330 concerning public accountancy. It has also provided summaries of two relevant court decisions, as well as statistical data on prosecutions in the area of fraud on the basis of the laws cited, which reads as follows:

Year	2003	2004	2005	2006	2007	2008	2009
no. of crimes	59	8	94	28	57	50	31
no. of defendants	70	8	100	41	85	57	49

Article 241 of the Penal Code:

Any judge or public official who misappropriates or embezzles or withholds without the right to do so or hides public or private funds, or securities in lieu of them or deeds or contracts or tangible assets under his control because of his duties, is punished with imprisonment from five years to twenty years and a fine of 5,000 to 100,000 dirham.

If the value of the things misappropriated, embezzled, withheld or hidden is less than 100,000 dirham, the culprit is punished with imprisonment for two years to five years and a fine of 2,000 to 50,000 dirham.

Article 242 of the Penal Code:

Any judge or public official who, in bad faith or with intent to harm, damages or misappropriates documents, securities, deeds or tangible assets that he has been entrusted with in his capacity or that have been directed to him because of his role, is punished by imprisonment of five to ten years.

Article 244 of the Penal Code:

The sanctions provided in the preceding article apply to any holder of public authority who orders the collection of direct or indirect levies other than those provided by law, and any public official who prepares lists for collection or initiates the extraction of these levies.

The same sanctions apply to holders of public authority or public officials who, in any form and for any reason whatsoever, without authorization by law, grant amnesty or exemption from duty, tax or public fee, or give away the property of state institutions. A beneficiary of this is liable as an accomplice.

Article 1 of Law No. 61-99 concerning the responsibilities of those authorising expenditure, public auditors and accountants:

This law is intended to define the responsibility of officials authorizing expenditure, auditors and public accountants of the State, local authorities and their associations and those of public

institutions and contractors subject to financial control of the State with respect to decisions that they take, licence or perform in carrying out their respective functions.

Except in cases of force majeure or otherwise provided by law, such officers, auditors and public accountants incur a liability which may be disciplinary, civil or criminal, without prejudice to sanctions that may be taken against them by the High Court of Audit or Regional Audit Courts.

Article 6 of Law No. 61-99 concerning the responsibilities of those authorising expenditure, public auditors and accountants:

Article 6:

Public accountants of the State, local authorities and their bodies, except where there is a legal order from the official authorizing expenditure, are personally and financially responsible for controls which they are to undertake by virtue of the regulatory texts in force, in respect of *decisions submitted to them for visa*.

Accounting officers of public institutions and enterprises, which are subject to financial control of the State, are personally and financially responsible for controls, explicitly set by legislative and regulatory texts in force, or by special instructions issued by the Minister of Finance, *which they are required to undertake in respect of decisions submitted to them for visa*.

(b) Observations on the implementation of article 17

Article 241 of the Moroccan Penal Code is compatible with the spirit and standard of article 17 of the Convention. Although article 241 of the Penal Code does not specifically mention the “diversion of property”, the reviewing experts are of the view that the inclusion of the words “withholds without the right to do so or hides” is sufficient to cover the diversion of property.

Article 18 Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of article 18

Morocco has provided the texts of articles 250 and 251 of the Moroccan Penal Code, and indicated that according to data available, 7 cases of trading in influence were prosecuted in 2009 on the basis of this provision

Article 251 of the Penal Code:

Whoever has used violence or threats, or made promises, offers, gifts or presents, or any other benefit, or responded to an offer of a bribe, even if it did not take the initiative, to obtain the commission or omission of an act, or an advantage or benefit indicated in Articles 243 to 250, shall be punished with the same sanctions as those provided for in those articles, whether the coercion or bribery has a result or not.

Article 250 of the Penal Code:

Any person who solicits or accepts an offer or promise, solicits or receives a donation, present or other benefit, to enable, or attempt to enable, a person to obtain or attempt to obtain a decoration, medal, honour or award, place, position or job or any other advantage granted by any public authority, or deal, business or other profit arising from agreement with the public authority or an administration under its supervision, or in general to obtain a decision to his benefit from this authority or administration, abusing in this way his real or supposed influence, is guilty of influence peddling and punished by imprisonment of two to five years and a fine of 5,000 to 100,000 dirham.

If the culprit is a magistrate, public official or holder of elected office, the sanctions are doubled.

(b) Observations on the implementation of article 18

Morocco has referred to article 251 of the Penal Code as a form of the criminalization as envisaged in article 18 of the Convention. Also, article 250 of the Moroccan Penal Code is a general bribery provision which applies to all persons. However, article 18 of the Convention is intended to create a separate and distinct offence. The emphasis of article 18 of the Convention is not so much on actual bribery, be it direct or indirect, but rather more on the personal *influence* which a public official or any other person has by virtue of his position or status.

As the provisions cited do not specifically regulate the trading of influence as envisaged in article 18(b) of the Convention, Morocco should be encouraged to consider amending the domestic criminalization of *trading in influence* in order to bring it in line with article 18 of the Convention.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of article 19

Morocco provided the text of article 250 of the Penal Code, and mentioned that in 2009, there has been seven cases of prosecution in the field of trading in influence on the basis of this law.

Article 250 of the Penal Code:

Any person who solicits or accepts an offer or promise, solicits or receives a donation, present or other benefit, to enable, or attempt to enable, a person to obtain or attempt to obtain a decoration, medal, honour or award, place, position or job or any other advantage granted by any public authority, or deal, business or other profit arising from agreement with the public authority or an administration under its supervision, or in general to obtain a decision to his benefit from this authority or administration, abusing in this way his real or supposed influence, is guilty of influence peddling and punished by imprisonment of two to five years and a fine of 5,000 to 100,000 dirham.

If the culprit is a magistrate, public official or holder of elected office, the sanctions are doubled.

The crime of breach of trust is one form of abuse of public function. In this context, it is important to refer to the requirements of article 243 of the Penal Code, which consider as breach of trust, punishable by two to five years of imprisonment, any judge or public official who solicited, received or imposed any order to collect what he/she knows to be undue, or exceeds what is due, whether to the administration or individuals for whose account it is collected or for his/her own account.

(b) Observations on the implementation of article 19

Article 250 of the Moroccan Penal Code does not criminalize *abuse of functions* as envisaged by article 19 of the Convention, although the crime of breach of trust (article 243 of the Penal Code) contains some of the elements of article 19 of the Convention. Morocco is encouraged to amend its legislation in order to bring it in closer conformity with the provisions of article 19 of the Convention.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of article 20

Morocco has indicated that full compliance with article 20 of the Convention review requires legal steps to criminalize the intent of a public official to commit illicit enrichment. It further noted that such steps have not been taken, and thus illicit enrichment is not established as a criminal offence in Moroccan law.

(b) Observations on the implementation of article 20

Morocco has not adopted nor implemented the measures included in article 20 of the Convention.

The offence of illicit enrichment is particularly important in instances where a public official suddenly has or acquires property, tangible or intangible, whose value is way beyond his or her means as a public employee and there is no reasonable explanation for the acquisition of the property in relation to his or her lawful income.

As Morocco has pointed out, the public official would ordinarily be required to provide a reasonable explanation, thus shifting the burden of proof. The question whether such a shifting of the burden of proof is permissible or not ultimately turns on the provisions of the Constitution and/or the fundamental principles of the legal system. However, it is not clear to the reviewing experts whether Morocco's constitution and the fundamental principles of its legal system permit the criminalization of illicit enrichment as envisaged in article 20 of the Convention.

Morocco should be provided with the necessary technical assistance in considering the adoption of legislation and other measures as may be necessary to establish the offence of illicit enrichment, in compliance with its constitutional and other legislative principles.

c) Technical assistance needs for article 20

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Legislative drafting
3. Legal advice

None of these forms of technical assistance has been provided in the past.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of article 21

Morocco has provided the texts of articles 249 and 251 of the Moroccan Penal Code, as well as two relevant court decisions

Article 249 of the Penal Code:

A person guilty of bribery and to be sentenced to imprisonment of one to three years and a fine of 5,000 to 50,000 dirham is a clerk, employee or agent employed or remunerated in payment or in kind who, either directly or by intermediary, has solicited or accepts offers or promises, or solicited or received any donation, gift, commission, discount or reward, without the agreement and consent of his employer, so as to carry out or prevent any act of his employment, or an act which, though outside of his personal competence is or could be facilitated by its use.

Article 251 of the Penal Code:

Whoever has used violence or threats, or made promises, offers, gifts or presents, or any other benefit, or responded to an offer of a bribe, even if it did not take the initiative, to obtain the commission or omission of an act, or an advantage or benefit indicated in articles 243 to 250, shall be punished with the same sanctions as those provided for in those articles, whether the coercion or bribery has a result or not.

(b) Observations on the implementation of article 21

Morocco refers to articles 249 and 251 of the Moroccan Penal Code as forms of the criminalization envisaged in article 21 of the Convention. Article 21 envisages separate and specific criminalization and is intended to deal with bribery *in the private sector*, as opposed to the bribery of public officials. The article 21 bribery is bribery directed to a person in the private sector, as opposed to a person who is employed in the public sector or hold public office. Although the distinction between the public and private sector bribery is not fully clear in articles 249 and 251 of the Moroccan Penal Code, one must accept that these articles refer to employees and employers in the private sector, as there is no reference to “public” employees. Therefore, the reviewing experts are of the view that Morocco complies with the requirements of article 21 of the Convention.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of article 22

Morocco has cited articles 547, 549, 550 and 555 of the Moroccan Penal Code, as well as articles 414 and 423 of the Company Law and article 724 of the Commercial Code which deal with embezzlement in the private sector. It has also provided information on related legal cases as follows:

year	2003	2004	2005	2006	2007	2008	2009
no. of crimes	3096	2706	13824	3212	2351	2604	2465
no. of	3379	3006	16030	3510	2553	3150	3079

defendants							
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Article 547:

A person who embezzles or misappropriates in bad faith, to the detriment of the owner, possessor or holder of effects, money, goods, documents, receipts, or papers of any nature containing or creating an obligation or release, and which had been given to him to be returned, used or employed for a specific purpose, is guilty of breach of trust and sentenced to imprisonment from six months to three years and a fine of 200 to 2,000 dirham.

Article 549:

The sentence for breach of trust is raised to imprisonment for one to five years and a fine of 200 to 5,000 dirham in the following cases:

- it is committed by a lawyer, receiver, trustee or administrator acting in the course of their duties;
- it is committed by a trustee, custodian, or employee of a religious foundation, to the detriment of the foundation;
- it is committed by an employee or agent to the injury to his employer or principal.

Article 550:

The sanction of imprisonment laid down in article 547 shall be doubled and the maximum fine be raised to 100,000 dirham if the breach of trust was committed by a person who obtains from the public sums of money or securities on deposit, trust or pledge, either for their own account or as directors, officers or agents of a corporation or a commercial or industrial enterprise.

Article 555:

In the cases indicated in articles 547, 549 and 550, the culprit may also be deprived of one or more of the rights mentioned in article 40 of the present Code, and denied the right of residence for from five to ten years.

Article 724 of the Commercial Code:

To be punished with the sanctions of bankruptcy:

- 1) those who, in the interests of the persons mentioned in section 702, hid, concealed or withheld all or part of movable assets, property or buildings ;
- 2) those who, in the proceedings, fraudulently claimed debts, either in their name or through another person;

Liable to the same sanctions are trustees who have committed one of the following acts:

- 1) intentionally and in bad faith damaging the interests of creditors, either by using money collected in the performance of his duties for personal ends, or by giving others benefits he knows are not due.
- 2) illegal use of a legal power granted to him, other than as intended and contrary to the interests of the debtor or creditors;
- 3) abuse of his power in order to use or acquire some of the debtor's assets for himself either personally or by proxy.

A creditor who, after the judicial decision to initiate the scheme of arrangement or liquidation, enters into a contract or contracts granting him special concessions to the detriment of other creditors, is also liable to the same sanctions.

Article 423 of the Company Law:

To be punished by imprisonment of one to six months and a fine of 8,000 to 40,000 dirham or one of these two sanctions, is the liquidator who, in bad faith:

- 1) uses the assets or credit of the company in liquidation in a way he knew to be contrary to the economic interest of the latter, for personal purposes or to promote another company or enterprise in which he has interests, directly or indirectly;
- 2) sells all or part of the assets of the company in liquidation in contravention of articles 365 and 366.

(b) Observations on the implementation of article 22

Although Morocco does not have legislation that criminalizes embezzlement of property in the private sector in the exact terms of article 22 of the Convention, the legal provisions cited must be considered as constituting adequate criminalization and penal measures for embezzlement of property in the private sector.

The reviewers further noted that the prescribed penalties are somewhat limited and may not have a sufficiently high deterrent effect.

Article 23 Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- (b) Subject to the basic concepts of its legal system:*
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*
 - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

2. For purposes of implementing or applying paragraph 1 of this article:

- (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*
- (b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*
- (c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only*

when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of article 23

Morocco provided the text of Law 43.05 concerning the fight against money laundering, which introduced Section VI bis on Money Laundering to the Moroccan Penal Code. It also cited articles 129 and 571 of the Moroccan Penal Code. Morocco further noted that the acts stipulated in article 23, subparagraph 1(a) of the Convention are deemed among the crimes of money laundering as stated in article 574-1 of the Penal Code”, which was amended by Law 10-13, adopted in January 2011.

Article 574-1 of the Penal Code reads as follows:

“The following offences, when committed intentionally and knowingly constitute money laundering:

- The acquisition, possession, use, conversion or transfer of property or its returns for the purpose of concealing or disguising the true nature or unlawful origin of such property, in the interest of the person who does so or others when they result from an offence under article 574-2 below;
- The concealing or disguising the true nature, unlawful origin, location, disposition, movement or ownership and associated rights of property, in the knowledge that it is the proceeds of an offence under section 574-2 below;
- Helping any person involved in the commission of an offence under section 574-2 below to evade the legal consequences of his actions;
- The facilitation by any means to falsely justify of the origin of property, or its returns, of the author of an offence under article 574-2 below, by which means has brought direct or indirect benefit;
- Providing assistance or advice to an operation of custody, placement, concealment, conversion, transfer or movement of the direct or indirect proceeds of an offence under Article 574-2 below.
- Attempted commission of the acts stipulated in this article.”

Article 574-2, also amended by law 10-13 adopted in January 2011, specifies the definition of money laundering laid down in article 574-1. Article 574-2, as amended, expands the list of predicate offences to include the following, even if committed outside Morocco:

- Illicit Trafficking in narcotic drugs and psychotropic substances;
- Trafficking in human beings;
- Migrant smuggling;
- Illicit trafficking of arms and ammunition;
- Corruption, bribery, influence peddling and embezzlement of public and private property;
- Terrorism offences;

- Counterfeiting or forgery of currency or monetary instruments of public credit or other payment methods.
- Membership in a gang or organization created or present to undertake the preparation or commission of a terrorist act(s);
- Sexual exploitation;
- Concealing the proceeds of a felony or misdemeanour;
- Breach of trust
- Fraud;
- Offences against industrial property;
- Offences against copyright and related rights;
- Environmental offences;
- Intentionally killing, causing violence or harm;
- Kidnapping, detention and hostage taking;
- Theft and robbery;
- Smuggling of goods;
- Cheating with respect to goods and foodstuffs;
- Counterfeiting, forgery and impersonation of jobs, titles or names, or their use without right;
- Conversion or damage of aircraft or ships or any other means of transportation, or damage of air sea or land navigation facilities, or causing faults or sabotage or damage to means of communication;
- Professionally or operationally obtaining inside information and its use to achieve or intentionally assist to achieve a trade or trades on the market;
- Computer hacking. (*Emphasis added*)

During the country visit, the experts were also informed that under the Moroccan legislation on money-laundering, it is not necessary to identify the predicate offence, as long as money laundering can be proven.

With regard to predicate offences committed outside the Kingdom of Morocco, the State party under review noted that article 19 of Law 43-05 stated the following:

“The crown prosecutor may order the following during the investigation phase for a period not exceeding one month and renewable once:

1) the temporary freezing. by preventing the transfer, conversion, disposition or movement, of property;

2) or the designation of an institution or a private organization in order to ensure temporary custody or control of property. The investigating magistrate may designate an institution or a private organization in order to ensure temporary custody or control of property.

The prosecutor or investigating magistrate may also order the seizure of property belonging to persons or entities suspected of involvement with persons, organizations or activities connected with the crime of money laundering, *even in cases when they are not committed on the territory of the Kingdom.*”

Morocco noted that articles 707, 708, 710 and 711 of the Penal Procedure Code on jurisdiction of Moroccan courts over offences committed abroad enshrine the same principle

Article 707 of the Penal Procedure Code:

Any act, qualified as an offence by Moroccan law, committed by a Moroccan national outside the Kingdom, may be prosecuted and judged in Morocco.

However, the accused may not be prosecuted and tried until he/she has returned to Morocco, there was no proof that he/she had been sentenced abroad *res judicata*, and if condemned, had completed the sentence or benefitted from prescription or amnesty.

Article 708 of the Penal Procedure Code:

Any act, qualified as a misdemeanour by Moroccan law, committed by a Moroccan national outside the Kingdom, may be prosecuted and judged in Morocco.

The accused may be prosecuted or judged only in conformity with the cases provided for in the second paragraph of article 707.

Moreover, in case of committing a misdemeanour against a person, prosecution shall be subject to a request from the Prosecution upon receipt of a complaint from the injured party or a notification issued by the authorities of the country in which the misdemeanor was committed.

Article 710 of the Penal Procedure Code:

Any foreigner who commits, outside the Kingdom, an offence punishable by Moroccan law, either as principal, contributor or accomplice, may be prosecuted and judged according to Moroccan law, if the victim of such an offence was a Moroccan national.

However, the accused may not be prosecuted or tried if it was proven that he/she had been sentenced for the act abroad *res judicata*, and if condemned, has to prove that he/she had served the sentence or benefitted from prescription.

Article 711 of the Penal Procedure Code:

Shall be tried, in accordance with Moroccan law, any foreigner who commits, outside the Kingdom, as principal, contributor or accomplice, a felony or misdemeanour against the security of the State, or a forgery of State stamp, national coins or banknotes legally circulated in Morocco, or a felony against staff or premises of diplomatic or consular missions, or Moroccan public offices.

If a Moroccan national commits, outside the Kingdom's territory, as principal, contributor or accomplice, any of the above-mentioned offences, he/she will be punished for such an offence as if it were committed inside Morocco.

Any person who, outside Morocco, contributed to or acted as an accomplice in the commission of any of the offences referred to in the first paragraph, shall be prosecuted as an accomplice in accordance with the said paragraph.

However, there shall be no prosecution or sentence if the accused has proven that he/she had been sentenced for the same act abroad *res judicata*, and if condemned, has submitted proof that he/she had served the sentence or benefitted from prescription.

Morocco advised that it had furnished copies of its laws giving effect to article 23 to the Secretary-General of the United Nations as required.

(b) Observations on the implementation of article 23

Prior to the adoption of Law 10-13, the reviewing experts had expressed the view that there appeared to be no legislative provisions or other measures which comprehensively covered high standard of criminalization envisaged in the whole of article 23. However, Law 10-13, which amended article 574-2 of the Penal Code, supplemented this article and sufficiently addressed the shortcoming that the reviewing experts had identified. The current provision of the Penal Code seems to significantly expand the range of predicate offences to the money laundering offence which was previously relatively narrow. Morocco's efforts towards expanding the range of predicate offences should be highlighted and commended.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of article 24

Morocco cited article 574-1 of the Penal Code as amended in January 2011 by bill 13-10, as well as a court case deemed relevant.

The amended article 574-1 of the Penal Code reads as follows:

The following offences, when committed intentionally and knowingly, constitute money laundering:

- The acquisition, possession, use, conversion or transfer of property or its returns for the purpose of concealing or disguising the true nature or unlawful origin of such property, in the interest of the person who does so or others when they result from an offence under section 574-2 below;
- The concealing or disguising the true nature, unlawful origin, location, disposition, movement or ownership and associated rights of property, in the knowledge that it is the proceeds of an offence under section 574-2 below;
- Helping any person involved in the commission of an offence under section 574-2 below to evade the legal consequences of his actions;
- The facilitation by any means to falsely justify of the origin of property, or its returns, of the author of an offence under Article 574-2 below, by which means has brought direct or indirect benefit;
- Providing assistance or advice to an operation of custody, placement, concealment, conversion, transfer or movement of the direct or indirect proceeds of an offence under Article 574-2 below.
- Attempted commission of the acts stipulated in this article.

(b) Observations on the implementation of article 24

The reviewing experts were of the opinion that, Morocco does not have specific legislative or other measures establishing the offence of *concealment* as envisaged in article 24 of the Convention. Thus, Morocco must be encouraged to amend legislation on concealment, in order to bring it in closer conformity with the provisions of the Convention.

Article 25 Obstruction of Justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of article 25

With regard to the implementation of article 25(a) of the Convention, Morocco cited article 373 of the Moroccan Penal Code, which reads as follows:

Article 373:

Whoever uses promises, offers or gifts, pressure, threats, violence, manoeuvres or tricks to persuade another to give testimony or statements or to give false statements, in any matter in any proceedings or for a legal application or defence, in any respect, shall be punished by imprisonment from one month to three years and a fine of 200 to 2,000 dirham or one of these two sanctions, whether his involvement had a result or not, and as long as he is not implicated in a more serious crime.

With regard to the implementation of article 25 (b), Morocco cited article 238 of the Moroccan Penal Code, which reads as follows:

Article 238:

All governors, pashas, higher caids, caids or administrative official who interfere either in the exercise of legislative power to enact laws containing legislative provisions or by stopping or suspending the enforcement of a law or laws, or in the exercise of judicial action by issuing an order or restraint to the courts, shall be punished by deprivation of national rights.

(b) Observations on the implementation of article 25

Article 373 of the Moroccan Criminal sufficiently covers the offence of obstruction of justice as envisaged in article 25 (a) of the Convention. However, the reviewing experts are of the view that such a serious offence should be punished by more severe penalties than is currently

prescribed. The statutorily limited sanction of 1 (one) month to 3 (three) years imprisonment, especially in high profile cases, may not be deterrent enough.

On the other hand, article 238 of the Moroccan Penal Code does not seem to be in line with article 25 (b) of the Convention, which requires intervention by any person, not only by selected public officials. The full adoption and implementation of article 25(b) is considered by the reviewing experts as particularly crucial for the full and successful implementation of the Convention. Morocco is invited to consider adopting and implementing legislative and/or other measures to establish the offence of the use of physical force, threats or intimidation to interfere with the exercise of duties by a justice or law enforcement official in relation to the commission of offences established in accordance with the Convention.

Article 26 Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of article 26

Morocco advised that current Moroccan criminal law did not specifically stipulate direct and personal criminal liability for a legal person as a general requirement. However, they pointed out that punishments and deterrent measures concerning legal persons had been laid down in articles 36, 47, 62, 90, 127, 574-3 and 574-5 of the Penal Code.

Morocco further stated that additional relevant provisions were included in articles 678-86 of the Penal Procedure Code concerning criminal records for legal persons, as well as in article 2 of the Anti-Money Laundering Law. Article 7 of the Penal Procedure Code, articles 79 and 80 of the Law on obligations and contracts, Article 85 of decree 2-06-388 (5 February 2007) renewing the conditions and forms for agreeing state contracts and some regulations concerning procedures and oversight, and article 138 of Draft Decree with respect to public contracts concerning local communities, as well as article 158 of the same draft, with respect to state and public institution contracts.

Article 36 of the Penal Code provides for the dissolution of a corporate person as an additional criminal punishment. According to article 47 of the Penal Code, “the dissolution of a corporate person means its prevention from continuing social activity, even under a different name and with other directors, officers or managers. It causes the liquidation of the property of legal person”.

Further, articles 62 and 90 of the Penal Code provide, as a preventive measure, for the closure of the establishment or institution that was used to commit an offence,

Criminal liability of legal persons is also established in terms of section VIbis of the Penal Code relating to Money Laundering. Articles 574-3 and 574-5 of section VIbis reads as follows:

Article 574-3:

Money laundering is punishable:

- For individuals with imprisonment from two to five years and a fine of 20,000 to 100,000 dirham;
- **For corporate persons, a fine of 500,000 to 3,000,000 dirham, without prejudice to sanctions that may be imposed on their directors or employees implicated in crimes;**
- Attempted money laundering is liable to the same sanctions as for the completed offence. (*Emphasis added*)

Article 574-5:

Persons guilty of money laundering are liable to one or more of the following sanctions:

- Partial or total forfeiture of property used to commit the offence and revenues generated by these assets, subject to the rights of bona fide third parties. This confiscation is always pronounced in case of conviction;
- **The dissolution of the corporate person;**
- The publication, by all appropriate means and at the expense of the convicted, of convictions that have acquired the force of *res judicata*.

The perpetrator of the crime of money laundering may also be sentenced to temporary or permanent ban to exercise, directly or indirectly, one or more professions, activities or arts that were used to commit the offence. (*Emphasis added*).

Under articles 574-3, 574-4 and 574-5, legal persons can be subject to a fine of 500,000 to 3,000,000 dirham, or double that amount. They are also subject to total or partial confiscation of the monies used to commit the crime and the returns on this money. They can also be subject to dissolution and publication of the relevant judgments when legally final by all appropriate means and at their expense.

The perpetrator of the crime of money laundering may also be subject to temporary or permanent ban to exercise, directly or indirectly, one or more professions, activities or arts that were used to commit the offence.

In the same context, article 2 of the Anti Money Laundering Law provides that “individuals and legal persons subject to public law or private law, with the exception of the state, who in the exercise of their jobs or professions carry out, supervise or advise transactions involving capital flows are subject to the provisions of this chapter when they involve offences and their punishments defined under Section VIb of Chapter IX of Title I of Book III of the Penal Code”.

Articles 678 to 686 of the Penal Procedure Code, which regulate records of sanctions imposed to legal persons, also indicate that the criminal liability of legal persons is established under Moroccan law.

Finally, Morocco cited article 131 of the Draft Penal Code, which specifies in general terms that the sanctions and deterrents in the Penal Code apply to individuals and corporate persons, and article 3 of the Draft Penal Procedure Code.

(b) Observations on the implementation of article 26

The reviewing experts noted that there was no general provision for the criminal, civil and/or administrative liability of legal persons in Morocco. Provisions relating to the liability of legal persons with respect to specific offences seem to partially meet the criteria set in the Convention. Notwithstanding, the experts appreciate the amendments proposed to the Penal Code and Penal Procedure Code under preparation which provisions envisage introducing more comprehensive treatment of corporate liability.

Morocco is encouraged to establish the liability of legal persons for participation in the offences established in accordance with the Convention.

Article 27 Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of article 27

Morocco provided the texts of articles 114, 117, 128, 129 and 130 of the Moroccan Penal Code. It further advised that article 574-1 of the Penal Code, amended in January 2011 by Law 13-10, criminalizes the attempt to commit acts considered as money laundering under this provision.

During the country visit, Morocco further referred to article 114 of the Moroccan Penal Code, in terms of which attempts in respect of any offence is covered. As far as bribery is concerned, the mere asking of a bribe (for example via e-mail), even if it was not given or the briber is not in a position to deliver, constitutes the offence of corruption.

Article 128

Participants in the offence are all those who personally took part in the material execution of the offence.

Article 129

Accomplices to a crime or a felony are those who, without direct participation in the execution of the offence, have done one of the following acts:

1. Ordered or instigated the commission of the action, this being by means of a gift, promise, threats, abuse of authority or power, deception or criminal fraud;

2. Procured weapons, tools or any other means used to commit the action, in the knowledge that they will be so used;
3. Knowingly aided or assisted the perpetrator or perpetrators of the offence in its preparation or facilitation;
4. Usually provided housing, refuge or meeting place to one or more criminals engaged in banditry or violence against state security, public peace, persons or property, and was aware of their criminal conduct.

Being an accomplice to a misdemeanour is not punishable.

Article 130:

An accomplice to a crime or a felony is punished with the same punishment as for the crime or the felony.

Personal circumstances which result in aggravation, mitigation of the sentence, or its pardon, shall have effect only in respect to the person to whom they apply.

The objective circumstances inherent in the offence, which aggravate or decrease the sentence, have effect on all the participants or accomplices in the offence, even if they were ignorant of them.

Article 574-1 of the Penal Code:

The following offences, when committed intentionally constitute money laundering:

- The acquisition, possession, use, conversion or transfer of property or its returns for the purpose of concealing or disguising the true nature or unlawful origin of such property, in the interest of the person who does so or others when they result from an offence under section 574-2 below;
- Helping any person involved in the commission of an offence under section 574-2 below to evade the legal consequences of his actions;
- Providing false justification, by any means, as to the origin of property or returns to the perpetrator of one of the offences under Article 574-2 below and by which means he obtained direct or indirect profit.
- Providing assistance or advice to an operation of custody, placement, concealment, conversion, transfer of the direct or indirect proceeds of an offence under Article 574-2 below.
- Attempting committing acts under this article

(b) Observations on the implementation of article 27

According to Morocco's response, the criminalization of participation in or attempt to or preparation to commit an offence created in accordance with the Convention is covered by articles 128, 129 and 130 of the Moroccan Penal Code. These provisions establish general rules for participation, attempt and preparation, which cover also offences established in accordance with the Convention. It was observed, however, that these articles do not deal directly and specifically with such offences.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of article 28

Morocco provided the text of article 286 of the Penal Procedure Code, which provides that “offences may be proved by any means of proof, except where the Law requires otherwise, and the Judge rules according to his conscience”. Morocco also cited articles 248-251 of the Penal Code and provided two cases considered relevant.

The following requirements of Law 43-05 on the fight against money laundering explain how to infer the offence of money laundering:

According to Article 15 the Financial Intelligence Processing Unit is tasked with collecting and processing data related to money laundering, taking decisions concerning the disposal of cases presented to it. It can order the collection of research and investigations undertaken by research and investigations departments which take part in the task of the Unit, and coordinates of the work of these departments.

Article 9 requires persons subject to the law to make a suspicious transaction report to the Unit in the matter of any money or transactions suspected to be linked to money laundering, and also any transaction where the identity of the sender or recipient is dubious.

Article 13 requires persons subject to the law to furnish the Unit and their own supervising and controlling authorities with all documents and information necessary to the performance of their tasks. They cannot obstruct inquiries and investigations ordered by the Unit. They must facilitate access to necessary documents and information. Professional secrecy cannot be used as an excuse to the Unit or the supervising and controlling authorities authorized by them.

Upon the Unit receiving information that reveals acts that may constitute an offence of money laundering, it shall refer to the Crown Prosecutor at the Court of First Instance in Rabat, clarifying, where appropriate, the inquiry and investigation departments and the supervision and control authorities that have been informed of the existence of investigations (Article 18).

The Crown Prosecutor may order during the investigation phase for a period not exceeding one month, renewable once:

1. The freezing by temporarily prohibiting the transfer, conversion, disposition or movement of property;
2. Or the designation of an institution or a private organization in order to ensure temporary custody or control of property.

The investigating magistrate may designate an institution or a private organization in order to ensure temporary custody or control of property.

The Crown Prosecutor or investigating magistrate may also order the seizure of property belonging to persons or corporate persons suspected of involvement with persons, organizations or activities connected with the crime of money laundering, even if they are not committed on the territory of the Kingdom. (Article 19).

(b) Observations on the implementation of article 28

The reviewing experts were of the opinion that it was not fully clear from Morocco’s response what the substantive legal position was with respect to whether knowledge, intent and purpose might be inferred from the objective factual circumstances within the framework of Morocco’s substantive criminal law. It is noted, however, that the provisions of Law 43-05 on the fight against money laundering cited by Morocco may eventually produce facts that may lead to an inference that money laundering has been committed, and that the perpetrator had knowledge thereof.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of article 29

Morocco provided the texts of articles 5, 6, 649 and 650 of the Penal Procedure Code, as well as articles 21, 22 and 23 of Law 78.00 relating to the Charter of the Communes and its amendments and supplements. It also provides summaries of two court decisions interpreting the applicable rules.

These provisions regulate the matter of statute of limitations in general terms and are applicable to all offences except otherwise indicated. Articles 5 and 6 read as follows:

Article 5:

The statute of limitations for public actions, unless special legislation stipulates otherwise:

- In felony cases, is twenty Gregorian years from the day the crime was committed;
- In misdemeanour cases, is five Gregorian years from the day the crime was committed;
- In offence cases, is two Gregorian years from the day the crime was committed.

However, if the victim was a minor and was subjected to criminal assault committed against him by a family member or by one who has care, guardianship or authority over him, the statute of limitations begins again for the same period from the date the victim reaches the age of civil majority.

Article 6:

The statute of limitation on public action is interrupted by any act of investigation or prosecution undertaken by the judiciary or ordered by it.

This is so, even with respect to people who are not involved in this act of investigation or prosecution.

A new statutory limitation period, for a period equal to that fixed by the preceding article, shall run from the date of the last act of interruption.

The statute of limitation on public action is suspended in case of an inability to keep it that arises from the law itself.

The day when this inability is terminated, the statute of limitation is resumed for a period equal to that remaining when the suspension occurred.

-In addition, Morocco noted that the duration of statute of limitations for public cases varies according to their type, and that it runs from the day when the act is committed. Morocco also noted that the statute of limitations is a public order matter.

(b) Observations on the implementation of article 29

The reviewing experts hold the view that Morocco has sufficient measures which provide sufficiently long periods in which a criminal prosecution must be commenced. The limitation period for more serious offences (felonies), which is 20 years, is long enough; the limitation period of 5 years for less serious offences (misdemeanours) is sufficiently long. Moreover, an investigation or prosecution ordered by the judiciary interrupts the operation of the limitation. Lastly, it is noted that Morocco has not cited any provision establishing a longer statute of limitation period or a suspension of the statute of limitations where the alleged offender has evaded the administration of justice. Morocco should be encouraged to adopt such provisions.

Article 30 Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or

other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of article 30

Morocco referred to articles 248-56, 574-1 to 574-7 of the Moroccan Penal Code, which criminalize a series of corruption-related offences. It also provided the text of articles 21 to 23 of Law No. 78.00 relating to the Charter of the Communes, as amended by Laws no. 01.03 and 17.08, providing for sanction against members of Communal Councils that have breached the law. Figures on administrative sanctions taken against elected local officials by the Ministry of Interior from 2003 to 2010 were also provided and read as follows:

Further, Morocco provided the texts of articles 264 to 268 of the Penal Procedure Code regulating immunities and jurisdictional privileges for a number of persons.

Year	Embezzlement	Influence Peddling	Fraud	Total
2003-2010	6	2	11	19

While the texts of articles 1 to 5 of Law 17.01 on Parliamentary Immunity was also provided, during the country visit, the experts were informed that since the adoption of the new Constitution, Parliamentarians and Magistrates do not have immunity anymore.

Morocco stressed the judicial efforts in view of lifting jurisdictional privileges and immunities, underscored cases of judicial police officers prosecuted for bribery and cases of workers prosecuted for embezzlement, and provided information on sanctions imposed:

Year	No of Prosecutions		No. of Adjudicated Cases	
	Judicial Police	Men in power	Judicial Police	Men in power
2005	2		5	
2006	1	1	8	
2007	1		5	
2008	1		3	
2009	6		7	
2010	12	11		

Morocco also provided the text of article 111 of Dahir No. 1.02.124 of 13 June 2002 implementing Law 62.99 on the Code of Financial Courts, and articles 40 and 49 of the Penal Procedure Code.

Article 40 of the Penal Procedure Code defines the prerogatives of the Prosecutors with respect to initiating prosecutions. Each prosecutor, in his area of jurisdiction, initiates or orders the initiation of all necessary measures to investigate perpetrators of violations of the Criminal Law and issues the order for arrest, charge and prosecution. He has the right, in

order to enforce the criminal extradition, to issue international orders for investigation and arrest. Further, he may transfer complaints, accusations and denouncements he receives, and the actions he takes in their respect, to investigative bodies or tribunals with jurisdiction, or he may order them to be reserved by a decision that can always be reversed.

According to article 49 of the Penal Procedure Code, the Crown Prosecutor General oversees the application of the Criminal Law in all areas of competence of the Court of Appeals. The Crown Prosecutor General wields authority over all judges of the Public Prosecution under his jurisdiction, over the officers and staff of the judicial police and over the functionaries of the judicial police, and may initiate himself or order the initiation of all necessary measures to investigate perpetrators of felony violations.

Pre-trial detention is regulated by articles 159 to 188 of the Penal Procedure Code concerning pre-trial detention and the judicial oversight applicable to crimes and felonies, which are relevant given that corruption offences in Moroccan Law fall within either of these two categories. According to article 159, placement under judicial supervision (bail) and pre-trial detention are both exceptional measures that apply to crimes or felonies punishable by the deprivation of liberty.

Conditional release is regulated by articles 622 to 632 of the Penal Procedure Code, which texts were also provided by Morocco. Statistical data for the years' 2005 to 2008 made available to the reviewers suggest that persons who have benefitted from conditional release have not included any persons prosecuted for corruption offences, as shown in the table below:

	2005	2006	2007	2008
No. of parolees	74	54	6	-
No. parolees convicted for corruption offences	0	0	-	-

In response to questions pertaining to paragraphs 6 and 7 of article 30 of the Convention, Morocco provided the texts of articles 21 and 73 of Dahir No. 1.58.008 of 24 February 1958 concerning the General Status of Public Service. Article 21 describes the eligibility criteria for being appointed to public office in Morocco, whereas article 73 provides for the suspension of public officials in general terms. According to article 73, "in the case of a serious lapse by an official, whether the matter relates to dereliction of professional duty or to a misdemeanour touching upon the public right, the author of this fault can be immediately suspended by the disciplinary authority"

Under paragraph 10 of article 30 of the Convention, Morocco cited article 75 of Dahir No. 1.58.008 of 24 February 1958 concerning the General Status of Public Service, Official Gazette No. 2372 of 11 April 1958.

Article 75:

The official against whom a disciplinary punishment has been made and who has not been excluded from the administrative corps may, after five years if it is a warning or reprimand, and ten years if it is any other sanction, submit to the Minister to whom he belongs a request that no trace of the sanction will remain on his file.

If the official's general conduct has proved satisfactory after the punishment against him, his request shall be granted. The Minister shall decide after consulting the Disciplinary Board. The file will be reformed in this new fashion.

(b) Observations on the implementation of article 30

With respect to paragraph 1 of article 30 of the Convention, it was observed that the sanctions referred to by Morocco appear to be too lenient and do not sufficiently reflect the gravity of the offences established in terms of the Convention. It is, for example, not all too clear whether the sanction to two to five years, is strictly limited to within that range. If it is strictly limited to within that range, then it leaves the sentencing judicial officer with no discretion to impose a higher sentence, in which event the gravity of the offence would not be expressed properly and sufficiently.

It should however be pointed out that Moroccan law increases the penalty, which may attain ten years, in case the amount of bribe exceeded 100 000 dirhams, as provided in the last paragraph of article 248 of the Penal Code. With respect to paragraph 2 of article 30, the reviewing experts noted that the balance between immunities or jurisdictional privileges accorded to public officials for the performance of their functions and the investigation, prosecution and adjudication of offences established in accordance with the Convention was particularly important where the perpetrators or suspected perpetrators were high ranking public officials, such as Ministers and other senior members of the legislatures, the executive and the judiciary. While there was some provision for the investigation, prosecution and adjudication of offences involving high ranking and/or senior public officials, it is not clear how this was implemented in practice, since the only examples provided by Morocco were the prosecution of judicial police officers for bribery and the prosecution of workers for embezzlement.

Also, article 94 of the Constitution provides that “cabinet members are criminally responsible before the Crown courts for any offences or misdemeanours committed during the exercise of their duties.”

Morocco's response on paragraph 3 of article 30 does not clarify whether and what sort of discretionary powers to prosecute or not to prosecute exist. Article 30(3) is also particularly relevant in instances where a member of the executive, such as the head of state, responsible for the administration of justice can override a decision to prosecute made by either the Crown Public Prosecutor or a magistrate.

The requirements of paragraphs 4 and 5 of article 30 are covered sufficiently by the provisions cited by Morocco.

With respect to paragraph 6 of article 30, it was observed that article 73 of Dahir No. 1.58.008 concerning the General Status of Public Office, which provides for the suspension of public officials in general terms, can be interpreted as covering bribery/corruption and other offenses established in accordance to the Convention. However, Morocco is encouraged to consider adopting more clearer and specific measures for the removal, suspension or reassignment of offending public officials.

It was further observed that Morocco does not have specific legislation or measures which establish procedures for the disqualification of persons convicted of offences established in

accordance with the Convention from holding public office or holding office in an enterprise owned in whole or in part by the State. Moreover, the provision cited with respect to paragraph 10 of article 75 does not seem relevant.

Article 31 Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) Summary of information relevant to reviewing the implementation of article 31

Morocco provided the texts of articles 43, 255 and 574-5 of the Moroccan Penal Code, as well as article 57 of the Penal Procedure Code.

During the country visit, Morocco noted that article 574-5 was amended in January 2011 to make confiscation of instruments and proceeds of money-laundering mandatory. It was also noted that the instrumentalities of the crime could be confiscated without a conviction, whereas for the confiscation of proceeds of crime a conviction was needed. Further, the freezing of assets likely to be confiscated was allowed both before and after conviction. Finally, the experts were advised that the Moroccan legislation also provides for the confiscation of the value of the proceeds, as well as the preservation of the confiscated assets, and that only a judge could order confiscation or freezing of assets.

Article 43:

In case of a felony conviction, the judge may order the forfeiture of assets to the State, subject to the rights of others, instruments and things that have, or would have, served in the commission of the offence, or resulted from it, and similarly gifts or other benefits that have served to reward or were intended to reward the perpetrator.

Article 574-5 of the Penal Code:

In case of conviction for an offence of money laundering, the total confiscation of all things, objects and properties used or had to be used to commit the offence and their products, or the total confiscation of the equivalent value of these things, objects, properties and products, must always be imposed, subject to the rights of bona fide third parties.

Article 255 of the Penal Code:

It is absolutely not allowed to return to the person who offers a bribe the things he offered or their value. Rather, their confiscation should be ordered and they should be forfeited to the state treasury, except as provided in section 256-1 below.

Confiscation extends to everything which is obtained using an offence under sections 248, 249 and 250 of this Code from any person and whatever his benefit.

Article 57 of the Penal Procedure Code:

In cases of in flagrante delicto with regard to a crime or felony, the police officer who has been notified must immediately inform the Public Prosecution, and shall without delay attend the crime scene and to make all relevant findings.

He must preserve the evidence susceptible to decay and all that can help to reveal the truth. He must seize the weapons and instruments that were used to commit the offence or were so intended to commit, and also anything that might have been the result of this offence.

Things seized will be shown to those suspected of participation in the felony or misdemeanour to see if they recognise them.

With respect to the freezing of property and the administration of frozen items, Morocco also cited article 19 of chapter II (money laundering prevention) of Law 43-05 Against Money Laundering, which stipulates the following:

“The Public Prosecutor may order the following during the investigation phase for a period not exceeding one month and renewable once:

- 1) the freezing by temporarily prohibiting the transfer, conversion, disposition or movement, of property, or
- 2) the designation of an institution or a private organization in order to ensure temporarily the custody or control of property. The investigating magistrate may designate an institution or a private organization in order to ensure temporarily the custody or control of property.

The prosecutor or the investigating magistrate may also order the seizure of property belonging to the natural or legal persons suspected of being involved with persons, organizations or activities related to the money laundering offences, even in cases when they are not committed inside the territories of the Kingdom.”

The Supreme Court of Morocco, in decision No 458 of 23 May 1978, ruled on confiscation as follows:

"The things offered by the person making the bribe shall be forfeited to the Public Treasury. It is absolutely not permitted to order their return to him. This forfeiture is not considered an additional punishment, but as a preventative measure included in the confiscation of things related to the crime. It must be ruled even in the case where the case fails because the statute of limitations has passed or death of the accused."

The following summary of Court decision no. 1810 of 29 March 1983 in Misdemeanour Case 13004 was provided by Morocco as an example of application of article 30, paragraph 5 of the Convention:

“Confiscation only impinges upon the things owned by the convicted person with the exceptions stipulated in law. If the property under confiscation is owned jointly between the convicted person and others, then the confiscation only applies to the portion of the convicted person and results in the division and liquidation by auction”.

With regard to paragraph 7 of article 31, Morocco provided the text of articles 595-1 and 595-4 of the Penal Procedure Code:

Article 595-1:

The Public Prosecutor can on judicial inquiry request information from the banks about the transactions or the movements of funds suspected of being linked to the funding of terrorism. The same information may be requested by the court or the investigation judge on a procedure linked to a terrorist crime.

Article 595-4:

The banking institutions indicated in Article 595-1 above must provide information requested within at most 30 days from the date of the request being communicated.

The banks may not confront the authorities mentioned in Article 595-1, or the Bank of Morocco, with the principle of banking secrecy.

Morocco further noted that persons subject to Article 13 of Law 43-05 against money laundering are required to produce to the Financial Information Processing Unit and their supervisory and authorities, all documents and information necessary for accomplishing their tasks. They cannot use professional confidentiality as an excuse against the Unit or the supervisory and control authorities, or object to the operations of inquiries or investigations ordered by the Unit. They must facilitate access to documents and information requested to accomplish their mission. The proposed amendment to Article 22 of the same Law aims to oblige public administrations and institutions and other corporate persons subject to public and private law to:

- Show the Unit upon its request all documents and information that facilitate its tasks;
- Inform the Unit of violations of the provisions of this Law which they discover in the performance of their tasks.

Article 20 of the bilateral agreement between Morocco and Holland in the area of judicial cooperation in criminal matters was also cited as example of application of paragraph 7 of article 31 of the Convention.

With regard to paragraph 8 of article 31, Morocco advised that there is no such provision in Moroccan law. Morocco noted that in the context of the vigilance obligations laid down in Law 43-05 Against Money Laundering and its amendments, persons subject to the law, particularly financial institutions, must take a set of precautions related to establishing the identity of their usual and casual clients, the true beneficiaries and the verification of this identity. Morocco added that the vigilance obligation comprised in particular:

- Investigation into the source of funds;
- Confirmation of the identity of those who order transactions to other beneficiaries;
- Taking particular care over work relationships or transactions carried out by, or to the benefit of, persons who belong to states that pose higher risks in the area of money laundering and terrorism funding;
- Confirmation that transactions carried out by clients are in complete conformity with what is known about these clients and their activities and also the level of risk they represent.

(b) Observations on the implementation of article 31

Article 31(1)(a) of the Convention enjoins state parties to take measures to enable confiscation of proceeds of crime derived from offences established in accordance with the Convention or property the value of which corresponds to that of such proceeds. The article specifically deals with confiscation and specifically refers to proceeds of offences established in accordance with the Convention.

Article 43 of the Moroccan Penal Code being referred to, deals only with forfeiture and applies only to instrumentalities. The same applies to articles 574-5 of the Moroccan Penal Code, to which Morocco refers (money laundering).

With respect to article 31(1)(b) of the Convention, Morocco refers once again to articles 43 and 574-5 of the Penal Code. Article 574-5, in particular, does not deal with confiscation of proceeds of offences established in accordance with the Convention but rather with the forfeiture of property in relation to money laundering.

In essence, Morocco does not have legislative or other measures which enable confiscation of proceeds of offences established in accordance with the Convention. The same applies to the identification, tracing, freezing or seizure of items or assets as contemplated in article 31(2) of the Convention.

It is suggested that Morocco should consider adopting specific legislation or other measures for the freezing, seizure and confiscation of items and/or assets as contemplated in the whole of article 31 of the Convention.

As to the regulation of confiscation the reviewing experts are of the opinion that the current Moroccan legislation does not permit the confiscation of value. It regulates only confiscation of a thing *in natura*. This preliminary conclusion supports the example given under paragraph 5 of article 31 of the Convention, namely, forfeiture of the value of proceeds of crime in case where there was a confiscation of the property owned jointly by the offender and another person. Although Morocco stated that confiscation of value is possible under the Moroccan law, Morocco is encouraged to consider adopting further legislative measures to that end.

With respect to paragraph 8 of article 31, the experts note that regulating declaration and origin of assets is challenging in many countries, and propose to reconsider the possibility of taking measures to demonstrate the origin of the property in compliance with its own constitutional and other legislative principles.

(c) Challenges for article 31

Morocco has identified the following challenges and issues in fully implementing article 31 of UNCAC:

1. Specificities in our legal system;

d) Technical assistance needs for article 31

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Model legislation;
2. Summary of good practices/lessons learned;
3. Legal advice;
4. Best practice.

None of these forms of technical assistance has been provided in the past.

Article 32 Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of article 32

Morocco provided the texts of article 231-3 of the Moroccan Penal Code. It has also mentioned articles 82-13, 82-14, 82-15, 82-16, 193-1 of the Draft Amended Penal Procedure Code.

Article 231-3:

Without prejudice to more severe sanctions, imprisonment from 10 to 20 years and a fine of 20,000 to 50,000 dirham applies if torture is perpetrated:

- against a witness, victim or civil party on account of his giving a statement or making a complaint or his bringing proceedings or not bringing them.

Article 82-13:

A victim is to be informed of his right to appear as a civil plaintiff before the investigating magistrate or trial court. He is also to be informed of the rights granted him by this law.

This notification is to be indicated in the indictment prepared by the judicial police or the Public Prosecution in the case when the victim appears before it.

Article 82-14:

The Crown Prosecutor, the Crown Prosecutor General or the investigating magistrate, as appropriate, will undertake protective measures to ensure the safety of the victim or his family members or his property from any damage he may face as a result of his making his complaint. To this end there may be placed at the disposal of the victim:

- A telephone hotline number to the judicial police or the security departments which he can call at any time to ask for protection;
- Physical protection for himself or his family members from the public force.

The victim can be given care by a specialist physician in the required social care.

Article 82-15 of the Penal Procedure Code (introduced by law 37-10, Official Gazette, issue No. 5988 dated 20 October 2011):

:

The witness or informant has the right, if there are serious reasons that put in danger his life, bodily safety or essential interests, or the lives, bodily safety or essential interests of his family members, when he gives his testimony or statement, to request from the Crown Prosecutor, Public Prosecutor or investigating magistrate, according to circumstances, the application of one of the measures provided in paragraphs 6 and 7 of Article 82-16 below. This is after giving the evidence which supports this.

Article 82-16 of the Penal Procedure Code (introduced by law 37-10, Official Gazette, issue No. 5988 dated 20 October 2011):

The Crown Prosecutor, the Public Prosecutor or the investigating magistrate can, when the matter is related to one of the offences stipulated in Article 108 of this law, take one or more of the following measures to ensure the protection of witnesses and informants:

1. Hearing personally from the witness or informant;
2. Concealing the true identity of the witness or informant in the reports and documents relating to the case where the testimony of the witness or the report of the informant is required. This is to be in a fashion that prevents identification of his true identity.
3. Including an assumed or false identity for the witness or informant within the reports or documents to be presented to the Court in a fashion that prevents others from recognising his true identity.

4. Not revealing the true address of the witness or informant in the reports and documents produced in the case in which the testimony or evidence of the witness or informant is required and in a way that his address is not revealed.
 5. Indicating the address of the witness or informant as the police station where he was heard or the Court competent to hear the case, provided the witness has been called for the first time before the investigating magistrate or tribunal.
 6. Putting at the disposal of the witness or informant who has given his testimony or report, a telephone number of the judicial police to enable him to notify them with the necessary speed of any act that may threaten his safety or that of his family.
 7. Provision of physical protection for the witness or informant from the public force in a way that prevents the witness or informant or his family members from exposure to risk.
- Taking the measures 2 to 5 provided above does not prevent the keeping of the real identity of the witness or informant in a special file at the disposal of the tribunal for its sight only.

Article 193-1 of the Penal Procedure Code (introduced by law 37-10, *Official Gazette*, issue No. 5988 dated 20 October 2011):

If there are serious reasons that prevent the appearance of a witness, expert or civil plaintiff, due to his being outside the influence of the Court and which the investigating magistrate deems to excuse his appearance, then the judge may, after the presentation of the applications of the Public Prosecution, decide to receive his written statements or listen to him, interrogate him or confront him with another by means of remote communications technology.

Such technology is only to be used in cases where the appropriate technical capacity is found.

During the dialogue phase that followed the country visit, Morocco informed the experts that law No. 37-10 was issued, to modify and complement Law No. 22.01 relating to Penal Procedure on the protection of victims, witnesses, experts and whistleblowers concerning bribery, embezzlement, abuse of power and other offences (*Official Gazette*, issue No. 5988 dated 20 October 2011).

This Law determines a range of measures to protect victims, witnesses, experts and whistleblowers, and provides, if such measures were insufficient, for the possibility of taking any other justified measure. Morocco considers this Law to be an effective guarantee in favour of those who deserve protection.

With regard to the requirement provided for in paragraph 5 of article 32 to enable the views and concerns of victims to be presented and considered in criminal proceedings, Morocco has provided the texts of articles 982 and 348 to 350 of the Penal Procedure Code which provide for the appearance as a civil party in criminal proceedings of any persona that has suffered damage from criminal offences. Morocco explained that this was the right of all those who claimed to have been exposed to damage from a criminal act, irrespective of the nature or kind of the crime.

(b) Observations on the implementation of article 32

It appears that there are sufficient measures for the protection of witnesses, experts and victims as envisaged in article 32 of the Convention. The amendment to the Penal Procedure

Code appears to further strengthen the protection of witnesses. It is not clear, however, whether Morocco has an effective and comprehensive witness protection programme.

(c) Challenges for article 32

Morocco has identified the following challenges and issues in fully implementing article 32 of the Convention:

1. Specificities in its legal system;
2. Limitations in knowledge of the latest programmes and practices concerning witness and expert protection;
3. Limitations in resources devoted to implementation (such as human/financial/other resources)

d) Technical assistance needs for article 32

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned
2. Legal advice
3. On-site assistance by a relevant expert
4. Capacity-building programmes for authorities responsible for establishing and managing witness, victim and expert protection programmes.
5. Model legislation

None of these forms of technical assistance has been provided in the past.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of article 33

Morocco referred the experts to articles 82-15 and 82-16 of the Draft Penal Procedure Code, cited above. It also provided the texts of articles 23 to 25 of chapter II of Law 43-05 on money laundering, which provide that no prosecution or civil legal action can be initiated against persons who made a suspicious transaction report in good faith or against staff of the Financial Information Processing Unit for actions taken in good faith in the accomplishment of their mission. Articles 23 to 25 read as follows:

Article 25:

Regarding the money or transactions which were the subject of a suspicious transaction report under section 9 of this Chapter, no prosecution based on article 446 of the Moroccan Penal Code or on the special provisions on professional secrecy, can be brought against any person subject to it, or against his directors and staff who made this statement in good faith.

Article 26:

No proceedings on the basis of civil responsibility shall be commenced, nor any sanction imposed, especially for false accusation against a person subject to this law, his officers or staff, when the suspicious transaction report was made in good faith.

The provisions of this article apply even if evidence of the criminal nature of the acts presented in the suspicious transaction report is not provided or if on the basis of these facts it was decided not to prosecute or to acquit.

If the transaction is executed as provided in article 11 above, the person subject to the law is excused all responsibility and no prosecution on account of this execution may be brought against its officers or agents, except in the case of being complicit with the owner of the money or the executor of the transaction.

Article 27:

No proceedings on the basis of criminal or civil liability against the Unit or its staff, or against the supervision and control authorities or their staff, charged to act by the Unit, shall be brought by reason of the tasks assigned to them under this chapter.

During the country visit, officials of the Ministry of Justice informed the reviewing experts that Morocco was in the process of promoting legislation for the protection of whistle blowers, that relevant Bill had already been discussed in the Second Chamber and that if that Bill were approved, Morocco would comply with the Convention. This legislation would address the protection of victims, experts and reporting persons.

During the dialogue phase that followed the country visit, Morocco informed the experts that law No. 37,10 was issued, to modify and complement Law No. 22,01 of Penal Procedure, on the protection of victims, witnesses, experts and reporting persons concerning bribery, embezzlement, abuse of power and other offences (*Official Gazette*, issue No. 5988 dated 20 October 2011).

Part III of this Law is devoted to whistleblower protection .

(b) Observations on the implementation of article 33

It appears that Morocco does not have legislative or other measures to provide for the protection of whistle-blowers or reporting persons. It is recommended that Morocco finalises and implements the proposed legislation as soon as possible.

(c) Challenges for article 33

Morocco has identified the following challenges and issues in fully implementing article 33 of UNCAC:

1. Specificities in its legal system;
2. Limited awareness of state-of-the-art systems and programmes used by the State to protect whistleblowers ,
3. Limited capacity (e.g. human/technological/institution)

d) Technical assistance needs for article 33

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned
2. Legal advice
3. On-site assistance by a relevant expert

None of these forms of technical assistance has been provided in the past.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of article 34

Morocco provided the text of article 574-5 of the Moroccan Penal Code, amended in January 2011 by Law 13-10, which, among other sanctions for persons convicted for money laundering, provides for a temporary or permanent ban to exercise, directly or indirectly, one or more professions, activities or arts that were used to commit the offence. It also provided the text of article 85 of decree 2-06-388 (5 February 2007) renewing the conditions and forms for agreeing state contracts and some regulations concerning procedures and oversight, Article 85 regulates exclusion from participation in government contracts and reads as follows:

Article 85

When fraudulent acts, repeated violations of work conditions or serious breaches of agreed commitments have been proved against the contract holder, the Minister concerned, without prejudice to the prosecution and punishment to which the contract holder could be liable, may make a reasoned decision after consulting the Board of Trade, to exclude him temporarily or permanently from participation in contracts he administers.

The contract holder is to be notified in advance by registered letter, with acknowledgment of receipt, to submit, within a period not less than ten (10) days, his observations on grievances alleged against him.

This exclusion can be extended to tenders raised by all public administration bodies on the basis of a Prime Ministerial decision on the suggestion of the Minister concerned, after consultation with the Board of Trade. This decision is to be published on the state procurement website indicated in section 76 above.

Morocco also provided the text of articles 138 and 158 of the Draft Decree concerning public contracts.

Further, during the country visit, the reviewing experts were informed that in case corruption is involved in a tender process, the resulting contract may be cancelled and the service provider may be excluded from further contracts with the state. It was further noted that a conviction is not necessary, and that there are two kinds of sanctions: a) an administrative

sanction, which is a temporary or definitive exclusion. This sanction is implemented by the Minister and is not dependent on a court decision, b) when the degree of action is more serious, for example the involvement of corruption or submitting forged documents, the matter is transferred to the prosecuting authority.

Article 138: Coercive Measures:

If a bidder, contract holder or the persons referred to in the last paragraph of article 24 above, as the case may be, are proven to have given a false sworn statement, submitted forged documents or committed fraudulent acts, corruption, or repeated violations of working conditions or serious breaches of signed commitments, irrespective, as appropriate, of prosecutions, the following penalty or penalties apply:

a) by a decision of Upon the Minister of the Interior, after consulting with the Follow-up Commission for National Public Procurement according to article 145 below, temporary or permanent exclusion of the bidder from participation in tenders concluded by a local commune, a group of communes or national public institution, or the combined tenders of local communes, groups of communes or national public institutions.

This exclusion can be extended to State tenders and tenders of public institutions subject to this Decree by a decision taken by the Head of Government at the suggestion of the Minister of the Interior, after consulting with the Tenders Committee.

b) by a decision of the competent authority, to annul the tender, to be followed or not by a new tender, at the expense and risk of the contract holder. The excess costs arising from the conclusion of a new tender after the annulment are to be deducted from the amounts that may be owed to the authorizer, regardless of the rights that should be held liable in case of the shortfall. The possible reductions in expenditures remain in favour of the project owner.

These decisions are to be published on the State procurement website.

B- In situations described in (a) and (b) above, the bidder or contract holder, as the case may be according to the circumstances, is required, at the outset to submit his observations within the period specified by the project owner and which cannot be less than fifteen (15) days. He is to be informed of the decision for sanction, which must be justified.

Article 158: Coercive Measures:

If a bidder or contract holder, as the case may be, is proven to have given a false sworn statement, submitted forged documents or committed fraudulent acts, corruption, or repeated violations of working conditions or serious breaches of signed commitments, irrespective, as appropriate, of prosecutions, the following penalty or penalties apply:

a) by a decision of the concerned Minister of State, or the decision of the Minister responsible for the public institution, and after consulting with the Tenders Commission, the temporary or permanent exclusion of the bidder from participation in tenders concluded by entities under his authority.

This exclusion can be extended to all tenders submitted by state departments and public institutions by a decision taken by the Head of Government at the suggestion of the concerned Minister of State, or the Minister responsible for the public institution, as appropriate, after consulting with the Tenders Committee.

b) by a decision of the competent authority, to annul the tender, to be followed or not by a new tender, at the expense and risk of the contract holder.

The excess costs arising from the conclusion of a new tender after the annulment are to be deducted from the amounts that may be owed to the defaulter, regardless of the rights that should be claimed from him/her. The remaining possible reductions in expenditures remain in favour of the project owner.

In situations described in (a) and (b) above, the bidder or contract holder, is required, at the outset to submit his observations within the period specified by the project owner and which cannot be less than fifteen (15) days.

The decisions provided under a) and b) must be justified and notified to the bidder or the defaulting contract holder, and are to be published on the State procurement website.

(b) Observations on the implementation of article 34

Article 34 is specifically intended to ensure that persons (both natural and legal) do not benefit from contracts or concessions or other similar instruments obtained through corruption; it encourages considering corruption as a factor in legal proceedings to annul or rescind such contracts or to withdraw such concessions. Moroccan law provides for the possibility to annul public contracts if the tender process was tainted by corruption, and sets forth additional consequences and sanctions in such a case. Therefore, the reviewers are of the opinion that Moroccan law is consistent with article 34 of the Convention.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of article 35

Morocco stated that article 35 of the Convention is implemented through articles 2, 7 to 14, 92 to 98 and 348 to 356 of the Moroccan Penal Procedure Code relating to the standing of a civil party requesting damages and direct complaints before the investigating magistrate and the courts and tribunals. According to these provisions of the Penal Procedure Code, any crime that has caused damage gives rise to the right to a civil action for compensation for the damage. The right to take civil action for damages caused by criminal offences applies to all those who have personally suffered bodily, material or psychological injury, directly caused by the offence.

The civil action may also be brought before a civil court, separately from the public prosecution. In such a case, however, the civil court would suspend taking a decision in this

case until a final ruling in criminal proceedings (if initiated) has been issued. The Moroccan Supreme court, in decision 237 of 13 February 1975, has ruled that the right to bring civil action before the criminal courts with the intention of demanding compensation for damage is an exceptional right which can only be exercised in cases specified by law, and that the civil case for damages is only heard before the criminal court from the party personally damaged by the crime caused the damage.

In the same context, article 122 of the Constitution provides that any party suffering damage due to judicial error may obtain compensation to be paid by the State.

(b) Observations on the implementation of article 35

Morocco has comprehensive legislation and other measures to ensure that entities or persons who have suffered damage as a result of acts of criminality (including corruption) have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of article 36

Morocco provided details on the establishment and functioning of the Financial Intelligence Processing Unit (the Unit), set up under Law 43-5 Against Money Laundering. Decree 2-08-572 of 24 December 2008 enabled the clarification of the administrative nature of the Unit, which is provided with its own budget, included within the budget of the Prime Minister's Office. The independence of the Unit is supported by its attachment, from an administrative perspective, to the Prime Minister. The Unit, in addition to its head, is composed of members representing the Ministries of Justice, Interior and Economy and Finance, representatives of the Bank of Morocco, the General Directorate of National Security, the Command of the Royal Gendarmerie, the Customs and Indirect Taxation Administration, the Securities Ethics Council and the Exchange Office.

According to Article 15 of Law 43-05 Against Money Laundering the Financial Information Processing Unit is charged with the following tasks in particular:

- to collect and process information related to money laundering and decide what action to take upon the issues before it;
- to establish a database on transactions of money laundering;
- to direct all inquiries or investigations carried out by the inquiry and investigation departments which are involved in carrying out the mission with which the Unit is vested and coordinate the means of operation of these departments;
- to jointly represent national departments and agencies involved in the fight against money laundering;

- to propose to the Government any legislative, regulatory or administrative reform needed in the fight against money laundering.

The structure of the Unit and the variety of the competencies and responsibilities of its members enable the Unit to perform its duties in the best conditions, as well as coordinating the efforts of relevant departments to fight money laundering and the funding of terrorism. The Unit was launched by the Prime Minister on 10 April 2009 at an official inauguration where the President and members of the Unit were introduced.

The Unit began to receive suspicious transaction reports from the beginning of October 2009 when it was forwarded tens of reports from a group of financial institutions. The transactions declared are particularly concerned with the following areas:

- unusually large cash payments;
- attempts to transfer large amounts (into Morocco) on the basis of documents suspected to be false;
- manual exchange transactions for significant sums that do not match the category of person concerned.

The work of the Unit is currently focusing at aspects of coordination and cooperation with other departments and agencies involved in the fight against money laundering and terrorist funding. It has also started organizing seminars and exchanging information and visits with corresponding Units, especially in Europe, with the aim of raising the level of qualifications and competence of the staff working in it and letting them review recent experiences and methods adopted in money laundering and terrorism funding and the means used to combat them.

Morocco also cited the higher council for inspection established by the Minister of Finance under Law 1.59.269 concerning the General Financial Inspectorate, the Central Authority for the Prevention of Corruption, created by Decree 2.05.1228 of 13 March 2007 creating, and Decree 2.05.1369, concerning the regulation of the ministerial sectors and administrative decentralization of 2 December 2005.

During the country visit, the reviewing experts were informed that the Central Authority for the Prevention of Corruption was not a law enforcement body, and that its mission was to coordinate national policies and strategies regarding the prevention of corruption, to supervise the implementation of these policies and strategies and to collect and share information on corruption.

During the dialogue phase that followed the country visit, Morocco pointed out to the adoption of Law 35,11 modifying the Penal Procedure Code, and which provides for the creation of national and regional judicial police teams entrusted with special tasks, including investigation into financial and economic crimes. The Crown Public Prosecutor is also entitled to establish regional teams empowered to investigation into *ad hoc* cases under the supervision of a judicial police officer.

As to the creation of a division for financial and economic affairs within the directorate of judicial police, Morocco informed that law 34,10 was issued, modifying Dahir 1,74,338, concerning the judicial organization of the Kingdom, by creating financial crimes sections including investigation, criminal and criminal appeal chambers, a public prosecution, an office for seizure and an office for public prosecution. Decree 2,11,445 was issued on 4 November 2011 which determines the number of appeal courts comprising financial crimes sections and defining their jurisdictions.

(b) Observations on the implementation of article 36

In the view of the reviewers, article 36 of the Convention regulates an authority combating corruption (this authority does not have to be a law enforcement authority, it might be also an administrative one). However, the response of Morocco to article 36 of the Convention, concentrates to an administrative body reporting to the Head of Government, specialized in the fight of money laundering, namely, the Financial Intelligence Processing Unit. However, it has been established during the country visit that the Financial Intelligence Processing Unit does not have law enforcement prerogatives.

The non existence of a specific law enforcement authority or body specialising in the investigation and prosecution of corruption offences, is seen as a gap in the legislation of Morocco. It was further noted that it was not effectively demonstrated that such a specialised body would exist within the different law enforcement authorities or that there are units in the structure of the judicial police specialized in combating corruption through law enforcement.

Reference was made during the dialogue to other pieces of legislation and recent amendments, which were forwarded later on to the team, and that provide, among others for the establishment of national teams of the judicial police and regional judicial police, which are entrusted with special tasks, including research and investigation in financial and economic crimes. However their content could not be adequately reviewed during the country review process because of late submission and time constraints.

Article 37 Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of article 37

Morocco provided the texts of articles 256-1 and 574-7 of the Moroccan Penal Code.

Article 256-1 of the Penal Code:

A person who informs the judicial authorities of an offence of bribery, where the notice is given before execution of the request made to him, or if proved, when made, that the official made the request and he was forced to pay it, shall enjoy a pardoning excuse from the sanction for bribery, as meant by Article 251 of this law.

Article 574-7 of the Penal Code:

The offender, assistant or accomplice who informed the competent authorities, before their knowledge, of facts constituting an attempted crime of money laundering, benefits from a full amnesty, as provided in sections 143 to 145 of the Penal Code.

The sanction is reduced by half if the notification takes place after the commission of the offence.

With respect to paragraph 4 of article 37 of the Convention, Morocco referred to article 373 of the Moroccan Penal Code, as well as articles 82-15 and 82-16 of the Draft Penal Procedure Code cited above (see article 32). Moreover, Morocco stated that it has not adopted the measures described in the paragraph 5 of article 37 of the Convention.

Regarding sentence and plea agreements, the experts were informed during the country visit that the Moroccan law does not allow for such agreements.

Morocco also noted that it may conclude agreements with other States providing for plea and sentence as encouraged in paragraph 5 of article 37, inasmuch as article 713 of the Penal Procedure Code gives the prevalence to international conventions in the field of international cooperation, and does not require the publication of such conventions, nor does it require any of the usual procedures concerning international conventions, which means that it covers any agreement between the Moroccan state and any foreign state, in line with commitments in the context of extradition procedure, as provided in articles 723 and 726 of the Penal Procedure Code.

(b) Observations on the implementation of article 37

Morocco only partially complies with paragraphs 1 to 4 of article 37 of the Convention. However, Morocco does not have legislation providing for plea and sentence agreements as encouraged in article 37.

(c) Challenges for article 37

Morocco has identified the following challenges and issues in fully implementing article 37 of UNCAC:

1. Specificities in its legal system;

d) Technical assistance needs for article 37

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned
2. Legal advice
3. Model legislation
4. legislative drafting
5. Model agreement/arrangement

None of these forms of technical assistance has been provided in the past.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of article 38

Morocco provided the texts of articles 18 and 19 of Law 43-05 for the Financial Information Processing Unit (the Unit) and article 8 of the law creating the Central Authority for the Prevention of Corruption, that both provide for transfer to the judiciary of information suggesting acts of corruption that was made available to these bodies. It has also provided the texts of articles 52, 58, 109 and 111 of the Code of Financial Courts, which regulate the obligation of the Minister concerned to forward to the Higher Audit Court information suggesting budgetary or financial irregularities involving employees of the public sector, and articles 20 to 32 of the Penal Procedure Code.

More specifically:

Article 18 of law 43-05:

Upon the Unit receiving information that reveals acts that may constitute an offence of money laundering, it shall refer to the Crown Prosecutor at the Court of First Instance in Rabat, clarifying, where appropriate, the inquiry and investigation departments and the supervision and control authorities that have been informed of the existence of investigations.

The Crown Prosecutor shall notify the Unit of final decisions taken in cases transferred to it.

Article 19 of law 43-05:

The Crown Prosecutor may order during the investigation phase for a period not exceeding one month, renewable once:

1. The freezing by temporarily prohibiting the transfer, conversion, disposition or movement of property;

2. Or the designation of an institution or a private organization in order to ensure temporary custody or control of property.

The investigating magistrate may designate an institution or a private organization in order to ensure temporary custody or control of property.

The Crown Prosecutor or investigating magistrate may also order the seizure of property belonging to persons or corporate persons suspected of involvement with persons, organizations or activities connected with the crime of money laundering, even if they are not committed on the territory of the Kingdom.

Article 8 of Decree 2.05.1228 of 13 March 2007:

The Executive Board is responsible for implementing, under the authority of the President, the tasks entrusted to the Central Agency and monitor its decisions and recommendations.

To this end, it is responsible, in particular:

- To receive and process information relating to acts of corruption brought to the attention of the Central Agency and inform the judicial authorities if such facts may constitute acts of corruption punishable by law;
- To establish and update a database on the phenomenon of corruption;
- To develop coordination and consultation between the administrations concerned with the prevention of corruption;
- To establish communication strategies and organize information campaigns and raise public awareness on the prevention of corruption.

Dahir No. 124,02,1 issued on the 1st of Rabi' al-Akhar 1423 (13 June 2002) implementing Law No. 62,99 concerning the Financial Courts Code.

Article 37:

If the Council does not prove any violation on the part of a public accountant, it settles the account or the accounting situation with a final decision.

If the Council finds violations due to failure to take actions which the public accountant should have taken in collecting the revenues or failure to control the validity of the expenditure in accordance with the regulatory texts in force, the Council orders the public accountant, through a preliminary decision, to submit his/her justifications in writing, or failing which to return the amounts stated by the Council as due to the public body concerned, within a delay decided by the Council of not less than three months, as of the date of notifying the preliminary decision.

Upon the lapse of this delay, the Council takes any action it deems appropriate pending the settlement of the case with a final decision within a maximum period of one year, as of the date of issuing the preliminary decision.

If it is found, through investigating the account or the accounting status, that there is any of the violation provided in articles 54, 55 and 56, the body takes a decision which it addresses to the Crown Public Prosecutor who refers the case to the Council under disciplinary measures concerning budget and financial matters, in line with the requirements of article 57 of this Law.

If, during the investigation, new components were discovered for a *de facto* procedure in the sense of article 41 below, the Council declares such procedure and decides on it notwithstanding criminal prosecutions.

If, during the investigation, acts were discovered which call for disciplinary sanction, the requirements of the second paragraph of article 111 below shall apply.

Article 55:

Is subject to sanctions provided in this article any controller of expenditure obligations and any financial controller, as well as any officer or assistant officer working under the orders of any controller of expenditure obligations and any financial controller, or working on their behalf, if they fail to undertake the controls which they are obliged to undertake in accordance with the regulatory texts in force, concerning documents related to obligating expenditure and to documents related to revenues if within their competence.

Article 56:

Is subject to sanctions provided in this article any public accountant as well as any officer or assistant working under his/her orders or on his/her behalf, if they fail to undertake in the exercise of their duties the controls which they are obliged to undertake in accordance with the regulatory texts in force.

They shall also be subject to the same sanctions:

- if they concealed any documents or submitted to the Council forged or invalid documents;
- if they obtained for themselves or for others an undue advantage in cash or in kind.

Article 109:

The concerned minister shall notify the Court or the concerned regional Court, as appropriate, of the reports made by the inspection and oversight bodies that indicate *de facto* transactions or violations included in the area of discipline connected to budgetary and financial affairs or contain observations over the running of the agencies subject to the control of the Financial Courts. These reports must be accompanied by the documentary proof of the subjects of these reports.

Article 111:

Prosecution before the Court does not preclude the exercise of disciplinary action and prosecution.

If the Court discovers acts which would justify disciplinary action, the Crown Public Prosecutor reports these facts to the disciplinary authority in respect of the individual, and which shall inform the Court, within six (6) months by a reasoned statement, of the measures it has taken.

If these are facts that seem to justify a criminal sanction, the Crown Public Prosecutor of his own initiative or at the request of the First President, raises the matter with the Minister of Justice to take action he deems appropriate and notify the authority having jurisdiction over the individual.

The Minister of Justice informs the Court of the steps he has taken.

The Financial Intelligence Processing Unit is an administrative FIU that receives Suspicious Transaction Reports from different institutions, analyses the information and transmits same to law enforcement authorities. To date, the Unit has received 120 Suspicious Transaction Reports, but only one (1) resulted in prosecution. FIPU is also empowered to solicit information from public institutions and bodies, which have the obligation under the new legislation enacted in 2011 to answer requests “promptly”, or to report suspicious transactions that suggest money laundering

Morocco also provided the following statistical data on cases transferred to the Higher Audit Court:

Year	No of cases passed to the Court	Action taken
2001	2	transferred to the judiciary
2005	1	transferred to the judiciary
2007	9	transferred to the judiciary
2008	5	transferred to the judiciary
2010	11	transferred to the judiciary
2011	10	transferred to the judiciary
total	38	

During the country visit, the reviewing experts were informed that the financial inspectorate within the Ministry of Economy and Finance cooperate with law enforcement authorities notifying them of the findings of audits or controls.

(b) Observations on the implementation of article 38

Generally speaking, the level of cooperation between the law enforcement agencies or judicial bodies and other national authorities is on an adequate level. The Moroccan legislation establishes various ways of such cooperation, and the information provided to the reviewing expert indicated that this cooperation is put in practice regularly. The reviewing experts are of the view that Morocco complies with article 38 of the Convention.

Article 39 Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of article 39

Morocco has cited Law 43-05 Against Money Laundering, in particular, Chapter II concerning prevention of money laundering and especially articles 1 to 24; Articles 256.1 and

446.1 of the Penal Code; Article 43 of the Penal Procedure Code; Law 58-90 concerning Monetary Free Zones; Article 80 of the Law regulating the activities of credit institutions and their oversight. Among those provisions, article 13 of Chapter II of Law 43-05 reads as follows:

Article 13:

Persons subject to the law must furnish the Unit stipulated in Article 14 below and their own supervising and controlling authorities with all necessary documents and information to the performance of their tasks.

Persons subject to the law cannot obstruct the inquiries and investigations ordered by the Unit and executed by the staff indicated in article 22 below. They must facilitate access to necessary documents and information to execute their duties.

Persons subject to the law cannot use professional secrecy as an excuse to the Unit or the supervising and controlling authorities authorized by them.

Morocco has further stressed the accurate and relevant information provided to the Financial Intelligence Processing Unit by the various persons and institutions of the private sector subject to the vigilance and notification measures provided in anti-money laundering legislation, and indicated that a number of study days, educational seminars and open meetings have been organized throughout the Kingdom by the concerned authorities in cooperation with private sector institutions.

Morocco also noted that article 84 of the law on credit institutions obliges banking institutions to be vigilant and to inform the judicial authorities of any suspected cases.

During the country visit and their meeting with the Financial Intelligence Processing Unit, the reviewing experts were informed that under applicable legislation, if a bank suspects that a transaction is linked to money laundering, it must inform the Unit. The Unit then has the power to oppose the execution of the transaction. The Unit must act within two (2) days. If not, the bank may allow the transaction. The Unit may in exceptional circumstances request an extension of 15 days to act.

(b) Observations on the implementation of article 39

Generally speaking, the level of cooperation between the law enforcement agencies or judicial bodies and private entities, including financial institutions and banks, appears to be on an adequate level. The reviewing experts are of the view that Morocco partially complies with article 39 of the Convention.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of article 40

The State party under review has provided the text of article 13 of Chapter II of Law 45-03 Against Money Laundering, and article 80 of the law relating to credit institutions and the bodies dealt with in its provisions. These provisions read as follows:

Article 13 of the money laundering law:

Persons subject to the law must furnish the Unit stipulated in article 14 below and their own supervising and controlling authorities with all necessary documents and information to the performance of their tasks.

Persons subject to the law cannot obstruct the inquiries and investigations ordered by the Unit and executed by the staff indicated in article 22 below. They must facilitate access to necessary documents and information to execute their duties.

Persons subject to the law cannot use professional secrecy as an excuse to the Unit or the supervising and controlling authorities authorized by them.

Article 80 of the law relating to credit institutions and the bodies dealt with in its provisions.

Besides the cases specified by the law, confidentiality cannot be used against the Bank of Morocco and the judicial authorities acting in the context of criminal proceedings.

This is in addition to article 595-4 of the Penal Procedure Code and article 37 of the law of Movable Value Council and articles 110 and 161 of the Financial Courts Code.

(b) Observations on the implementation of article 40

The Moroccan legislation appears to be in compliance with article 40 of the Convention against corruption.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of article 41

Morocco cited article 716 of the Penal Procedure Code, which reads as follows:

Article 716 of the Penal Procedure Code

If during the course of a prosecution for a felony or ordinary misdemeanour, after review of the criminal record of the perpetrator of the offence, it becomes apparent to any restraining court of the Moroccan Courts that he has been previously sentenced by a foreign court for a felony or ordinary misdemeanour, so punished by the Moroccan courts, it may include in its judgement special reasoned provisions that verify the correctness of the judgement of the foreign restraining court and take this judgement into account when determining recidivism.

This is in addition to the international exchange of records in accordance with articles 675-677 of the Penal Procedure Code which govern the exchange, between States, of information on individuals' criminal records.

Moreover, Morocco noted that according to the provisions of article 24 of Law 43-05 relating to the fight Against Money Laundering, the Financial Information Processing Unit may, within the framework of international conventions which Morocco has signed and duly published or under the principle of reciprocity, exchange, in respect to the provisions of law in force, the financial information related to money laundering, with foreign authorities with similar competencies.

In this way, the exchange of information with other Financial Information Units enables the Unit to access information that concerns persons who have been convicted in other states or about whom there are suspicions.

Moroccan legislation foresees the establishment of a database of money laundering transactions by the Unit, as well as cooperation and engagement between the Unit and other departments and agencies concerned with studying action that can be taken to fight money laundering. In this way, the Unit can be provided with information on persons previously convicted of one of the predicate offences relating to money laundering.

(b) Observations on the implementation of article 41

Article 716 of the Penal Procedure Code covers sufficiently the requirement of article 41 of the Convention.

Article 42 Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

- (a) The offence is committed in the territory of that State Party; or*
- (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State Party; or*
- (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*
- (c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*
- (d) The offence is committed against the State Party.*

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of article 42

The Moroccan courts have jurisdiction to consider all crimes committed on Moroccan territory whatever the nationality of the perpetrator is.

When the commission of one of the acts that form one the constituent elements of an offence takes place within Morocco, then this offence is considered to have been committed on Moroccan territory.

The jurisdiction of the Moroccan courts extends to the other acts of participation or concealment, even if committed outside the Kingdom and by foreigners.

Morocco provided the following information:

- Subparagraph 1 (a) of article 42 of the Convention has been implemented through article 704 of the Penal Procedure Code.

Article 704:

The Moroccan courts have jurisdiction to consider all crimes committed on Moroccan territory whatever the nationality of the perpetrator.

Every offence where the commission of one of the acts that form one of its constituent elements takes place within Morocco is considered to have been committed on Moroccan territory.

The jurisdiction of the Moroccan courts, just as in ruling on the principle act, extends to the other acts of participation or concealment, even if committed outside the Kingdom and by foreigners.

- Subparagraph 1 (b) of article 42 of the Convention has been implemented through articles 705 and 706 of the Penal Procedure Code, which read as follows:

Article 705:

The courts of the Kingdom are competent to try felonies and misdemeanours committed on the high seas on ships flying the Moroccan flag, whatever the nationality of their perpetrators. The courts of the Kingdom are also competent to try felonies and misdemeanours committed in a Moroccan seaport on board a foreign merchant vessel.

Jurisdiction resides with the Court which covers the Moroccan port where the ship first docks or the court which covers the place where the principal was arrested, if he is subsequently arrested in Morocco.

Article 706:

The courts of the Kingdom are competent to try felonies and misdemeanours committed on board Moroccan aircraft whatever the nationality of the perpetrator.

They are also competent regarding felonies and misdemeanours committed on board foreign aircraft if the perpetrator or victim is of Moroccan nationality or if the aircraft lands in Morocco after the felony or misdemeanour.

Jurisdiction goes to the courts where the plane landed in case of arrest at the time of landing and it goes to the court which covers the place where the principal was arrested, if he is subsequently arrested in Morocco.

Article 712:

In the cases indicated in this Chapter, the court with jurisdiction, respecting the provisions of articles 705 and 706, shall be the court in the place where the suspect lives or the court of his last known place of residence in Morocco or the place where he was arrested or the place of residence of the victim of the offence.

- Subparagraph 2 (c) of article 42 of the Convention has been implemented through article 704 of the Penal Procedure Code.

- Subparagraph 2 (d) of article 42 of the Convention has been implemented through article 711 of the Penal Procedure Code.

Article 711:

Any foreigner who, outside the territory of the kingdom, commits, as a principal, participant or accomplice, a felony or misdemeanour against state security, or forging the state seal, or forging or counterfeiting coinage or national banknotes circulating as legal tender in Morocco, or a felony against the staff or premises of Moroccan diplomatic and consular missions or public offices, may be prosecuted under the provisions of Moroccan law

If a Moroccan, in his capacity as principal, participant or accomplice, commits, outside the Kingdom, one of the offences indicated above, he will be punished for this offence as though it had been committed within Morocco.

Any person who, outside Morocco, is a participant or accomplice in the commission of one of the offences stipulated in the first paragraph, will be prosecuted in his capacity as a participant as provided in the mentioned paragraph.

However, the prosecution cannot proceed or sentence be passed, if the accused proves that he has been tried abroad for the same act, and a legally final verdict was reached, and, if he was convicted, he can prove that he has been punished as sentenced or that the sentence is statute bar.

- Paragraph 3 of article 42 is implemented through article 749 of the Penal Procedure Code.

Morocco noted that when a formal complaint is received from a foreign state, it is possible to prosecute in Morocco a Moroccan citizen who has committed an offence within or outside the Kingdom. He will not be extradited out of consideration for his Moroccan nationality. He will be tried and sentenced according to the provisions of Moroccan law. According to the figures provided by the State party under review, 32 formal complaints were received with respect to Moroccan citizens in 2009, and 17 in 2010.

- Paragraph 4 of article 42 is implemented in part through article 749 of the Penal Procedure Code

- Paragraphs 5 and 6 of article 42 are not implemented

(b) Observations on the implementation of article 42

Morocco appears to have measures to establish jurisdiction over offences established in accordance with the Convention in respect of articles 42(1)(a) and 42(1)(b). Moreover, the reviewing experts are of the opinion that articles 710 and 707 to 709 of the Penal Procedure Code seem to be more in line with subparagraphs 2 (a) and 2 (b) of article 42 respectively than the provisions cited by Morocco. Articles 707 to 710 of the Penal Procedure Code read as follows:

Article 707

Any act qualified as crime under Moroccan legislation committed outside the Kingdom of Morocco by a Moroccan citizen can be prosecuted and tried in Morocco.

However, prosecution or trial can take place only if the indicted person has returned to Morocco and cannot prove that the conviction judgment is irrevocable abroad and, in case of conviction, that his sentence is served or subject to limitation by lapse of time or that he has been pardoned.

Article 708

Any act qualified as felony under Moroccan legislation committed outside the Kingdom of Morocco by a Moroccan citizen can be prosecuted and tried in Morocco.

Prosecution or trial can only take place if the conditions mentioned in subparagraph 2 of article 707 are met.

Moreover, in case of a felony committed against an individual, prosecution can only be initiated at the request of the Prosecutor's office following a complaint of the prejudiced person or a complaint of the authorities of the country where the act was committed.

Article 709

Prosecution or trial can take place, in the cases foreseen in articles 707 and 708 as well as in subparagraph 2 of article 711, even in case the indicted person obtained the Moroccan citizenship after committing the offence.

Article 710

Any foreigner that, outside the territory of the Kingdom of Morocco, committed an act qualified crime under the Moroccan Law as author, co-author or accomplice, can be prosecuted and tried in accordance with the provisions of Moroccan legislation, if the victim of this crime has Moroccan citizenship.

The position with respect to articles 42 paragraph 2 (c), 42 paragraph 3, 42 paragraph 4, 42 paragraph 5 and 42 paragraph 6 is not clear from Morocco's response.

(c) Challenges for article 42

Morocco has identified the following challenges and issues in fully implementing article 42 of UNCAC:

1. Specificities in its legal system;

d) Technical assistance needs for article 42

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned
2. Legal advice
3. On-site assistance by a relevant expert

None of these forms of technical assistance has been provided in the past.

Unofficial translation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of paragraph 1 of article 44

There is no separate law on extradition in Morocco. The matter is regulated by provisions included in the Moroccan Penal Code and the Penal Procedure Code. Moreover, a number of bilateral treaties on extradition are in force.

Article 720 of the Penal Procedure Code determines the offences for which extradition can be requested and defines dual criminality as a requirement for granting extradition:

Article 720:

The following acts can be invoked either to request or approve extradition:

1. All acts which are punishable as crimes according to the Penal Code of the requesting State Party.
2. Acts which are punishable as misdemeanours or felonies according to the Penal Code of the requesting State Party by deprivation of liberty, if the maximum sentence is deemed by these laws to exceed one year, or if the person has been convicted by one of the courts of the requesting State Party when the sentence is equal to or exceeds four months.

Extradition will not be granted in any circumstances if the act is not punishable according to the Moroccan Penal Code.

The rules cited above apply to offences consisting of an attempt to commit a crime or participation thereof.

The State party under review noted that it had received a significant number of requests for extradition: In 2009 the judicial authorities received 40 requests for extradition two of which were related to financial issues. In 2010, 25 requests for extradition were received in total, one of which was related to money-laundering.

(b) Observations on the implementation of paragraph 1 of article 44

Article 720 of the Morocco Penal Code provides that the following acts can be invoked either to request or approve extradition:

- (1) All acts which are punishable as crimes according to the Penal Code of the requesting State Party.
- (2) Acts which are punishable as misdemeanours or felonies according to the Penal Code of the requesting State Party by deprivation of liberty, if the maximum sentence is deemed by these laws to exceed one year, or if the person has been convicted by one of the courts of the requesting State Party when the sentence is equal to or exceeds four months.

According to article 720 of the Morocco Penal Code extradition will not be granted in any circumstances if the act is not punishable according to the Morocco Penal Code. The principle of dual criminality seems to be strictly applied according to Morocco Penal Code as will be demonstrated in the subsequent assessment.

While Morocco is able to assist in extradition requests pertaining to bribery of national public officials, this does not seem to be the case in respect of bribery of foreign public officials and officials of public international organizations. The latter position is due to the fact that the Morocco Penal Code does not explicitly make provision for the concept of the foreign public official or officials of public international organizations as already indicated in the assessment under criminalization. Article 224 of the Morocco Penal Code provides that public officials (national) for the purposes of criminal law are considered to be any person who, in whatever capacity and to any extent, are carrying out a function or task be it temporary, paid or without payment, and participate as such, in serving the State, public bodies, municipalities, or public interest organizations. As conceded by Morocco, indeed this article, read with article 248, fall short of criminalizing bribery of foreign public officials and officials of public international organizations. Therefore, with the strict adherence to the principle of dual criminality, Morocco would not be in a position to make request for or accede to requests for extradition of foreign public officials or officials of public international organizations involved in bribery.

Morocco also pointed out that article 44 of the same Convention covers what might be reproached as a shortfall in this respect inasmuch as the Moroccan Constitution provides for the prevalence of international conventions and as article 44 of the Convention enables extradition when the act is criminalized under the Convention, even if not criminalized under the national legislation.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of paragraph 2 of article 44

The State party under review stated that it would always take dual criminality into consideration.

(b) Observations on the implementation of paragraph 2 of article 44

Morocco cannot exercise discretion to grant the extradition of a person for any of the offences covered by the UNCAC that are not punishable under its own domestic law, as provided in paragraph 2 of article 44, due to their strict adherence to the principle of dual criminality. In essence, it is not permissive for Morocco to grant extradition of any person for bribery

involving a foreign public official, or official of public international organizations as these are not criminalized in their Penal Code.

Non-compliance with the requirement of dual criminality will also apply to other offences not criminalized, or not adequately criminalized in the Morocco Penal Code such as-

- Trading in influence (article 18) (non-mandatory)
- Illicit enrichment (article 20) (non-mandatory)
- Bribery in the private sector (article 21) (non-mandatory)
- Concealment (article 24) (non-mandatory)
- Offences committed by Legal Persons (article 26) (mandatory)

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of paragraph 3 of article 44

With respect to paragraph 3 of article 44 of the Convention, Morocco stated that if the extradition request was based on numerous distinct acts, each punishable according to the law of the requesting State Party and Moroccan law by deprivation of liberty, some of these acts being punishable by a sentence of less than one year's imprisonment, the extradition would be accepted for the sum of these crimes if the maximum penalty for all of them according to the law the requesting State was at least two years imprisonment.

Morocco also noted that out of the 40 requests for extradition received in 2009, two were related to the application of this measure. No related request was recorded in 2010.

(b) Observations on the implementation of paragraph 3 of article 44

In their response, Morocco affirms that their country is in compliance with the above provision. If the extradition is based on numerous distinct acts, each punishable according to the law of the requesting State Party and Morocco law by deprivation of liberty, some of these acts being punishable by a sentence of less than one year's imprisonment, the extradition is accepted for the sum of these crimes if the maximum penalty for all of them according to law of the requesting state is at least two years imprisonment. The information provided by Morocco is applicable for all types of offences, including those covered by the Convention.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be

concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of paragraph 4 of article 44

The State party under review has referred to article 720 of the Penal Procedure Code and noted that it has concluded several bilateral agreements of judicial cooperation in the field of extradition. These extradition agreements provided for crimes in general, including those to which the Convention against Corruption applies. The State party under review further added that there were some crimes (for example, those relating to exchange, taxes or customs) where extradition might be carried out without the necessity of communication between the two countries concerned. Article 32 of the Convention of Extradition between Morocco and France is an example of such provision.

As an example of bilateral extradition treaty, the State party under review cited the Agreement on Judicial Cooperation signed by the Kingdom of Morocco and the People's Republic of Poland in Warsaw on the 21st May, 1979, which provides for extradition for offences punishable according to the laws of both State Parties by imprisonment for a year or more, or by a more severe penalty.

(b) Observations on the implementation of the article

Morocco stated that it is in compliance with paragraph 4 of article 44 of the Convention and cited article 720 of the Moroccan Penal Code in support of this response. While Morocco has concluded judicial cooperation agreements in the field of extradition, it is not clear at which instance they use the Convention as the basis of extradition. Also, if Morocco made use of the provisions of the Convention, would it grant extradition regardless of the claim, by an accused/suspect, of the political offence exception? Another question that would arise in case Morocco uses the Convention is how Morocco ranks it with other bilateral treaties and how does Morocco deal with possible conflicts between these instruments. As already remarked above, it is presumed that the said bilateral treaties would exclude the granting of extradition of foreign public officials and officials of public international organizations as Morocco has not criminalized these offences and strictly adhered to the principle of dual criminality.

Morocco also invoked the provisions of paragraph 6 of article 46 and paragraph 18 of article 44 whereby bilateral agreements have precedence over international conventions.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of paragraph 5 of article 44

Morocco noted that it considered the Convention as the legal basis for extradition in respect to any offence to which article 44 applies, and has cited article 713 of the Moroccan Penal Procedure Code, according to which priority will be given in the Moroccan legal system to international agreements with regard to judicial cooperation with foreign countries.

It further noted that the application of this measure in the absence of a bilateral agreement between the two countries is dependent on whether the countries concerned have both ratified the Convention.

The Moroccan judicial authorities received two extradition requests of this kind in 2008. No requests for the implementation of this procedure were recorded in 2009 or 2010.

(b) Observations on the implementation of paragraph 5 of article 44

In response, Morocco indicated that it uses the Convention as the legal basis for extradition in respect to any offence to which the article under review applies. In terms of article 713 of the Morocco Penal Code, priority is given to foreign countries with which they have concluded judicial cooperation agreements. The information provided by Morocco indicates that extradition is not conditional to the existence of a treaty: in the absence of bilateral treaties, the provisions of Chapter IV of Title III of the Penal Procedure Code on extradition would apply. Moreover, the application of the Convention in the absence of bilateral treaties, is dependent on whether the countries concerned have ratified the Convention which forms the subject of this review. The Moroccan Judicial Authorities received two extradition requests of this kind in 2008 (no requests were recorded in 2009 or 2010).

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of paragraph 6 of article 44

Morocco reported that it partially adopted the measures described in subparagraph 6 (b), and referred to article 713 of the Penal Procedure Code, which provides that priority will be given to international agreements with regard to judicial co-operation with foreign countries, and that the provisions on international cooperation and extradition of the Penal Procedure Code are applicable only where no agreement exists or in the absence of agreements containing these provisions.

In the field of judicial cooperation, including that of extradition, Morocco authorises a range of mechanisms. Among these are agreements of bilateral judicial cooperation and agreements of international cooperation which have been recognised by Morocco. In this context, Morocco has concluded several agreements with other countries dealing generally with the field of judicial cooperation, including with respect to matters covered by the Convention.

(b) Observations on the implementation of paragraph 6 of article 44

The information provided by Morocco indicates that extradition is not conditional to the existence of a treaty: in the absence of bilateral treaties, the provisions of Chapter IV of Title III of the Penal Procedure Code on extradition would apply. Therefore Morocco does not need to take specific action in accordance with paragraph 6 of article 44

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of paragraph 7 of article 44

Morocco again referred the experts to article 713 of the Penal Procedure Code, and noted that there had been cases where it had responded to requests for extradition, despite the absence of bilateral agreement with the country requesting the extradition. Nevertheless, the requests were acceded to by the application of an international agreement recognised by both the countries concerned. An example of this would be two extradition requests received and responded to in 2008.

(b) Observations on the implementation of paragraph 7 of article 44

Morocco has partially implemented paragraph 7 of article 44 of the Convention, which makes it mandatory for States Parties that do not make extradition conditional on the existence of treaty to recognize offences to which this article applies as extraditable offences between themselves

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of paragraph 8 of article 44

Morocco referred the examiners to article 713 of the Penal Procedure Code which provides that in the absence of an international agreement for judicial cooperation, or of any agreement for cooperation, the domestic law shall apply. It noted that this provision is implemented, given that the manner in which extradition requests received by the judicial authorities of Morocco have been dealt with indicates that extradition is subject to the conditions provided for by Moroccan law.

(b) Observations on the implementation paragraph 8 of article 44

Morocco partially complies with paragraph 8 of article 44 of the Convention, which provides that extradition shall be subject to conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

Article 44 Extradition

Paragraphs 9 and 10

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of paragraphs 9 and 10 of article 44

Morocco stated that it has implemented the provisions of paragraphs 9 and 10 of article 44 as extradition requests received by the Moroccan judicial authorities are dealt with swiftly at the judicial level and responded to promptly and decisively. It has also provided the text of articles 729 to 731 of the Penal Procedure Code, which provide for the temporary arrest of sought persons. These provisions read as follows:

Article 729:

The Royal Prosecutor of the Court of First Instance or one of his deputies may, in a case of urgency and upon a request made directly from the judicial authorities of the requesting State Party, or upon notification by the International Criminal Police Organisation (Interpol), order the temporary arrest of a foreign national as soon as notification is received, by mail or by any more rapid means of communication which leaves a written or material trace on the documents described above in Item 1 of Article 726.

An official request must be sent at the same time and through diplomatic channels to the Minister of Foreign Affairs.

The Royal Prosecutor must immediately notify both the Minister of Justice and the Royal Prosecutor of the High Court of the measures taken in this arrest.

Article 730:

The prisoner must be presented to the Royal Prosecutor of the Court of First Instance or one of his deputies within twenty-four hours of his arrest, in order to be identified and informed of the basis for his arrest. A recording of this procedure must then be made.

Article 731:

The person arrested is to be conveyed at the earliest opportunity to a custodial institution at the headquarters of the High Court.

(b) Observations on the implementation of paragraph 9 and 10 of article 44

Morocco stated that their country is in compliance with paragraph 9 of article 44 and that extradition requests received by the Moroccan judicial authorities are dealt with, at the judicial level, swiftly and decisively.

The reviewing experts are of the opinion that the information provided by Morocco suggests that it is in compliance with the Convention as it appears that it has introduced specific measures to expedite the process.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of paragraph 11 of article 44

Morocco reported that it is in compliance with the provision of paragraph 11 of article 44 and has provided the text of article 749 of the Penal Procedure Code. It further stated that the Moroccan judicial authorities received 26 such official complaints from foreign authorities in 2009, and 12 official complaints from foreign authorities in 2010.

Article 749:

In the event of continued official complaint from a foreign country, Morocco may prosecute a Moroccan citizen who has committed a crime either abroad or on domestic territory. The Moroccan citizen can not be extradited because of his Moroccan nationality. He will be tried and sentenced according to Moroccan law.

(b) Observations on the implementation of paragraph 11 of article 44

Morocco complies with paragraph 11 of article 44 of the Convention. As demonstration, Morocco has adopted and implemented above measures. It would be interesting to ascertain

the practical application of the above measures, especially the issues of cooperation – procedural and evidentiary aspects.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of paragraph 12 of article 44

Morocco reported that it has not implemented this provision, as the Moroccan legal system does not allow the extradition of its citizens

(b) Observations on the implementation of paragraph 12 of article 44

Morocco does not comply with paragraph 12 of article 44 of the Convention against Corruption.. This is based on their law of non-extradition of nationals.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of paragraph 13 of article 44

Morocco reported that it has not implemented this provision, as the Moroccan legal system does not allow the extradition of its citizens. It further noted that the issue is not linked to regulation or suitable time limit but rather to the specificities of its legal system, which does not permit the extradition of Moroccan citizens. Thus, extradition requests for implementation of a sentence issued by a foreign authority for Moroccan citizens may not be granted. If the matter is related to the penalty or issued sentence of a foreign authority, they must present an official complaint on the subject.

(b) Observations on the implementation of paragraph 13 of article 44

Morocco does not comply with paragraph 12 of article 44 of the UNCAC. This is based on their law of non-extradition of nationals.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of paragraph 14 of article 44

Morocco reported that it is in compliance with paragraph 14 of article 44 of the Convention and provided the text of article 723 of the Penal Procedure Code, which provides that “extradition is only accepted on the condition that the person extradited shall not be prosecuted, tried, arrested, or subjected to any other measures which would curtail his personal liberty, on account of any act made prior to the date of extradition, apart from the act for which he is being extradited.” It further noted that the Moroccan law guarantees these measures for all persons, regardless of the nationality of those persons requested for extradition, just as the Moroccan judiciary guarantees these rights for all defendants, As demonstrated by trials before the Moroccan judicial authorities in which all persons requested for extradition enjoyed fair treatment. The evidence for this lies in the fact that no sought person has ever presented a complaint or evidence of unfair treatment during his appearance before the competent judicial authorities.

(b) Observations on the implementation of paragraph 14 of article 44

Morocco is in compliance with the provision, as Moroccan law guarantees these measures for all persons, regardless of the nationality of those persons requested for extradition.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of paragraph 15 of article 44

Morocco reported that it is in compliance with paragraph 15 of article 44 of the Convention and provided the text of article 721 of the Penal Procedure Code, which provides as follows:

Article 721:

Extradition shall not be granted:

1. If the person requested for extradition is a Moroccan citizen and was defined as such at the time when the act was committed for which extradition is being sought.

2. If the act for which extradition is sought is considered to be a political crime or related to a political crime.

This rule also applies if the Moroccan authorities believe, with good reason, that the extradition request is based on an ordinary crime that has not been presented for any other reason than to prosecute or punish that person for considerations of race, religion, nationality or political views, and that this person would be exposed to risk of harm or danger on account of any one of these considerations.

Morocco further noted that this measure is a fundamental principle of the legal and judicial system of Morocco. If a request for extradition is contrary to it, the judicial system will always guarantee to uphold this principle.

(b) Observations on the implementation of paragraph 15 of article 44

Morocco will, as provided in paragraph 15 of article 44, refuse extradition on the grounds of nationality or if extradition is sought for a political crime (or an act is related to a political crime)(article 721 of Morocco Penal Code). This rule also applies if the Moroccan authorities believe, with good reason, that the extradition request is based on an ordinary crime that has not been presented for any other reason than to prosecute or punish that person for considerations of race, religion, nationality/political views, and that the person would be exposed to risk of harm or danger on account of any one of these considerations.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of paragraph 16 of article 44

Morocco reported that it is in compliance with paragraph 16 of article 44 of the Convention and provided the text of article 720 of the Penal Procedure Code, which provides as follows:

Article 720:

The following acts can be invoked either to request or approve extradition:

1. All acts which are punishable according to the Penal Code of the requesting State Party.
2. Acts which are punishable according to the Penal Code of the requesting State Party by deprivation of liberty, if the maximum sentence is deemed by these laws to exceed one year, or if the person has been convicted by one of the courts of the requesting State Party when the sentence is equal to or exceeds four months.

Morocco also noted that compliance with paragraph 16 of article 44 has been made evident in the treatment of extradition requests brought before the Moroccan judicial authorities where the case was related to fiscal matters, such as in the case of an extradition request made for the crime of money laundering in 2010.

(b) Observations on the implementation of paragraph 16 of article 44

In terms of article 722 of the Moroccan Penal Code, Morocco complies with paragraph 16 of article 44 of the Convention.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of paragraph 17 of article 44

Morocco reported that it is in compliance with paragraph 14 of article 44 and provided the text of article 738 of the Penal Procedure Code, which provides that I “if it is found that the information provided by the requesting State is insufficient to allow the Moroccan authorities to make a decision, the Moroccan authorities may request and specify the necessary supplementary information”. It further reported that the Moroccan authorities had consulted with foreign authorities following extradition requests which could have been refused, an provided the example of article 32 of the 1957 extradition agreement between France and Morocco, according to which there must be an exchange of communication between the countries concerned, prior to any refusal of an extradition request for a crime relating to currency exchange, taxes or customs.

(b) Observations on the implementation of paragraph 17 of article 44

Morocco complies with paragraph 17 of article 44 of the Convention..

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of paragraph 18 of article 44

Morocco has concluded more than thirty various bilateral agreements with foreign states regarding the extradition of criminals, most of which reinforce and uphold the mechanisms of extradition. According to article 713 of the Penal Procedure Code, international agreements with regard to judicial co-operation with foreign countries are given priority over national legislative provisions.

(b) Observations on the implementation of paragraph 18 of article 44

The above is a clear indication that Morocco complies with paragraph 18 of article 44 of the Convention.

Challenges for article 44

Morocco has identified the following challenges and issues in fully implementing article 44 of UNCAC:

1. Specificities in our legal system;

Technical assistance needs for article 44

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned.
2. Legal advice

None of these forms of technical assistance has been provided in the past.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of article 45

Morocco reported that it is partially in compliance with article 45 of the Convention, as it has implemented this provision in the framework of specific bilateral or multilateral agreements and arrangement. Relevant provisions cited include article IV of the agreement between Morocco and Belgium to assist persons in detention and transfer sentenced persons to their homeland, which reads as follows:

Article IV of the Agreement

It is incumbent upon the relevant authorities of the accusing foreign State to notify all sentenced persons in the care of the country of the applicable sections of this agreement, with regards to the possibility of transferring him to his country of origin to serve out his sentence.

The Minister of Justice may, either automatically or at the request of the sentenced person if he is Moroccan, present a request to the foreign country in which the sentenced person is being held to transfer him to Morocco to serve out his sentence or the remainder thereof.

He may also, at the request of the foreign country, transfer the person sentenced to deprivation of liberty by their courts to Morocco to carry out his sentence or the remainder thereof, if the sentenced person is Moroccan and the following conditions apply:

1. The sentenced person agrees to the transfer in writing, or by any other means legally recognised by Moroccan law and the law of the foreign State.
2. The issued sentence is in *res judicata*.
3. The act for which the sentence has been issued is a crime under Moroccan law.

4. The same act has not been tried in Moroccan courts and the person either acquitted or condemned, a sentence has already been passed by Moroccan law on account of this act, a long period of time has elapsed, or a pardon has been granted.
5. The implementation of the sentence is not inconsistent with the fundamental principles of Moroccan law.
6. The remainder of the sentence is no less than a year at the time at which the request is made.

Morocco further provided the texts of articles 749.10 and 749.14 of the Draft Amendment to the Penal Code, which provide for the possibility to transfer a person convicted in Morocco to a foreign state to serve a sentence of deprivation of liberty if certain conditions are met. It further noted that it had received 63 requests during 2010, and had responded to most of those that met the conditions required by law. Morocco had received 29 requests in 2009.

Article 749.10:

It is permissible to transfer a person, sentenced by Moroccan courts to deprivation of liberty, to a foreign state to carry out his sentence or the remainder thereof if the sentenced person is one of its nationals and the following conditions are met:

1. The sentenced person agrees in writing or by equivalent legal means if his age or physical or mental health does not permit this.
2. The sentenced persons upholds to pay any fines, court costs, compensation payments, or any financial penalty of any kind that he has been sentenced to perform.
3. The transfer is dependent upon the acceptance of the country of the sentenced person.

(b) Observations on the implementation of article 45

Morocco is partially compliant with this provision. It has concluded an agreement with Belgium in this regard, and is to enact into law draft articles 749.10 and 749.14 of the Penal Procedure Code to fully implement this provision.

(c) Challenges for article 45

Morocco has identified the following challenges and issues in fully implementing article 45 of UNCAC:

1. Specificities in its legal system
2. Limited capability
3. Limited resources

d) Technical assistance needs for article 45

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Legal advice
2. Programmes to enhance the capabilities of the authorities responsible for international cooperation in criminal matters.
3. Field assistance from an expert in the relevant area.

None of these forms of technical assistance has been provided in the past.

Article 46 Mutual legal assistance

Paragraphs 1 and 2

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of paragraphs 1 and 2 of article 46

There is no separate law regulating mutual legal assistance in Morocco. The Penal Code and Penal Procedure Code deal with these matters. Morocco referred the examiners to article 713 of the Penal Procedure Code, first article of Section III of the Penal Procedure Code on Judicial Relations with Foreign Authorities, which stipulates that priority over national laws will be given to international agreements with regard to judicial co-operation with foreign countries.

Morocco also reported that the Moroccan judicial authorities had received 241 requests for legal assistance in 2009, four of which related to money laundering, one to smuggling of funds, and two to embezzlement of public funds. In 2010, the Moroccan judicial authorities had received 24 requests for legal assistance relating to money laundering, and two requests for legal assistance related to bribery.

Morocco further informed the reviewing experts that the Moroccan judicial authorities have dealt with requests for judicial cooperation from the requesting State Party with the required speed, and with joint cooperation with representatives of foreign judicial authorities to carry out judicial requests for legal assistance.

With respect to paragraph 2 of article 46, Morocco provided the text of article 715 of the Penal Procedure Code, which provides that “international judicial requests for legal assistance arriving from abroad will be dealt with in the same manner as requests for legal assistance issued from within the territories of Morocco, and in accordance with Moroccan legislation.” However, Morocco did not provide further information relating to the treatment of mutual legal assistance requests pertaining to offences for which legal persons might be held liable.

(b) Observations on the implementation of paragraphs 1 and 2 of article 46

Morocco is in compliance with paragraphs 1 and 2 of article 46 of the Convention. However, clarity is sought regarding the ranking on mutual legal assistance under the Convention and bilateral treaties, especially where there is a conflict between the Convention and any bilateral treaty. (During the onsite visit, the Moroccan officials said they would use the Convention as the basis, yet they rank bilateral treaties in the criminal code as priority).

Article 46 Mutual legal assistance

Subparagraphs 3 (a) to 3 (h)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of subparagraphs 3(a) to (h) of article 46

With regard to the purposes for which mutual legal assistance may be requested, listed in subparagraphs 3 (a) to 3 (h) of article 46, Morocco cited examples of legal provisions and bilateral international agreements which made reference to specific instances of mutual legal assistance, such as:

- Article 715 of the Penal Procedure Code,

.Article 715:

Requests for legal assistance from outside the country will be implemented in the same manner as requests for legal assistance issuing from within the territories of the Kingdom, and in accordance with its legislation.

The Justice Minister may notify a representative of the foreign authority when a request for legal assistance has been carried out, such as statements taken.

However, the request for legal assistance will not be implemented if it lies outside the jurisdiction of the Moroccan judicial authorities, or if its implementation would compromise the sovereignty, security, ordre public or other essential interests of the Kingdom of Morocco.

Requests for legal assistance arriving from abroad should be sent through diplomatic channels but may, in cases of emergency, be sent directly to the relevant judiciary.

However, in the event that a request has been sent directly, the authorities of the requesting State Party must not know the outcome of the request until after the aforementioned copies have arrived by diplomatic means.

Responses to requests for legal assistance will be returned through diplomatic channels.

- Articles 746 of the Penal Procedure Code.

Article 746:

If a foreign country deems it necessary for a witness resident in Moroccan territory to be present at an interview in the event of an accusation made against him, the Moroccan authorities, to whom the request has been presented through diplomatic channels, shall call upon the witness to answer to the charges made against him.

However, this call upon the witness shall only be made on the condition that no prosecution or restriction on personal liberty shall be enforced on account of acts or sentences completed prior to his presence at the interview.

Article 747:

All persons detained in Moroccan custodial institutions whose personal presence is requested by the requesting State, for the purpose of bearing witness or similar measures, may be transferred temporarily to the requesting State, on condition of his return at a time determined by the Moroccan authorities.

- Chapter I of an agreement signed by Morocco and the United States of America., providing that

Chapter I:

Both State Parties pledge mutual cooperation in accordance with this agreement to carry out search requests and judicial proceedings.

(d) Service of judicial documents.

(g) to implement requests requiring searches for and interviews of the persons concerned, and requiring inspection and detention measures.

Chapter XII:

The central authorities of one country may notify the central authority of the other country of funds and merchandise present in its territory with the aim of seizing and confiscating it, should this measure be necessary.

Chapter XII: The confiscation of funds and merchandise in relation to drug smuggling.

The central authority of the requesting State Party may notify the central authority of the requested State Party of the presence in its territories of funds or merchandise, with the aim of seizing and confiscating it, in accordance with current legislation of the above-mentioned State Party.

- the Agreement of Judicial Cooperation between Morocco and Spain.

Article Four: Implementation of Requests

The requested State Party will, in accordance with its legislation, implement requests for judicial cooperation which aim to examine evidentiary dossiers, files or documents.

The requested State Party may send certified copies of these files or documents. However, in

the event that the requesting State Party has sought the originals, their request will be carried out as far as possible.

-A bilateral agreement concluded between Morocco and Portugal in the field of judicial cooperation with regards to crime

Article One:

Both State Parties pledge to take part in mutual judicial cooperation in criminal matters, in accordance with the rules laid down in this agreement:

Dispatch of evidentiary items.

2. Exchange of information.

Morocco also provided statistical data on the nature of judicial requests for legal assistance it has received in 2010. More specifically, Morocco has received:

- 211 requests for legal assistance from various countries, which have included requests for interviews with certain persons;
- 273 requests for service of judicial documents from various countries, which were communicated to those concerned (233 such requests were received in 2009);
- 75 requests were related to procedures of seizure and freezing (year of submission of the requests was not specified);
- 10 requests related to the investigation of objects and relevant steps (year of submission of the requests was not specified);
- 197 requests for the provision of information, evidentiary items and expert evaluations (year of submission of the requests was not specified);
- 67 requests relating to the dispatch of bank records and bank statements;
- 35 requests relating to Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- 197 requests for other forms of legal assistance.
- Also, in 2009 the Moroccan judicial authorities acceded to a request by the English authorities to facilitate the voluntary appearance of persons in the requesting State Party.

(b) Observations on the implementation of subparagraphs 3(a) to (h) of article 46

Morocco provides a number of forms of legal assistance in accordance with article 715 of their Penal Procedure Code (cited above) and agreements reflected below. Furthermore, they have concluded the judicial cooperation agreement with the USA, which provides the carrying out of searches, interviews of persons. They have a similar agreement with Spain providing for assistance in examining evidentiary dossiers, files or documents. The other similar agreement with Portugal provides for assistance in dispatching evidentiary items and exchange of information. The agreement with the United States of America provides for seizing and confiscation of funds and merchandise in relation to drug smuggling. Articles 746 and 747 of the Moroccan Penal Code facilitate the voluntary appearance of persons in requesting State Party. The agreement between Morocco and Spain provides for the confiscation of the proceeds of crime.

While noting with appreciation a number of treaties concluded by Morocco, it is advisable that they consider concluding similar agreements with State Parties to the Convention so as to

strengthen cooperation amongst States Parties to the Convention. The need to address the gap on asset recovery is noted.

Article 46 Mutual legal assistance

Subparagraphs 3 (j) and 3 (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of paragraphs 3(j) and (k) of article 46

With regards to subparagraph 3 (j) of article 46, Morocco referred to the text of the agreement of judicial cooperation between Morocco and the United States of America, cited above.. It further reported that a number of requests of that kind had reached the Moroccan judicial authorities, of which 22 related to money laundering were implemented.

The State party under review indicated that it was only partially in compliance with the provision of subparagraph 3 (k) of article 46, as there is no domestic legal provision which allows such a possibility. It noted nevertheless, that there are bilateral agreements that could allow for such a possibility, when implementation of this measure is allowed by the domestic legislation of the requested State Party. In that context,, the example of article 23 of the bilateral agreement for judicial cooperation in criminal matters existing between the Kingdom of Morocco and the Kingdom of the Netherlands. Article 23 provides as follows:

“The requested State Party shall, to the extent allowed by its legislation, estimate the possibility of returning the proceeds of crime to the requesting State Party, while taking into account the bona fide rights of others”.

(b) Observations on the implementation of paragraphs 3(j) and (k) of article 46

It is noted that Morocco has no domestic legal provision regulating mutual legal assistance for the purpose of asset recovery, as provided for in subparagraph 3 (k) of article 46. Without domestic law providing identification, freezing and tracing of proceeds of crime, Morocco will be unable to reciprocate despite the concluded bilateral treaties providing for these measures.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority

in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of paragraph 4 of article 46

Morocco referred to the examples given under subparagraph 3(e) of article 46, where it provided the example of a bilateral agreement concluded between Morocco and Portugal in the field of judicial cooperation with regards to crime. Article 1 of this agreement addresses the issue of transmittal of information in the following terms: “Both State Parties pledge to take part in mutual judicial cooperation in criminal matters, in accordance with the rules laid down in this agreement: 1. Dispatch of evidentiary items. 2. Exchange of information”.

No further information on spontaneous transmittal of information relating to criminal matters was provided. It was noted, however, that the Moroccan authorities received 198 requests for judicial cooperation of this kind in 2010.

Morocco also made reference to other bilateral agreements concerning the exchange of information and evidence, including the Moroccan-French Agreement, published in the *Official Gazette* in 2011.

(b) Observations on the implementation of paragraph 4 of article 46

Morocco indicated that they are in compliance with paragraph 4 of article 46.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of paragraph 5 of article 46

With regard to the confidentiality requirement provided for in paragraph 5 of article 46, Morocco provided the text of article 12 of the agreement of judicial cooperation concluded between Morocco and Portugal, which addresses the issue in general terms and not specifically in the context of spontaneous transmittal of information, and reads as follows:

Article 12

The requested State Party maintains, if requested to do so, the confidentiality of the request for judicial cooperation both in terms of its content or its supporting documents.

The requesting State Party maintains, if requested to do so, the confidentiality of evidentiary proof and information given by the requested State Party which is not necessary for the procedure referred to in the request.

Morocco further indicated that the Moroccan judicial authorities received 37 requests in 2010 which stipulated confidentiality. Therefore, it seems as if Morocco's approach is to under all circumstances treat such information confidential.

(b) Observations on the implementation of paragraph 5 of article 46

It is observed that Morocco is in compliance with paragraph 5 of article 46 in that the above safeguard is provided in general terms in their bilateral agreements such as the one concluded with Portugal.

Article 46 Mutual legal assistance

Paragraph 6

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of paragraph 6 of article 46

Morocco referred the reviewing experts to article 713 of the Moroccan Penal Code, which provides that priority over national laws will be given to international agreements with regard to judicial cooperation with foreign countries.

(b) Observations on the implementation of paragraph 5 of article 46

Implementation of this provision does not call for particular observations.

Article 46 Mutual legal assistance

Paragraph 7

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

(a) Summary of information relevant to reviewing the implementation of paragraph 7 of article 46

Morocco cited article 713 of the Penal Procedure Code, according to which priority over national laws is given to international agreements with regard to judicial cooperation with foreign countries.

It further stated that the agreements concluded by Morocco with other countries are of general jurisdiction with respect to the field of judicial cooperation, and they are not limited to a

particular area. Therefore, judicial cooperation in the fight against corruption implicitly falls within the areas of judicial cooperation in general.

During the country visit, it was confirmed that international cooperation is based on reciprocity. A treaty, joint statement between the countries concerned or Memorandum of Understanding is required. If Morocco does not have a treaty or agreement with a country, Chapter IV of the Convention can be utilised as basis for mutual legal assistance. Furthermore, the Moroccan constitution guarantees the supremacy of international conventions and treaties.

(b) Observations on the implementation of paragraph 7 of article 46

Morocco complies with paragraph 7 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of paragraph 8 of article 46

Morocco reported that it is in compliance with this provision and cited as example article 3 of the Agreement of Judicial Cooperation between the Kingdom of Morocco and the Kingdom of the Netherlands, which provides that a State Party shall not use bank secrecy as grounds to refuse of judicial cooperation.

The reviewing experts were also informed that the Moroccan judicial authorities received upwards of 37 requests for disclosure of bank statements and financial assets contained in bank accounts, which were responded to and implemented without being screened for bank secrecy, as long as the requests were made in the context of judicial investigations.

(b) Observations on the implementation of paragraph 8 of article 46

Morocco complies with paragraph 8 of article 46 of the Convention

Article 46 Mutual legal assistance

Paragraph 9

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of paragraph 9 of article 46

Morocco referred once again to article 713 of the Penal Code on the priority given to international agreements with regard to judicial cooperation with foreign countries. It indicated that over the past three to five years, the Kingdom of Morocco has provided assistance using the following measures that it qualified non-coercive: Providing information, investigation and detention proceedings, interviews with witnesses. It further noted that the Moroccan judiciary carries out requests for judicial cooperation with full respect for the law, and for the personal rights and freedoms guaranteed to individuals by law.

Morocco indicated that while it considers dual criminality to be a requirement for international cooperation, this requirement is deemed fulfilled irrespective of whether the Moroccan law and the law of the requesting State denominate the offence by the same terminology: the existence of similar crimes in the two legal systems is sufficient to engage in international cooperation. However, Morocco could not clarify in which cases dual criminality is required for responding to requests of mutual legal assistance, and stated that it has not implemented subparagraph 9 (c) of article 46.

(b) Observations on the implementation of paragraph 9 of article 46

Morocco has no measures in place to render assistance in the absence of dual criminality as provided for in paragraph 9 of article 46. However, Morocco uses article 713 of the Moroccan Penal Code, allowing assistance to countries with which they have concluded judicial cooperation agreements. Morocco is also encouraged to use article 46, paragraph 9 (c) of the Convention to allow for mutual legal assistance in the absence of dual criminality.

Article 46 Mutual legal assistance

Paragraphs 10, 11 and 12

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

- (a) The person freely gives his or her informed consent;*
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of paragraphs 10 to 12 of article 46

Morocco provided the texts of articles 746 and 747 of the Penal Procedure Code, which read as follows:

Article 746:

If a foreign country deems it necessary for a witness resident in Moroccan territory to be present at an interview in the event of an accusation made against him, the Moroccan authorities, to whom the request has been presented through diplomatic channels, shall call upon the witness to answer to the charges made against him.

However, this call upon the witness shall only be made on the condition that no prosecution or restriction on his personal liberty shall be enforced on account of acts or sentences completed prior to his presence at the interview.

Article 747:

Any person detained in a Moroccan custodial institution whose personal presence is requested by a requesting State Party for the purposes of providing testimony or similar measures, may be transferred temporarily to the requesting State, on condition of his return at a time determined by the Moroccan authorities.

The request is submitted through diplomatic channels.

The transfer may be refused:

- If the person detained does not accept it;
- If it appears that his/her presence is required for a criminal matter pending in Morocco;
- If the transfer would delay the length of his/her detention;
- If particular considerations do not allow his/her transfer to the requesting State.

The person who has been transferred in this manner will remain in the custody of the requesting State Party, unless the sentence being served has elapsed and the Moroccan state requests his release.

The time served by the person in question in prison at the requesting State shall be taken into consideration for his conviction in Morocco and shall be deducted from the sentence he/she is serving.

Morocco also mentioned that a request was made by the Belgian authorities for the transfer of a witness in 2009, which the Moroccan authorities carried out after the witness agreed to the transfer. The witness remained in Belgian custody until the time of his return to Morocco.

(b) Observations on the implementation of paragraphs 10 to 12 of article 46

As set out in article 746 of the Penal Procedure Code above, Morocco is in compliance with paragraph 10 of article 46.

In the same vein, Morocco complies with paragraph 11 of article 46, but it is observed that it does not have an equivalent legal provision in respect of subparagraph 11 (c) of article 46. As indicated in article 746 of Penal Procedure Code above, Morocco is also in compliance with paragraph 12 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of paragraph 13 of article 46

Morocco indicated that it had established the Ministry of Justice as Central Authority and that it had notified the Secretary General of the United Nations thereof.

The aims of the Central Authority have been specified in all bilateral agreements concluded between Morocco and other countries. As example, it cited article 14 of the Agreement of Judicial Cooperation concluded between Morocco and Portugal, which provides that requests for judicial cooperation and other information between the two countries shall be made through diplomatic channels, or through their central authorities.

Although Morocco allows that requests for mutual legal assistance and any related communications be transmitted to the central authorities designated by States Parties, it requires that such requests and communications be submitted through diplomatic channels. At the same time, it allows, in urgent circumstances, requests for mutual legal assistance and related communications to be submitted through the International Criminal Police Organization (INTERPOL).

(b) Observations on the implementation of paragraph 13 of article 46

Morocco has a Central Authority as required by paragraph 13 of article 46. The Ministry of Justice of the Kingdom of Morocco is the Central Authority, and the Secretary-General of the United Nations has been notified accordingly.

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of paragraph 14 of article 46

Morocco reported that it is in compliance with paragraph 14 of article 46 of the Convention and cited as example the text of article 17 of the Agreement of Judicial Cooperation concluded between Morocco and Portugal, which provides that requests for judicial cooperation and accompanying documents will be written in the language of the requesting State Party, and accompanied by a copy translated into the language of the requested State Party.

(b) Observations on the implementation of paragraph 14 of article 46

Although Morocco does not have a general provision confirming this requirement, the treaties entered into by Morocco with other State Parties clearly indicate that Morocco at all times comply with paragraphs 14, 15 and 16 of article 46. See for examples, the treaties concluded with Spain, Portugal and Turkey.

Article 46 Mutual legal assistance

Paragraph 15

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

(a) Summary of information relevant to reviewing the implementation of paragraph 15 of article 46

Morocco reported that it is in compliance with paragraph 15 of article 46 and cited as example the text of article 16 of the Agreement of Judicial Cooperation between Morocco and Spain on the form and content of a request for judicial cooperation:

Article 16:

Requests for judicial cooperation must contain the following information:

The authority issuing the request

The reason for the request

(b) Observations on the implementation of paragraph 15 of article 46

The information provide by Morocco only partially complies with paragraph 15 of article 46.

Article 46 Mutual legal assistance

Paragraph 16

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of paragraph 16 of article 46

Morocco reported that it is in compliance with paragraph 16 of article 46 and cited as example the text of article 33 of the Agreement of Judicial Cooperation concluded between Morocco and Turkey, which reads as follows:

“If the requested State Party requires supplementary information which is essential to confirm that the conditions of this section of the agreement are available and it appears that the omission would correct this, then it may notify the requesting State Party of this omission and specify the information required before refusing the request.”

Morocco reported that it had required additional information in the following cases:

1. Specification of the required measures, especially when it has received requests which are limited to a request to carry out all necessary measures to conduct a search.
2. A detailed description of acts attributed to the suspect.

(b) Observations on the implementation of paragraph 16 of article 46

Morocco complies with paragraph 16 of article 46 of the Convention, as these provisions are contained in a number of treaties concluded by them. See for example the treaties concluded with Spain, Portugal and Turkey).

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of paragraph 17 of article 46

Morocco reported that it is in compliance with paragraph 17 of article 46 and referred to article 715 of the Penal Code, according to which international judicial requests for legal assistance arriving from abroad will be dealt with in the same manner as requests for legal assistance issued from within the territories of Morocco, and in accordance with Moroccan

legislation. At a practical level, requests for judicial cooperation were implemented according to domestic law.. Exceptionally, requests for judicial cooperation may be implemented according to formalities requested by the country concerned, if they are not in conflict with Moroccan law.

(b) Observations on the implementation of paragraph 17 of article 46

As set out in article 715 of the Penal Procedure Code, Morocco complies with paragraph 17 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of paragraph of article 46

Morocco stated that it has partially implemented paragraph 18 of article 46 of the Convention and that it has undertaken a draft law allowing and regulating the use of communication technology in the courtroom and during investigations. It has provided the text of the draft articles 193.1 and 193.2 of the Penal Code.

Article 193.1:

If there are good reasons why a witness, expert or claimant may not appear in the court, or the presiding judge has excused his presence, the judge may, after representation from the public prosecutor, decide to hear his statements, examine him or cross-examine him using communication technology.

This is an option only where the possibility exists of appropriate technological means for accomplishing it.

Article 193.2:

The judge shall send a judicial mandate to the magistrate of the court which has jurisdiction over the person concerned, stating the reasons that justify the resort to communications technology, along with the identity of the person or persons forming the subject of this action, and determining the required task and the date and time of its implementation.

The appointed judge shall summon the person or persons on the determined date to the office or room equipped with communications technology, and shall notify the public prosecutor thereof.

The taking of the statement, examination or cross-examination shall be carried out by the presiding judge who issued the mandate.

The articles cited above are only draft proposals and have not been implemented yet.

(b) Observations on the implementation of paragraph 18 of article 46

At present Morocco partially complies with paragraph 18 of article 46 of the Convention. Once amendments 193.1 and 193.2 to the Penal Code have been implemented, Morocco will be fully compliant.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of paragraph 19 of article 46

Morocco holds the view that it has implemented the provision in question, as it respects the confidentiality of information provided by the country concerned in accordance with the bilateral agreement concluded, such as the Agreement for Judicial Cooperation concluded between Morocco and the United State of America. Chapter VII of this bilateral agreement provides that “The requesting State Party may not, without the agreement of the requested State Party, make use of evidence obtained according to this agreement for aims other than those referred to in the request”. In general, the Moroccan judicial authorities respect the principle of confidentiality of information presented by foreign states.

(b) Observations on the implementation of paragraph 19 of article 46

Although there is no general legislative provision confirming Morocco’s position, all indications are that Morocco, by way of treaties, complies with paragraph 19 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of paragraph 20 of article 46

Morocco stated that paragraph 20 of article 46 has been implemented through international bilateral agreements, such as article 12 of the Agreement for Judicial Cooperation concluded between Morocco and Portugal. Article 12 of this bilateral agreement reads as follows:

Article 12:

1. The requested State Party will, at the request of the requesting State Party, maintain the confidentiality of the request for judicial cooperation, both in terms of content and supporting documentation. If it is not possible to implement a request without a breach of confidentiality, the requested State Party will notify the requesting State Party of this, in order for the requesting State Party to decide if the request can be implemented under these circumstances.

(b) Observations on the implementation of paragraph 20 of article 46

As indicated above, Morocco complies with paragraph 20 of article 46 of the Convention..

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

(a) Summary of information relevant to reviewing the implementation of paragraph 21 of article 46

Morocco reported that it is in compliance with paragraph 21 of article 46 of the Convention. It has provided a series of legal provisions that regulate refusal of requests for mutual legal assistance:

Article 715 paragraph 3 of the Penal Procedure Code

However, the request for legal assistance will not be implemented if it lies outside the jurisdiction of the Moroccan judicial authorities, or if its implementation would compromise the sovereignty, security, ordre public or other essential interests of the Kingdom of Morocco.

Chapter II of a bilateral agreement for judicial cooperation signed between Morocco and the United States of America.

Judicial cooperation may be refused in the following circumstances:

1. If implementation of the request would prejudice the safety or ordre public of the requested State Party, or is in conflict with its legislation.
2. If the request relates to offences breaching military obligations only.
3. If the request does not comply with the requirements of this agreement.

Morocco further noted that requests for judicial cooperation made to the Moroccan judicial authorities have been examined to ensure that they meet the conditions required for implementation, such as compliance with domestic legislation and lack of prejudice to ordre public, both in formal and substantive terms. If the request meets these conditions, then it is

implemented; if it prejudices any of these conditions, the requesting State Party is notified of the subject of the decision, and the reasons for it clarified. No requests recorded in 2010 by the Moroccan judicial authority have fallen within the framework of non-compliance with Moroccan law.

(b) Observations on the implementation of paragraph 21 of article 46

As indicated in article 715 of the Moroccan Penal Code and the agreement between Morocco and the USA, Morocco complies with paragraph 21 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation paragraph 22 of article 46

Morocco stated that it is in compliance with paragraph 22 of article 46 of the Convention and referred to the text of paragraph 1 of article 715 of the Penal Procedure Code. This provision reads as follows:

“Requests for legal assistance arriving from abroad will be dealt with in the same manner as requests for legal assistance issued from within the territories of Morocco, and in accordance with Moroccan legislation”.

It further noted that the Moroccan judicial authorities have received a number of requests for judicial assistance involving fiscal matters, including 46 related to searches for financial assets and examinations of bank accounts.

(b) Observations on the implementation of paragraph 22 of article 46

In accordance with article 715 of the Morocco Penal Code, Morocco complies with paragraph 22 of article 46 of the Convention,

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of paragraph 23 of article 46

Morocco reported that paragraph 23 of article 46 of the Convention has been implemented through bilateral agreements, such as article 3 of a bilateral agreement of judicial cooperation concluded between Morocco and Portugal, which stipulates that the requested State Party shall inform the requesting State Party as soon as possible of any refusal, in whole or in part, of a request for judicial cooperation, along with reasons for this refusal.

The Moroccan practice is to inform the requesting State Party through diplomatic channels as soon as possible of any refusal of a request for judicial cooperation along with an explanation of this refusal; no refusal of a request for judicial cooperation was recorded in 2009 and 2010.

b) Observations on the implementation of the provision

Although Morocco does not have a specific legislative provision in respect of this requirement, practice confirms that Morocco adheres to paragraph 23 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of paragraph 24 of article 46

Morocco reported that it is in compliance with paragraph 24 of article 46 of the Convention and provided relevant excerpts of paragraph 4 of article 715 of the Penal Procedure Code, which read as follows:

Article 715 of the Penal Procedure Code

Requests for legal assistance arriving from abroad should be sent through diplomatic channels but may, in cases of emergency, be sent directly to the relevant judicial authority. However, in case of direct transmittal, the foreign authority shall not be advised of the outcome of the request prior to receipt of a copy of the request through diplomatic channels

On average, the Kingdom of Morocco requires 3 months to respond to a request for mutual legal assistance. There have been countries who inquired about the status of the implementation of a request made to the Moroccan authorities in cases of urgency, where the case requires a prompt appearance before the judiciary of the requesting country. In these cases, the request for judicial cooperation is handled and implemented as quickly as necessary.

Morocco referred to a request for legal assistance by the Belgian judicial authorities, which they requested to be implemented within one day of the request's referral to the competent Moroccan judicial authorities. After being informed of the circumstances, the Moroccan authorities carried out this request within 24 hours of being notified by the foreign authorities.

Cases in which the assistance sought was no longer required were also reported. In average, three months are required before Morocco receives a response to requests for mutual legal assistance.

(b) Observations on the implementation of paragraph 24 of article 46

Morocco complies with paragraph 24 of article 46 of the Convention , which require prompt execution of requests for mutual legal assistance. On average, the Kingdom of Morocco takes three months to respond to a request for mutual legal assistance. However, if requested to do so, Morocco is in a position to dispose of mutual legal assistance requests in less than three months.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation paragraph 25 of article 46

Morocco stated that it is in compliance with paragraph 25 of article 46 of the Convention and has given the example of article 3 of the Agreement for Judicial Cooperation in Criminal Matters between Morocco and the United States of America. This article provides that the requested State Party may, after notifying the requesting State Party, postpone the implementation of requests if they interfere with searches or other proceedings in that State.

Morocco further noted that the implementation of a request for judicial cooperation made in 2010 by the Dutch judicial authorities, regarding a case of alleged murder, was deferred by the Moroccan judicial authorities until the conclusion of investigative measures carried out by the Moroccan judiciary.

(b) Observations on the implementation of paragraph 25 of article 46

Although there is no legislative provision regulating this requirement of the Convention, all indications are that in practice Morocco's approach is to adhere to paragraph 25 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of paragraph 26 of article 46

Morocco stated that it is in compliance with paragraph 26 of article 46 of the Convention. Morocco provided as example article 3 of the Agreement for Judicial Cooperation between

the Kingdom of Morocco and the Kingdom of the Netherlands, which provides that “before refusing any request for judicial cooperation, the requested State Party must examine the possibility of granting cooperation under any conditions it deems necessary, and implementing it if the requesting State Party agrees to these conditions”.

Morocco further noted that these measures have been implemented in requests for judicial cooperation received and implemented by the judicial authorities concerned, after consultation with the requesting State Party and before informing the requesting State Party of a refusal. As an example of this, a request for judicial cooperation was made by the Dutch judicial authorities in 2009 through non-judicial channels regarding access to information on the Social Security records of two persons residing in Holland. Before informing the State Party of a refusal, a consultation was held to correct the request in order to allow its implementation.

(b) Observations on the implementation of paragraph 26 of article 46

Although there is no legislative provision regulating this requirement of the Convention, all indications are that in practice Morocco’s approach is to adhere to paragraph 26 of article 46 of the Convention..

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of paragraph 27 of article 46

Morocco reported that it is in compliance with paragraph 27 of article 46 of the Convention and referred to article 746 of the Penal Procedure Code, which reads as follows:

Article 746:

If a foreign country deems it necessary for a witness resident in Moroccan territory to be present at an interview in the event of an accusation made against him, the Moroccan authorities, to whom the request has been presented through diplomatic channels, shall call upon the witness to answer to the charges made against him.

However, this call upon the witness shall only be made on the condition that no prosecution or restriction on personal liberty shall be enforced on account of acts or sentences completed prior to his presence at the interview.

(b) Observations on the implementation of paragraph 27 of article 46

Morocco complies with paragraph 27 of article 46 of the Convention. See article 746 of the Morocco Penal Code.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of paragraph 28 of article 46

The State party under review stated that it is in compliance with paragraph 28 of article 46 of the Convention. As example, Morocco referred to article 15 of the Agreement for Judicial Cooperation between Morocco and Portugal, which provides the following:

Article 15:

The requested State Party shall bear expenses resultant upon judicial cooperation, except in the following circumstances, where expenses shall be borne by the requesting State Party:

- Compensation, wages and expenses related to the transfer of persons
- Expenses related to the transfer of guards or employees of the prison administration
- Exceptional expenses resultant upon the implementation of a request for judicial cooperation, at the request of the requested State Party

As an example, the State party under review mentioned a request made in 2009 by the Belgian authorities for the transfer of a defendant from Morocco to Belgium; the expenses of his outward and return journey were borne by the Belgian authorities.

(b) Observations on the implementation of paragraph 28 of article 46

Although there is no specific legislative provision regulating this requirement of the Convention, all indications are that in practice Morocco's approach is to adhere to paragraph 28 of article 46 of the Convention. As indicated above, Morocco referred to examples where this provision was adhered to.

Article 46 Mutual legal assistance

Paragraph 29

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of paragraph 29 of article 46

Morocco reported that it is in compliance with subparagraph 29(a) and partially in compliance with subparagraph 29(b) of article 46 of the Convention. There is no specific provision relating to government records. Also, there is no provision which specifies the types of documents which must be sent or placed at the disposal of the requesting State Party, if the request is for access to documents or records not available to the general public.

It is possible to implement requests for judicial cooperation which contain documents or information, or documents which include documents or information, which may be published in accordance with the law. It is vital that the request does not conflict with domestic law or order public.

(b) Observations on the implementation of paragraph 29 of article 46

Although that is no specific provisions regulating the requirements of paragraph 29 of article 46, all indications are that in practice Morocco complies with paragraph 29 of article 46 of the Convention.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of paragraph 30 of article 46

Morocco stated that it is in compliance with paragraph 28 of article 46 of the Convention and referred to various agreements concluded between Morocco and s other countries.

(b) Observations on the implementation of paragraph 30 of article 46

Although that there is no specific provisions regulating the requirements of paragraph 30 of article 46, all indications are that in practice Morocco complies with paragraph 29 of article 46 of the Convention.

Challenges for article 46

Morocco has identified the following challenges and issues in fully implementing article 46 of the Convention:

1. Specificities in its legal system;
2. Absence of legal provisions for this measure;
3. Limited capabilities;
4. Limited resources.

Technical assistance needs for article 46

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Field assistance from an expert in the relevant area;
3. Programmes to enhance the capabilities of the authorities responsible for international cooperation in criminal matters.

None of these forms of technical assistance has been provided in the past.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of article 47

Morocco reported that it has not implemented article 47 of the Convention..

(b) Observations on the implementation of article 47

Morocco has no legal measure complying with article 47 of the Convention. It is important to point out that article 47 of the Convention is not mandatory. However, Morocco should be encouraged to seriously consider the implementation of article 47 of the Convention.

(c) Challenges for article 47

Morocco has identified the following challenges and issues in fully implementing article 47 of UNCAC:

1. Specificities in its legal system;

d) Technical assistance needs for article 47

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. Legal consultations

None of these forms of technical assistance has been provided in the past.

Article 48 Law enforcement cooperation

Paragraph 1

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action

to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of paragraph 1 of article 48

Morocco reported that it has taken measures to implement paragraph 1 of article 48. The framework of law enforcement cooperation between Morocco and other States is composed of the following legal instruments:

- The Charter of the International Criminal Police Organization, of which Morocco is one of the active State Parties
- World Customs Organization
- International conventions, bilateral and multilateral agreements between the Kingdom of Morocco and various State Parties to the United Nations Convention against Corruption, including agreements concerning cooperation in the field of security and the exchange of relevant information.
- Memoranda of understanding between governmental authorities and national public administrations, and their counterparts in the States Parties to the Convention against Corruption
- Agreements on technical cooperation between Morocco and foreign countries.

On 13 July 2011, Morocco's Financial Intelligence Unit, the Financial Information Processing Unit, which is operational since April 2009, became a member of Egmont group.

Morocco further reported that it had established a Central Electronic Database and a central paper database through which information can be shared, which are updated centrally at the regional level. All state, regional and local agencies make their archives available to the judicial police, and therefore each update is differentiated. Existing data is automatically updated, and is combined with new data as it becomes available. The data is obtained from various sources, such as INTERPOL or state, administrative and specialist departments.

Moreover, Morocco stated that there have been a number of cases where information had been exchanged between specialist administrative departments in the Kingdom of Morocco and their counterparts in other countries, which had achieved the identification of persons active in the network of the material transfer of funds out of or into Morocco, with the aim of disguising the criminal origins (corrupt activity).

Morocco makes use of updated general information by INTERPOL to conduct research and implement measures based on the data issued by State Parties of INTERPOL. Morocco is deemed by States Parties to be active in the area of cooperation and exchange of information through the channel referred to Interpol, which is operated by specialized agencies (National Central Bureau) integrated with the database managed by the Secretariat of INTERPOL.

A number of liaison officers are assigned to Moroccan embassies in other countries, and therefore Moroccan experts abroad and foreign experts in Morocco are available for the implementation of programmes of assistance and technical cooperation between Morocco and the States Parties to the Convention.

The functions of the liaison officers are to play the role of the link between the State security bodies accredited to Morocco, as well as to identify and engage in programs of cooperation and mutual technical assistance between the two countries concerned

The evaluation of the performance and cost-effectiveness of liaison officers in the light of their success in implementing programmes and cooperation schemes is done either by the Moroccan authorities administratively, or by the Moroccan diplomatic or consular staff in the country concerned.

Morocco also cited section 3 of the Penal Code, under 'Relations with Foreign Judicial Authorities' Paragraphs 713 and 715, Paragraphs 2 and 4 of article 49 of the Penal Code, Chapters III to XXVII of Law 43.05 relating to the fight against money laundering, Article 2 of the Decree on the Central Authority of the Prevention of Corruption, patrol No. 13373 6 January 1955 issued by the Director General for National Security, and article 4 of the ordinance of the General Directorate of National Security and General Regulations for Public Service Employees.

(b) Observations on the implementation of paragraph 1 of article 48

Taking into account the above-mentioned legislative provisions and other measures referred to by Morocco, the reviewing experts hold the view that Morocco is in compliance with paragraph 1 of article 48 of the Convention.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of paragraph 2 of article 48

Morocco reported that it is in compliance with this provision. It has cited articles 713 to 715 of section 3 of the Penal Procedure Code. It also referred to international agreements of security, judicial cooperation and mutual legal assistance between Morocco and State Parties to the Convention, as well as memoranda of mutual understanding between governmental authorities, general and national administrative bodies, and their counterparts in State Parties to the Convention.

Morocco also noted that it has established appropriate and swift cooperation via INTERPOL for the exchange of information and the implementation of requests for judicial legal assistance, issued by the Moroccan judicial authorities and by foreign judicial authorities, with the aim of implementing them in Morocco.

(b) Observations on the implementation of paragraph 2 of article 48

Morocco complies with paragraph 2 of article 48 of the Convention.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of paragraph 3 of article 48

Morocco reported that it is in compliance with this provision, and cited articles 574.1 to 574.7 of the Moroccan Penal Code, related to money laundering, articles 218.1 (especially section 7) and 218.4 of the Penal Code, related to terrorist supplies, and articles 607.3 to 607.11 of the Penal Code

In the context of the implementation of paragraph 3 of article 48, Morocco referred to bilateral and multilateral agreements of security, judicial cooperation and mutual legal assistance between Morocco and State Parties to the Convention and to memoranda of mutual understanding between governmental authorities, general and national administrative bodies, and their counterparts in State Parties to the Convention.

(b) Observations on the implementation of the article

It is important to note that this provision is not mandatory. However, all indications are that in practice Morocco has taken the necessary steps to comply with paragraph 3 of article 48 of the Convention.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of article 49

Morocco reported that draft legislation regulating joint investigations is under discussion, and has provided the text of a draft article 713.3 of the foreseen amendment to the Moroccan Penal Code.

Draft article 713.3:

The competent judicial authorities may, subject to prior agreement with the Minister for Justice and at the discretion of the State Party or Parties concerned and within judicial and national guidelines, form joint search teams to carry out complex and large-scale search proceedings in other countries, when a group of countries conduct searches in relation to crimes which require concerted and centralized action from these countries.

The foreign elements attached to the joint search teams of the other countries may, within the limits proscribed by the task they are entrusted with, carry out the following tasks within the national territories under the supervision of the competent judicial authorities:

- Investigate all crimes, misdemeanours and contraventions of the law, and deal with them in accordance with their own national law as necessary.
- Assist Moroccan police officials in the course of their duty.
- Carry out investigations and procedures as specified in this legislation.

The foreign elements attached to the joint search teams of the other countries may, subject to the agreement of the country who has engaged them, carry out their task within the limits of the operations they have been assigned to.

It is not permitted for any Moroccan member of the police to delegate the authority conferred on him by the state to any member of the joint search team.

A copy of the records shall be assembled, and must be written or translated into Arabic for the presiding committee of the judicial authority.

(b) Observations on the implementation of article 49

It is important to note that the measures suggested in article 49 of the Convention are not mandatory. However, once the proposed legislative amendments to the Moroccan Penal Code have been adopted, Morocco will comply with the said provision of the Convention.

(c) Challenges for article 49

Morocco has identified the following challenges and issues in fully implementing article 49 of UNCAC:

1. Limited capacity;
2. Limited resources for implementation.

d) Technical assistance needs for article 49

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. On-site assistance by a relevant expert;
3. Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation

None of these forms of technical assistance has been provided in the past.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of article 50

Controlled deliveries have recently been regulated in Moroccan law by Law 10-13, which in January 2011 amended the Penal Code (new article 82.1) and the Penal Procedure Code (new article 749.1). The texts of these provisions read as follows:

Article 82.1 of the Penal Code:

The controlled delivery is the method that allows the passage inside or through or outside Morocco of an illegal substance or a shipment suspected of being so, without being seized or after being removed or replaced in whole or in part, under the supervision of the competent authorities, in order to identify its final destination, to investigate an offence, to identify and to arrest the offenders and those involved in.

For the purposes of this section, illegal shipment shall mean, things or funds whose detention is an offence, or which are the product of the offence or used or had to be used to commit the offence.

Article 749.1

A foreign State Party may request from the Moroccan competent authorities the execution of a controlled delivery operation inside the Kingdom of Morocco.

Even prior to the adoption of the aforementioned provisions, Morocco responded to requests for judicial cooperation containing this type of applications within the context of implementing the requirements of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Morocco has received and implemented 14 requests of this kind in 2010, and 19 in 2009. The requirements of the draft amendment to the Penal Code regarding controlled delivery are general requirements, and may be applied to the provisions of the Convention.

With respect to paragraphs 2 and 3 of article 50, Morocco cited as example article 18 of the Agreement for Judicial Cooperation between Morocco and Holland, which provides as follows:

Article 18 -Controlled delivery

- 1 - Each Party shall, at the request of the other party, permit licenses to conduct controlled deliveries over its territory, within the limits proscribed by its domestic legislation.
- 2 - The decision to resort to controlled delivery shall be taken on a case-by-case basis by the competent authorities of the requested Party, with respect for its domestic law.
- 3 - Controlled delivery shall take place in accordance with the rules set forth by the requested State Party. The suitability of taking this decision, and the conduct and control of these operations, shall remain at the discretion of the competent authorities of the requested State Party.

With respect to paragraph 4 of article 50, Morocco noted the following:

Controlled delivery of funds or objects whose possession is a criminal offence, which have been obtained through criminal means, or which have been used as an apparatus for committing a criminal offence in accordance with domestic law, is permitted through border crossings either into or out of Moroccan territories, without being seized or replaced in full or part, under surveillance by the competent judicial authorities and at the request of a foreign country, with the aim of ascertaining the final destination of the objects or seizing the perpetrators or beneficiaries thereof. The majority of requests made to the Moroccan

authorities for controlled delivery of international drug smuggling have mostly culminated successful operations which have achieved their desired end.

(b) Observations on the implementation of article 50

Morocco complies partly with article 50 which requires controlled delivery and other special investigative techniques to ensure the admissibility of evidence relating to such delivery, and “conclusion of agreements” in regard to special investigative techniques. Moroccan law 1 regulates since January 2011 the process of controlled security, and even prior to that Morocco responded to requests for judicial cooperation containing this type of request within the context of implementing the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances.

(c) Challenges for article 50

Morocco has identified the following challenges and issues in fully implementing article 49 of UNCAC:

1. Limited capacity;
2. Limited resources for implementation;
3. Specificities of our legal system.

d) Technical assistance needs for article 50

Morocco has indicated that the following form of technical assistance, if available, would assist it in better implementing the provision under review:

1. Summary of good practices/lessons learned;
2. On-site assistance by a relevant expert;
3. Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation

None of these forms of technical assistance has been provided in the past.