



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Ethiopia

Review by Togo and Malta of the implementation by Ethiopia 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 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 the Federal Democratic Republic of Ethiopia (hereinafter, Ethiopia) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Ethiopia, 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 Togo, Malta and Ethiopia, by means of telephone conferences and e-mail exchanges and involving Mr. Wedo Atto Yatto and Mr. Billen Girmay from Ethiopia, Mr. Marc Fiawonou from Togo and Mr. Paul Vassallo from Malta. The staff members of the Secretariat were Ms. Tanja Santucci and Ms. Jennifer Sarvary-Bradford.
6. A country visit, agreed to by Ethiopia, was conducted in Addis Ababa from 23 to 26 February 2015. During the on-site visit, meetings were held with the Federal Ethics and Anti-Corruption Commission (FEACC), Federal Police, Financial Intelligence Center, Ministry of Civil Service, Federal court, Ministry of Justice, Public Procurement and Property Administration Agency, as well as representatives of civil society.

III. Executive summary

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

Ethiopia signed the United Nations Convention against Corruption on 10 December 2003 and ratified it on 26 November 2007, “with a reservation on Article 44 of the Convention.” According to article 9(4) of the Constitution of Ethiopia 1994, which is the supreme law of the land, “[a]ll international agreements ratified by Ethiopia are an integral part of the law of the land.”

While the primary source of law is codified law (mainly the Constitution, proclamations, regulations and directives), both case law (decisions of the federal Supreme Court at a cassation level) and customary law (mainly in rural areas) are also sources of law. The legislative framework of Ethiopia against corruption includes the Criminal Code (“CC”), Criminal Procedure Code (“CPC”), Civil Code, Code of Civil Procedure, Corruption Crimes Proclamation No. 881/2015 (“CCP”), Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation No. 882/2015 (“Evidence Proclamation”), Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation No. 883/2015 (“FEACC Proclamation”), Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 (“AML Proclamation”), Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation No. 699/2010, Disclosure and Registration of Assets Proclamation No. 668/2010, Civil Servants Disciplinary Measures and Grievance Procedure Proclamation No. 515/2005 (“CSDP”), and the Procedure for Pardon Proclamation No. 395/2004.

Ethiopia follows a federal arrangement of government. At the federal level, a Federal Ethics and Anti-Corruption Commission (“FEACC”) is established, and all nine regional states have separate ethics and anti-corruption commissions, which are fully functional.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

“Public servant” is defined in article 402(1) CC as “any person who temporarily or permanently performs functions being employed by, or appointed, assigned or elected to, a public office or a public enterprise”; “[p]ublic office” is defined as “any office fully or partially financed by government budget, and which performs the functions of the Federal or Regional Governments”, and “[p]ublic enterprise” means a “Federal or Regional Government enterprise or share company, in which the Government has total or partial share as an owner”. Because all three branches of Government (executive, legislature, judiciary) are included, the definition also covers judges, members of Parliament and the Head of State. Persons performing unpaid functions for the Government are covered in article 2(12) CCP.

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

Ethiopia has criminalized active and passive bribery of public officials in articles 403, 404, 408, 409, 427 and 428 of Title III CC (“Crimes Against Public Office”).

The active bribery of foreign public officials and officials of public international organizations is criminalized (article 427(2) CC), but

investigations and prosecutions have not been carried out. Passive foreign bribery is not criminalized.

Ethiopia relies on the general bribery provisions (article 427 CC) for pursuing cases of active trading in influence. The abuse of real or supposed influence to obtain an undue advantage from an administration or public authority is covered in articles 28 and 29 CCP (Use of Pretended Authority and Traffic in Private Influence). Articles 403, 404(2), 414, 430 and 431 CC cover passive trading in influence.

Ethiopia has partially criminalized active bribery in the private sector (article 427 CC, article 27 CCP). Passive bribery in the private sector is contemplated in articles 703 CC and 10 CCP.

Concerning the elements of the offence of bribery, of national and foreign public officials as well as officials of public international organizations, it was clarified that, despite not specifically covered in article 427, the promise of bribery, as well as indirect bribery and third-party benefits are covered in article 404 read together with article 427.

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

The elements of the offence of money-laundering are satisfactorily covered, notably in article 29 AML Proclamation. The definition of 'predicate offence' in Ethiopian law covers a broad range of offences punishable by a minimum of one year imprisonment, including all Convention offences. Ethiopia has not furnished copies of its laws to the United Nations, as foreseen in the Convention.

Articles 29 AML Proclamation and 40, 445 and 855 CC address the concealment of proceeds of crime.

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

Embezzlement and related crimes are defined in articles 412, on the unlawful disposal of object in charge, article 413, on appropriation and misappropriation in the discharge of duties, article 415, on the illegal collection or disbursement, and articles 665, 675 and 676, which address the offences of theft and breach of trust.

The requirements related to abuse of functions are covered in articles 407, 411, 416 and 418 CC, which define, respectively the offences of abuse of power, maladministration, undue delay of matters and granting and approving license improperly. Articles 419, on possession of unexplained property, and 663 CC, on presumption of unlawful or unjustifiable enrichment, adequately cover illicit enrichment in respect of any unexplained enrichment.

Articles 702 CC and 15 CCP cover the embezzlement and misappropriation of property in the private sector.

Obstruction of justice (art. 25)

Obstruction offences are covered in articles 444 and 455 CC, on crimes against whistleblowers or witnesses as well as on provocation and suborning, respectively.

Threats against the judiciary (article 449 CC) and obstruction of FEACC officers (articles 27 and 2(6)(b) FEACC Proclamation, as amended) are covered. There are no specific provisions penalizing obstruction of police or other law enforcement officers.

Liability of legal persons (art. 26)

Ethiopia has established the criminal, administrative and civil liability of legal persons for offences defined in the Convention, as evidenced by article 23(3) and 34 CC. Article 90 CC stipulates criteria for the application of fines to legal persons, and article 405 CC set forth the concurrent application of administrative penalties and compensation for damages. The Evidence Proclamation also clearly stipulates that it applies equally to natural and legal persons. Penalties foreseen in different laws appear to present disparities.

Participation and attempt (art. 27)

The modalities of participation in and attempt to commit offences, foreseen in the Convention, are covered in the CC. However, the preparation for an offence is not criminalized, except as stipulated in article 26 CC.

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

Penalties for UNCAC offences appear to present disparities, such as the option between “simple imprisonment” (i.e. 10 days to 3 years) and “rigorous imprisonment” up to 7 years for some corruption offences, including bribery under article 417 of the Criminal Code. Other offences carry the possibility of a fine in lieu of imprisonment. Judges exercise discretion in considering mitigating and aggravating circumstances in accordance with articles 82, 84 and 88 CC and sentencing guidelines of the Federal Supreme Court, which also apply to corruption cases.

The President and Prime Minister, as members of Parliament, have immunity from prosecution. Ministers who are members of Parliament also enjoy criminal immunity. Procedures for lifting immunity are in place, requiring the consideration of requests by a parliamentary committee (e.g., article 56 Evidence Proclamation).

Article 42 (1)(d) and (3) CPC places a certain amount of discretion in the hands of a Minister (the FEACC Commissioner in respect of corruption cases) not to institute proceedings in the public interest. Moreover, the FEACC Proclamation provides for the power of the FEACC Commissioner to withdraw, in accordance with law, corruption investigations and charges, as well as corruption cases pending in court (article 2(9)(14)). While this has not been exercised, the Commissioner’s decision not to prosecute is not subject to independent review or legal redress.

Disciplinary measures against public officials are taken by an administrative tribunal under the Ministry of Civil Service, including suspension for up to two months. Moreover, article 67 CSDP allows for the demotion and dismissal of civil servants, even in cases of acquittal from criminal charges. The disciplinary and criminal proceedings are separate and may run in parallel (article 405 CC).

Persons convicted of corruption offences may be precluded from employment in State-owned enterprises, in accordance with the provisions of the Labour Proclamation No. 377/2003. However, corruption-related offences are not included among the offences allowing for disqualification from holding public office under article 14(2) of the Federal Civil Servants Proclamation.

The ability to offer immunity from prosecution is available under Ethiopian law, and collaborators of justice may be rewarded for their cooperation in combatting corruption. The newly adopted FEACC Proclamation further includes provisions on plea bargaining and withdrawal of cases and charges.

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

The Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation No. 699/2010, the FEACC and Evidence Proclamations contain relevant provisions protecting witnesses and whistleblowers. In practice, FEACC can apply for protective measures to be provided by the police, which has the necessary manpower. However, physical protections are rarely afforded in criminal cases due to the required coordination and the fact that retaliation is rarely detected or reported. Victims are expected to file reports to receive protection as whistleblowers or to participate as witnesses in proceedings.

Any person who believes to be the subject of a reprisal action as a result of having testified or reported may apply to the judiciary to have the measure suspended or reversed. However, it is noted that the existing protections do not extend to persons who report corruption in the private sector.

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

Confiscation (including value-based) of proceeds of crime is possible in accordance with provisions in the CC, Evidence and FEACC Proclamations. Instrumentalities of crime are covered only in respect of money-laundering (article 35 AML Proclamation) and dangerous articles (article 140 CC). Evidentiary presumptions facilitate the confiscation of property.

Investigators are legally empowered to search for and seize assets as long as appropriate warrants are obtained. Moreover, the Financial Intelligence Center (FIC) is mandated under article 36 AML Proclamation to freeze and seize assets.

The legal framework for asset management is limited, including the possibility of appointing court receivers to manage property subject to a restraining order. In practice, the management of property before the issuance of a court order is done by investigating agencies, including FEACC and the police, in accordance with the Federal Government Procurement and Property Administration Proclamation No. 649/2009 ("Procurement Proclamation"). The newly adopted Evidence Proclamation provides for the collection, sale and disposal of confiscated assets by appropriate organs, namely FEACC and/or the regional commissions (article 2(8)(34)(3)).

Bank secrecy does not seem to present any obstacles in the investigation and prosecution of money-laundering or corruption cases. In particular, the police may access relevant records by court order, which appear to be easily and quickly obtained.

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

As “serious” crimes, corruption-related offences carry longer periods of limitation than other CC offences (for example, 20 years for abuse of power, corrupt practices, acceptance of undue advantages and money-laundering). The period begins from the date of commission of the offence and is interrupted by any investigative steps, but not the self-imposed absence of the offender.

Previous foreign convictions may be considered by the courts during sentencing, according to article 22 CC.

Jurisdiction (art. 42)

Article 11 CC allows for jurisdiction to be exercised over crimes committed in the territory of Ethiopia, including vessels and airplanes. Articles 13 and 18 recognize cases of extraterritorial jurisdiction on the basis of the protective principle, as well as the active and passive personality principles, provided that the criminal was not tried in the foreign country, the act to be tried was prohibited by the law of the State where it was committed and by Ethiopian law, and it was of sufficient gravity to justify extradition.

Although Ethiopia does not extradite its own nationals, it will take over their prosecution if the crimes allegedly committed are also crimes under Ethiopian law (article 17(1) CC). In cases mentioned in that provision (including extraterritorial jurisdiction over an international crime specified in Ethiopian legislation, or an international treaty or a convention to which Ethiopia has adhered, except in cases of final judgment in the foreign country), Ethiopia may also establish jurisdiction over offences described in the Convention when the alleged offender is present in its territory and it does not extradite him or her.

Ethiopia is able to exchange information and cooperate with foreign competent authorities in cases of concomitant investigations, prosecutions or judicial proceedings in respects of the same conduct.

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

Ethiopia has adopted measures for blacklisting companies and contract rescission in the Procurement Proclamation. Moreover, general conditions of contract provide for the automatic annulment of contracts on the grounds of unethical or illegal behavior. The withdrawal of licenses by the licensing authorities on grounds of corruption or criminal activity is possible.

Aggrieved persons may apply to the courts for compensation both in civil and criminal instances.

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

FEACC is accountable to the Prime Minister, as set forth in article 3(1) of the FEACC Proclamation. Its independence is stipulated in article 4 of the same Proclamation, which determines that the Commissioner and Deputy Commissioner may not be removed on grounds other than as provided in article 14.

The Ethiopian Federal Police, an autonomous federal government organ accountable to the Ministry of Federal Affairs, investigates simple corruption cases not involving public officials, by delegation from FEACC, which remains responsible for further prosecution. For cases involving public officials, the police will notify FEACC of any relevant reports and the case may be investigated either by FEACC or the police in partial delegation from FEACC. For more complex cases, joint investigations by FEACC and the police may be done, in accordance with the Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011. While the police and FEACC have participated in joint trainings, capacity-building and inter-agency coordination could benefit from further strengthening.

The FEACC Proclamation obliges officers of public offices and enterprises to report instances of corruption that they encounter and to cooperate with FEACC in the investigation of offences. Moreover, FEACC conducts various outreach activities and awareness raising involving the private sector and civil society. FEACC and the FIC also conduct regular training on reporting of corruption and money-laundering.

2.2. Successes and good practices

- The evidentiary presumption of intent to obtain an undue advantage or to cause injury to the right or interest of a third person (article 403 CC), with consequent inversion of the burden of proof, was positively noted as conducive to the effective investigation and pursuit of corruption offences.*

2.3. Challenges in implementation

The following actions are recommended to further strengthen the existing anti-corruption framework:

- Consider criminalizing passive bribery by foreign public officials and officials of public international organizations (art. 16);*
- Furnish a copy of the money-laundering provisions and any subsequent amendments thereto to the Secretary-General of the United Nations (art. 23(2)(d));*
- Establish or strengthen relevant protections against retaliation for police and other law enforcement officers (art. 25(b));*
- Review the effectiveness, proportionality and dissuasiveness of applicable penalties for legal persons and ensure their full application in practice (art. 26(4));*
- Consider calculating the period of limitations from the time of discovery of an offence and allowing for interruption or suspension where the offender has evaded the administration of justice (art. 29);*

- *Harmonize the punishment for Convention offences to reflect the varying degree of offences, and monitor the imposition of penalties by the judiciary in light of existing sentencing guidelines, to ensure the effectiveness of applicable sanctions (art. 30(1));*
- *Review and consider revising the scope of immunities of public officials, in particular ministers and members of parliament, as well as the applicable procedures for lifting such immunities (art. 30(2));*
- *Revisit existing procedures and adopt measures to ensure that prosecutorial discretion is subject to adequate safeguards and exercised to maximize the effectiveness of law enforcement measures, pending the adoption of a relevant regulation in accordance with the FEACC Proclamation (art. 30(3));*
- *Consider amending legislation to include corruption-related offences among those allowing for disqualification from holding public office (art. 30(7));*
- *Amend legislation on confiscation and asset tracing to include instrumentalities of crime for offences other than money laundering, and adopt measures to strengthen the administration of frozen, seized and confiscated property, including proceeds and instrumentalities of crime (art. 31);*
- *Adopt measures to strengthen the protection of witnesses, experts and victims in corruption cases, as well as cooperating offenders, and ensure that appropriate mechanisms are set up for whistle-blower reporting, as well as the protection of whistle-blowers in the private sector (arts. 32, 33, 37(4)).*
- *Consider enhancing the existing blacklisting procedures by providing for information exchange from FEACC to the procurement authority with regard to investigations or convictions of persons and companies (art. 34);*
- *Continue efforts to enhance the capacity and resources of the criminal justice institutions engaged in the fight against corruption and money-laundering, including FEACC, the police and the FIC, especially under the mandates of the new anti-corruption laws, as well as for institutions responsible for international cooperation, and take measures to strengthen the legal and operational independence of the FIC (art. 36);*
- *Strengthen the outreach and cooperation with civil society, including by raising awareness of corruption and education, in order to also encourage the corruption reporting (art. 39);*
- *Consider ensuring jurisdiction over participatory acts to money laundering committed outside Ethiopia (art. 42);*

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

Ethiopia indicated that it would require technical assistance in the following areas:

- *Other assistance: file management and automation (art. 15); awareness-raising and training for judges and prosecutors (art. 35);*
- *Summary of good practices/lessons learned (arts. 16, 22, 32 and 37);*
- *On-site assistance by an anti-corruption expert (arts. 16, 21, 23, 31, 32, 33 and 36);*
- *Capacity-building for authorities responsible for identifying and tracing property or instrumentalities for purposes of confiscation; for establishing and managing protection of witnesses, experts and reporting persons (arts. 31, 32, 33 and 37);*
- *Model agreement and arrangement (art. 37).*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

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

At the time of ratification, Ethiopia made a general reservation¹ to Article 44, despite the Constitution's Article 9 (4) declaring international agreements as an integral part of the law of the land. The reservation is being reconsidered. Extradition is regulated in the Criminal Code (articles 11, 12 and 21), AML Proclamation (articles 38 and 44) and two bilateral treaties with Djibouti and Yemen.

UNCAC offences are extraditable under Ethiopia's treaties, which impose a one-year imprisonment threshold for an offence to be extraditable, provided that the offence is recognized under Ethiopian law. Article 21 CC allows for the extradition of foreigners for offences criminalized in Ethiopia that do not directly and principally concern the Ethiopian State.

Reciprocity is recognized in Ethiopia as a basis for extradition and international criminal cooperation for the exchange of information, and Ethiopia has responded to several requests on that basis. Extradition is otherwise subject to dual criminality, which is evaluated considering the underlying conduct rather than the strict terminology of offences. Extradition is limited to the extent that not all offences established under the Convention have been criminalized.

The grounds for refusal of extradition are outlined in the existing treaties and the AML Proclamation for money laundering cases (article 45). Ethiopia consults the requesting State before refusing extradition as a matter of practice.

*Extradition for purposes of executing a penalty may be granted pursuant to Ethiopia's bilateral treaties where the punishment imposed is at least 6 months' imprisonment. Any portion of a foreign sentence that has not been served for crimes with either principal or subsidiary Ethiopian jurisdiction may be enforced in Ethiopia (articles 12(3) and 20(2) CC). The CC and AML Proclamation codify the principle of *aut dedere, aut judicare*.*

¹ <http://treaties.un.org/doc/Publication/CN/2008/CN.1257.2007-Eng.pdf>

While the AML Proclamation stipulates the FIC as competent to receive extradition requests (articles 46 and 47), the Ministry of Justice is the Central authority for international cooperation in general.

Under Ethiopia's bilateral extradition treaties, requests for extradition shall be submitted through diplomatic channels. The bilateral extradition treaty with Yemen establishes a simplified extradition procedure if a person arrested admits the crime.

Since 2010, Ethiopia has received five extradition requests from Sudan, Djibouti and the United States of America. Three of the requests were not processed due to non-extradition of nationals.

The transfer of prisoners to and from Ethiopia can proceed in cases of subsidiary jurisdiction of Ethiopian courts on the basis of Articles 20 (1) and (2) and 12(3) CC, which address the enforcement of foreign sentences. There is no legislation or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

There is no law on mutual legal assistance (MLA) in Ethiopia, although some provisions are contained in the AML Proclamation (article 38). Ethiopia's Criminal Justice Policy of 9 August 2009 (article 3.22.2) provides that cooperation is "based on bilateral or multilateral agreements or arrangements or, in some instances, on national law". Ethiopia considers and has had experience in applying the Convention as a legal basis for MLA. There is one MLA treaty in place with Sudan, which covers only assistance regarding the service of summons or other judicial documents and the obtaining of evidence (article 23).

Dual criminality is required for MLA (article 40 AML Proclamation; treaty with Sudan). As a matter of practice, requests that are deemed non-coercive and not explicitly against Ethiopian law would be considered favourably.

The AML Proclamation (article 39) outlines the forms of MLA that can be afforded in money laundering cases and their required format (articles 48 and 49). Bank secrecy is not an obstacle to MLA (article 13 AML Proclamation; articles 7 (5) and 12 (g) FEACC Proclamation). Ethiopia would render assistance even in tax or fiscal matters, although there has been no such experience to date.

The AML Proclamation (article 40) outlines grounds for refusal of MLA (see also articles 1, 8 and 9 of the treaty with Sudan), and requires those to be communicated promptly to requesting States.

The Ministry of Justice is the central authority for international cooperation according to the Criminal Justice Policy and article 16 (14) of Proclamation No. 691/2010 "Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia". The Criminal Justice Policy further provides that requests be transmitted through diplomatic channels. The AML Proclamation outlines that requests shall be made in Amharic or English or accompanied by a translation in Amharic or English (article 47).

The timely execution of requests and matters related thereto are not specified.

The AML Proclamation (article 50) observes the confidentiality requirement. As a matter of practice, Ethiopia would postpone assistance where a request interferes with an ongoing investigation or proceeding and consult with a requesting State before postponing or refusing assistance.

The safe conduct of witnesses, experts and other persons for MLA, while not codified, would be afforded as a matter of practice and is partially reflected in the Sudan treaty (article 25). The voluntary transfer of prisoners is not addressed.

Ethiopia has not codified limitations on the use of information or evidence obtained through MLA. There is no law or previous experience in the use of videoconferencing for obtaining and transmitting evidence. The spontaneous sharing of information is permissible in theory, but Ethiopia has had no practical experience to-date. Government records, as long as not classified, could in principle be provided, although this is not codified.

Ethiopia does not regulate the issue of costs in line with the Convention.

Since 2010, Ethiopia has received 8 requests for mutual legal assistance in criminal matters: from Yemen, Turkey, Egypt, Kenya, Switzerland, Pakistan and the United Arab Emirates (four of which have been honoured, and four of which were pending at the time of review); only one of these requests related to corruption.

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

Law enforcement cooperation is done through the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO), INTERPOL, the Asset Recovery Inter Agency Network for Eastern Africa (ARIN-EA) and the StAR/INTERPOL Asset Recovery Focal Points network. The Federal Police Commission, the FIC and the Customs and Revenue Authority cooperate based on a number of bilateral arrangements, in particular with neighbouring countries. Ethiopia could consider the Convention a basis for law enforcement cooperation but has not done so to date.

Ethiopian border commissions have conducted joint investigations in terrorism and organized crime cases, despite an absence of legislation, but not in corruption cases.

Article 46 of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation (434/2005) permits the use of special investigative techniques in Ethiopia's efforts to combat corruption, including the interception of telephonic correspondence, telecommunications and video cameras, etc. The police are also allowed to employ controlled delivery techniques in criminal cases, including internationally.

3.2. Successes and good practices

- *In evaluating dual criminality for purposes of extradition, Ethiopia considers the underlying conduct rather than the strict terminology of offences (art. 44 para 2).*

3.3. Challenges in implementation

- *Ethiopia is encouraged to withdraw its reservation to Article 44 to allow it to use the Convention as a legal basis, to notify the Secretary-General accordingly, and to consider adopting additional treaties pending the withdrawal (art. 44 para. 6).*
- *As a matter of priority Ethiopia is urged to expedite the adoption of the Draft Directive on International Cooperation and include elements of the Convention which are not yet reflected to address shortcomings in implementing the Convention (e.g., art. 44 paras. 3-5, 7-10, 16; art. 45; art. 46 paras. 1, 3-5, 9-12, 15-29).*
- *Ensure that all UNCAC offences are extraditable, including by amending article 21 CC accordingly (art. 44 para. 8).*
- *While the general processing of extradition requests takes 70-80 days, adopt measures to expedite extradition procedures and to simplify evidentiary requirements for offences under the Convention (art. 44 para. 9).*
- *Continue to ensure that it applies the principle of aut dedere aut judicare (art. 44 para. 11).*
- *Continue to ensure that fair treatment protections are applied in practice in accordance with domestic laws and treaties (art. 44 para. 14).*
- *Codify its practice of consulting requesting States before refusing extradition (art. 44 para. 18).*
- *Take steps towards swiftly putting in place comprehensive legislation and procedures on international cooperation to allow Ethiopia to render assistance in respect of offences under the Convention (art. 46 para. 1).*
- *Adopt measures to ensure that in assessing dual criminality restrictions, the purposes of the Convention are taken into account, and ensure that non-coercive assistance is provided in the absence of dual criminality (art. 46 para. 9).*
- *Notify the Secretary-General of its central authority and acceptable languages for MLA and take steps to strengthen the operation of the central authority, to ensure the speedy and proper execution of requests (art. 46 paras. 13-14).*
- *Address the timely execution of requests (Art. 46 para. 24).*
- *Pending the entry into force of the draft Directive on International Cooperation, Ethiopia is urged to consider adopting additional MLA treaties (art. 46 para. 30).*
- *Establish and enhance data collection systems to provide for the accurate and timely tracking and reporting of data on international cooperation requests (e.g., underlying offences, timeframe for responding to requests and any grounds for refusal) (arts. 44 and 46).*
- *Continue to strengthen law enforcement cooperation in matters involving offences under the Convention, including with States outside the region (art. 48 para. 1).*

- *Ethiopia may wish to adopt measures on the use of special investigative techniques (including electronic or other forms of surveillance, undercover operations and controlled delivery) and to ensure the admissibility of evidence derived therefrom (art. 50).*

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

- *Capacity-building programmes for law enforcement and justice authorities responsible for international cooperation in criminal matters; development of a system or database to register requests for extradition and MLA and to track the underlying offences involved (arts. 44, 45, 46 and 47).*
- *Legal advice and good practices to establish a comprehensive legislative framework and procedures on international cooperation. The draft Directive for International Cooperation on Criminal Matters will be codified in the Criminal Procedure Code and should be aligned to the provisions of the Convention (arts. 44, 45, 46 and 47).*
- *On-site assistance by an anti-corruption expert to guide the development of the central authority (arts. 44 and 46).*
- *Model agreements/arrangements to develop clear systems and processes for incoming and outgoing requests, including, inter alia, templates for the preparation of requests, standardized practices in responding to and preparing requests and tracking the execution of requests to ensure follow-up (arts. 44, 45, 46 and 47).*
- *Technological assistance to strengthen the relationship of Ethiopia's law enforcement agencies with their counterparts abroad, including to encourage the informal sharing of information and intelligence on crime and criminal groups. Ultimately, supporting the establishment of a national police information and communication centre within the National Police, coordinating all law enforcement agencies in Ethiopia, to ensure such exchanges at the international level (arts. 48, 49 and 50).*

IV. Implementation of the Convention

A. Ratification of the Convention

7. Ethiopia signed the Convention on 10 December 2003² and subsequently ratified it on 26 November 2007³. The Convention entered into force in Ethiopia on 26 December 2007. Ethiopia participated in the development of the Convention starting from the drafting stage. When the Commission's establishment and procedural proclamations (Proclamation No. 235/2001 and 236/2001) were drafted, the provisions of the Convention and its

²C.N.1475.2003.TREATIES - 80

³C.N.1257.2007.TREATIES- 36

overall purpose were taken into consideration. More serious consideration was given to the Convention's provisions during the amendment of the above mentioned proclamations (Proclamation No.433/2005 and 434/2005).

8. Ethiopia made the following reservation upon ratification of the Convention: "...ratification by Ethiopia of the said Convention with a reservation on Article 44 of the Convention." Article 9(4) of the Constitution of Ethiopia 1994 provides that "All international agreements ratified by Ethiopia are an integral part of the law of the land."
9. The implementing legislation and related policies include:
 - Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995.
 - Corruption Crimes Proclamation No. 881/2015.
 - Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation No.883/2015.
 - Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation No. 882/2015.
 - Disclosure and Registration of Assets Proclamation No.668 /2010.
 - Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation No.699/2010.
 - The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Proclamation No. 414/2004, 9 May 2005.
 - The Civil Servants Proclamation No. 515/2005.
 - Procedure for Pardon Proclamation No. 395/2004.
 - The Functioning of Ethics Liaison Units Council of Ministers Regulation No. 144/2008.
 - Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013.
 - Civil Code of Ethiopia, Proclamation No. 165 of 1960.
 - The Civil Procedure Code Decree, Decree No. 52 of 1965.
 - Criminal Procedure Code of Ethiopia, Proclamation No.185 of 1961.
 - Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010.
 - Federal Courts Proclamation No. 25/1996.
 - Criminal Justice Policy of Ethiopia of 9 August 2009.
 - Establishment proclamations of regional Ethics and Anti-Corruption Commissions.
 - Regional Assets Disclosure and Registration Proclamations.

B. Legal system of Ethiopia

10. Ethiopia has a codified legal system with a primary source of codified law. The sources of law are mainly the Constitution, proclamations, regulations, directives, case laws (federal Supreme Court decisions at a cassation level) and customary laws. One can, therefore, see that the Ethiopian legal system shows features from both the civil law and common law

legal systems. For example, codification of laws (main feature of civil law legal systems) and case law (major feature of the common law legal systems) are both characteristics of the Ethiopian legal system.

11. The Ethiopian Constitution is the supreme law of the land. Article 9 (4) of the Constitution stipulates that all international agreements ratified by Ethiopia are an integral part of the law of the land.
12. According to Articles 51 and 55 of the Constitution, the following matters are reserved for the exclusive competence of the federal government: religion, nationality, money (or currency), foreign affairs, external security, determining the criminal and financial legislations and national symbols. The House of Federation interprets the Constitution, and other subsidiary laws are interpreted by the judiciary. The Ethiopian judicial system consists of federal and regional branches.
13. The Prime Minister selects and submits for approval to the House of Peoples' Representatives nominations for posts of the President and Vice-President of the Federal Supreme Court and the Auditor General. The Federal Judicial Administration Commission has the power to select those who qualify for judgeship in accordance with Article 8 of Proclamation No. 24/1995, from among candidates nominated by members of the Commission upon final approval by the House of People's Representatives. Regions also follow the same trend within their own sphere.
14. The current hierarchy of the Ethiopian Courts is as follows: at the federal level, the Federal First Instance Court, High Court and Supreme Court; at a regional level, Wereda (District Court) Court, Zonal Court and Supreme Court. In addition, the two chartered city administrations have their own City First Instance and Appellate Courts. Regional supreme courts may also serve as Federal High Courts if delegated. Furthermore, customary law cases, mainly in rural areas, are heard by Shimigilina (hearings which have different designations in different places) associated with villages, the traditional chiefs acting as presidents.
15. Almost one third of the 1995 Constitution provides for the protection of the fundamental rights and freedoms of the individual.
16. Concerning relevant draft bills, policies and other measures, Ethiopia provided the following information.

Following the country visit in February 2015, the following new laws came into force on the date of their publication in the official gazette on 3 April 2015:

- Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation (No. 883/2015);
- Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation (No. 882/2015);
- Corruption Crimes Proclamation (No. 881/2015).

As described more fully under chapter IV, a draft Directive on International Cooperation has been prepared by the Ministry of Justice in 2011 in collaboration with stakeholders, including the Federal Ethics and Anti-Corruption Commission. As of July 2015, the directive was still in draft form. Further, the Ministry of Justice has begun drafting an Extradition Act for Ethiopia. Consideration is also being given to enacting a Mutual Assistance in Criminal Procedure Proclamation.

17. Regarding previous assessments of its anti-corruption measures, Ethiopia indicated that studies conducted by independent institutions like the Addis Ababa University, Transparency International's Global Barometer, Kilimanjaro International and the World Bank (in collaboration with other international organizations) came up with the following conclusions:

- The Ethiopian Government has been committed to tackling corruption at all levels.
- The Ethiopian Government has been effective in tackling corruption and promoting good governance.
- Public awareness on the threat of corruption and the dire need for combating it has increased significantly through awareness-raising programmes of the Government.
- The findings of the study conducted by the Global Barometer showed that the level and magnitude of corruption in Ethiopia has been decreasing. However, the findings of the study conducted by the Kilimanjaro International showed that the level of corruption remained the same.
- The study "Diagnosing Corruption in Ethiopia" conducted by the World Bank, in collaboration with Canadian International Development Agency (CIDA), UK Department for International Development, and Royal Netherlands Embassy, concluded that the government has been committed to fighting corruption in a participatory manner and put forward important recommendations for further improvement in the struggle against corruption and promoting good governance in the Country. The sectors surveyed included health, education, water, justice, construction, land, telecommunications, and mining. Here are the specific recommendations of this study:
 - There is a wide variation of corruption across sectors,
 - Basic Service Sectors (primary health and education, rural water, justice) appear to have comparatively limited corruption;
 - 'Old' Investment Sectors (construction, land, mining) have higher corruption risk;
 - 'New Sectors' (telecommunications, HIV/AIDS & pharmaceuticals) with new flows of funds, less stakeholder experience suffer higher levels of corruption similar to those in other low income countries;
 - The fear is that unless confronted this will result in new levels of corruption across the board;
 - Widespread perceptions across sectors that there is political favoritism; and although the World Bank study acknowledges attempts to address these perceived problem.

The study has been shared with the reviewing experts.

Ethiopia further indicated that some of the studies put forward the following recommendations:

- Enhance oversight - especially through audit function;
- Enforce uniform procurement standards;
- Strengthen regulatory institutions;
- Continue capacity building; and
- Promote greater trust (stronger procedures to reduce conflicts of interest, civic outreach, stakeholder forums).

18. Ethiopia indicated that it follows a federal arrangement of government. This allows regional states to establish their own ethics and anti-corruption commissions. Accordingly, all the nine regional states have established such separate ethics and anti-corruption commissions, which are fully functional.

19. The Federal Ethics and Anti-Corruption Commission (FEACC) conducted a Business Process Reengineering (BPR) and Balanced Scorecard (BSC) process and it is currently implementing the newly-established systems of work that are the results of the re-engineering process. These tools and systems are helping the Commission improve performance. The Ethiopian Government engaged in the BPR initiative involving the Ministry of Justice and other government agencies. One of the issues examined through this process related to the international aspects of criminal law and international cooperation practice, and a number of gaps in practice were identified. Through the BPR initiative, the Government supported a thorough analysis of most aspects of the criminal justice sector as part of the government-wide reform. A core aspect of the BPR was strengthening the criminal justice system by making the delivery of justice to the public more efficient and of higher quality. A committee was established at the federal level and within each region to guide the BPR process of the justice system, beginning with a study of the system itself, examining the criminal justice process from investigation to the rendering of a final verdict in court. Following the study, the recommended reforms began to be implemented. A broad Criminal Justice Policy was adopted in March 2011. The BPR is not currently available in English.

C. Implementation of selected articles

Chapter III. Criminalization and law enforcement

20. Ethiopia noted that the statistical data presented in the table below shows the aggregate number of corruption offences that were received, investigated, and prosecuted by all anti-corruption commissions in the country, including the FEACC. As a federal state, Ethiopia has one federal and nine regional anti-corruption commissions.

Year	Allegations received	Cases investigated	Cases submitted for prosecution	Charges filed into courts	Cases convicted	Individuals penalized	Individuals acquitted	Referred to other agencies for administrative measures	Delegated to other investigative authorities	Asset recovered in Ethiopian Birr
2009/10	5,177	1,994	1,152	829	362	518	281	368	451	More than 2 million Birr, 7 vehicles, 15 buildings, thousands of hectare of urban land
2010/11	6,283	2,357	—	1,514	541	798	247	1389	904	More than 4 million Birr, 41 buildings, 8 vehicles, and 70 thousand hectares of urban land
2011/12	7,564	1,812	—	939	896	1,578	489		1,606	More than 71 million Birr, 90

										buildings, 104 thousand hectares of urban land, 48 vehicles, and other heavy machineries .
2012/1 3	8,596	2,546	1,384	629	1,241	258	8,596	444	1,371	
2013/1 4	9,044	3,918	2,592	631	1,265	216	306	1,302	9,044	

Article 15 Bribery of national public officials

Subparagraph (a)

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;

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

21. Ethiopia indicated that Articles 402, 403, 427 and 428 of its Criminal Code are relevant here.

Article 402 Criminal Code [Definitions]

(1) "Public servant" means any person who temporarily or permanently performs functions being employed by, or appointed, assigned or elected to, a public office or a public enterprise.

(2) "Public office" means any office fully or partially financed by government budget, and which performs the functions of the Federal or Regional Governments.

(3) "Public enterprise" means a: Federal or Regional Government enterprise or share company, in which the Government has total or partial share as an owner.

(4) In this Title, unless the context requires otherwise, "advantage" means:

a) Any gift, loan, fee, reward or commission consisting of money, or of any valuable security or of other property or interest in property;

b) any office, employment or contract;

c) any payment, remission, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

d) any service or favour, including protection from any penalty or disability, incurred or apprehended or from any action of an administrative, civil or criminal nature, whether or not already instituted;

e) the exercise of "or forbearance from the exercise of, any right, duty or obligation;

f) any other advantage or service other than those listed 'above and riot assessable In terms of money; and

g) any offer, undertaking or promise of any advantage within. the' meaning of, any of the preceding paragraphs from (a) to (f).

(5.) "Undue advantage" means an improper benefit or a j benefit obtained through improper means.

Article 403 Criminal Code [Presumption of Intent to Obtain Advantage or to Injure]

Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular Article providing for a crime of corruption perpetrated to obtain or procure undue advantage or to cause injury, such act shall be presumed to have been committed with intent to obtain for oneself or to procure for another an undue advantage or to injure the right or interest of a third person.

Article 427 Criminal Code [Soliciting of Corrupt Practices]

(1) Whoever, with intent to procure a public servant to perform or omit an act in violation of the duty proper to his office, gives or offers an advantage or gift to such public servant, is punishable, according to the circumstances of the case, with simple imprisonment, or with rigorous imprisonment not exceeding seven years and fine not exceeding fifteen thousand Birr.

(2) Whoever gives or offers an advantage or gift to official or employee of a foreign State international organization, with intent to procure him to perform or omit an act related to international trade in violation of his official duties, is punishable as provided under sub-article (1).

(3) Where the advantage or gift offered by the criminal is considerable, or where the act has caused substantial damage to State, public or private interests, the punishment shall be rigorous imprisonment from five years to fifteen years and fine not exceeding fifty thousand Birr.

(4) Any person who, in consideration for the performance by a public servant of an act proper to his office, gives or offers him an advantage or a gift before or after the performance of such an act, is punishable, according to the circumstances of the case, with fine, or simple imprisonment, or with rigorous imprisonment not exceeding five years.

(5) Where the crimes specified in the preceding sub-articles are committed by a juridical person, the punishment shall be fine as provided under Article 90 (3).

(6) In Addition to the punishment laid down under this Article, the Court may give an order depriving the criminal, permanently or temporarily, of his right to take part in any contract or transaction with the State.

Article 428 Criminal Code [Giving Things of Value Without or With Inadequate Consideration]

Whoever, in the circumstances specified under Article 417, offers, gives or agrees to give to any public servant or to any other person related to him, anything of value without or with an inadequate consideration, is punishable with simple imprisonment not exceeding five years.

22. In the years 2010-2013, some 20 allegations of active bribery were received by the Commission. Out of these cases, 20 were fully investigated and prosecuted. Out of the 20 cases prosecuted, 19 resulted in convictions, and one in the acquittal of the defendant. The relevant law used for the prosecution of the cases was Article 427 of the Criminal Code. Additional cases not captured here exist at the regional level. The following are examples of these cases:

Federal Ethics and Anti-corruption Commission prosecutor vs. Moges Lema

Moges Lema built illegal construction on his residential premises and law enforcement agencies came to know that fact. With a view to preventing the demolition of his illegal building, the accused tried to give a 10, 000 Birr bribe and he was caught red-handed while offering the bribe. He was, then, charged with the crime of bribing a public official and the case is pending currently.

(b) Observations on the implementation of the article

23. Article 15(a) is catered for by Articles 427 and 428 of the Criminal Code, read together with Article 404. Article 404 (“Principle”) sets forth the general principle for the crimes in Title III (“Crimes Against Public Office”). With respect to the elements of the bribery offence, the reviewers noted that the promise of bribery, as well as indirect bribery and third party benefits are not specifically covered in Section 427 of the Criminal Code. In this regard it was explained that Article 404, when read together with Article 427, covers promises of bribery as well as indirect bribery and third party benefits.
24. Specifically with respect to the promise of bribery, a case example involving a promise of bribery to a public servant was discussed during the country visit. The person promising the bribe was sentenced to 7 years imprisonment, due to his cooperation as a participating offender in the investigation.
25. Regarding the definition of “public servant” in Ethiopia, it was explained during the country visit that the definition covers persons performing functions for offices of the Government that receive public funds (Article 402 of the Criminal Code). Because all three branches of Government (executive, legislature, judiciary) are included, the definition also covers judges, members of Parliament and the Head of State. Persons performing unpaid functions for the Government are covered in the new Corruption Crimes Proclamation(No. 881/2015)under the category of “temporary workers”, including those performing unpaid services (article 2(12)).
26. It is noted that the penalty for bribery under Article 427 is “simple imprisonment” or “rigorous imprisonment” not exceeding seven years and a fine not exceeding 15,000 Birr. As noted under UNCAC article 30(1), the option of “simple imprisonment,” i.e. 10 days to 3 years, as opposed to “rigorous imprisonment” (one year up to life) for certain corruption offences, including Article 427 of the Criminal Code, raises concerns, despite the fact that the Ethiopian authorities explained that in practice, the minimum punishment has never been imposed.
27. Moreover, where the bribe is given or offered in exchange for an act that is proper to the public servant’s office, the punishment under Article 427(4) of the Criminal Code is either a fine, simple imprisonment or rigorous imprisonment up to five years. The possibility of a fine to punish such acts of bribery also raises concerns. It is recommended that Ethiopia harmonize the punishment for acts of bribery within and outside the scope of a public official’s functions. Please also refer to the observations under UNCAC article 30(1) below.

28. Giving gifts to public officers under article 428 is punishable with imprisonment of no more than five years.

(c) Successes and good practices

29. The evidentiary presumption established in Article 403 of the Criminal Code was positively noted by the reviewers as conducive to the effective investigation and pursuit of corruption offences.

Article 15 Bribery of national public officials

Subparagraph (b)

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

(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 the article

30. Ethiopia cited Articles 403, 404(2), 408 and 409 of the Criminal Code of the Federal Democratic Republic of Ethiopia.

Article 403 Criminal Code [Presumption of Intent to Obtain Advantage or to Injure]

Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular Article providing for a crime of corruption perpetrated to obtain or procure undue advantage or to cause injury, such act shall be presumed to have been committed with intent to obtain for oneself or to procure for another an undue advantage or to injure the right or interest of a third person.

Article 404 Criminal Code [Principle]

(2) Any public servant who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right of another, directly or indirectly, accepts or solicits an undue advantage by improperly performing his responsibility or duty; or who, in any other way, misuses the responsibility or public trust vested in him to procure an undue advantage for himself or another; or Any person who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right of another, promises, offers, gives or agrees to give an undue advantage to a public servant; or Any person who gives, or any public servant who accepts, an undue advantage in consideration for an act of public office properly performed or to be

performed, shall be deemed to have committed crimes of corruption specified in this Chapter, and be liable to the punishments prescribed in the provisions below.

Article 408 Criminal Code [Corrupt Practices]

(1) Any public servant who, directly or indirectly, seeks, receives or exacts a promise of an advantage for himself or another, in consideration for the performance or omission of an act, in violation of the duties proper to his office, is punishable with simple imprisonment for not less than one year, or rigorous imprisonment not exceeding ten years and fine not exceeding twenty thousand Birr.

(2) Where the purpose of the breach of responsibility or duty solicited, the extent of the advantage received, the official capacity or powers of the person corrupted or the extent of the harm to private, public or State interests renders the case of particular gravity, the punishment shall be rigorous imprisonment from seven years to fifteen years and fine not exceeding fifty thousand Birr.

(3) Where two or more of the circumstances mentioned in sub article (2) above are present concurrently, the punishment shall be rigorous imprisonment from ten years to twenty-five years and fine not exceeding one hundred thousand Birr.

(4) Any public servant who, in the manner specified under sub article (1) of this Article, and in respect of a duty connected with international trade, solicits, accepts or agrees to accept an advantage or a gift from any foreign State, person or organization, including a transnational corporation, shall, according to the circumstance of the case, be liable to one of the punishments prescribed in the three sub-articles hereinabove.

Article 409[Acceptance of Undue Advantages]

(1) Any public servant who, for the performance of an act proper to his office, solicits or obtains an advantage or exacts a promise before or after the performance of such an act, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding seven years and fine not exceeding ten thousand Birr.

(2) Where the extent of the advantage received or the official capacity or powers of the person corrupted renders the case of particular gravity, the punishment shall be rigorous imprisonment from five years to fifteen years and fine not exceeding thirty thousand Birr.

(3) Where the crime is committed in respect of a duty connected with international trade, the punishment prescribed in the sub- articles herein above shall be applicable, according to the circumstances of the case.

31. Between the years 2010 and 2013, some 130 allegations of passive bribery were received by the Commission. Out of these cases, 66 were fully investigated and prosecuted. Out of the 66 cases prosecuted, 13 were concluded with conviction, and 4 were concluded with acquittal of the defendant. The relevant law used for the prosecution of the cases was Article 408 of the Criminal Code. Additional cases not captured here exist at the regional level.

32. Ethiopia provided the following case example.

Federal Ethics and Anti-corruption Commission prosecutor vs. Kassahun Ayalew

Kassahun Ayalew was a public official who was head of the Design and Construction Office of Kaliti Sub-city. He solicited a bribe from a Mr. Hailu Mekonnen so that the illegal construction the latter built would not be demolished. He was caught red-handed while taking the bribe and charges were pressed against him by the Federal Ethics and Anti-corruption Commission Prosecutor. The case is pending trial.

(b) Observations on the implementation of the article

33. The provisions of article 15(b) of the Convention are catered for in Articles 403, 404 and 408 of the Criminal Code.
34. Article 402 of the Ethiopian Criminal Code allows the presumption of the intent to procure an advantage when it is proved that an act of corruption has been carried out unless proved otherwise.
35. Article 417 penalizes the acceptance of gifts by public officers with a penalty not exceeding five years imprisonment. The failure to declare or register property, financial status or gifts when so required by law is also punishable with the same penalty. Article 417, however, states that it shall not be an offence for a public servant to accept a gift *“considered by national or local culture or custom as a common manifestation of affection, or obtaining a gift from a close relative by consanguinity or affinity or by a close friend”*. Such an exemption seems to weigh against this provision. In this context it was clarified during the country visit that there are two exceptions under Ethiopian law to the prohibition on a public servant not accepting gifts. The first is the above-mentioned situation under Article 417 of the Criminal Code. The second is Article 15 of Proclamation No. 668/2010 “Disclosure and Registration of Assets”, which provides that an appointee, an elected person or a public servant may accept a gift, hospitality or sponsored travel if refusal to accept it could jeopardize his or her “working relation”, provided that he deposits the gift with the relevant public office or public enterprise or discloses it to the Commission or the relevant ethics liaison unit.

(c) Challenges, where applicable

36. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:
- Limited capacity (e.g. human/technological/institutional)

(d) Technical assistance needs

37. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
- Other assistance: File management and automation

None of these forms of technical assistance has been provided to Ethiopia to-date.

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 the article

38. Ethiopia noted that it has partially implemented the article under review and cited Article 427 of the Criminal Code as applicable.

Article 427 Criminal Code [Soliciting of Corrupt Practices]

(1) Whoever, with intent to procure a public servant to perform or omit an act in violation of the duty proper to his office, gives or offers an advantage or gift to such public servant, is punishable, according to the circumstances of the case, with simple imprisonment, or with rigorous imprisonment not exceeding seven years and fine not exceeding fifteen thousand Birr.

(2) Whoever gives or offers an advantage or gift to official or employee of a foreign State or international organization, with intent to procure him to perform or omit an act related to international trade in violation of his official duties, is punishable as provided under sub-article (1).

(3) Where the advantage or gift offered by the criminal is considerable, or where the act has caused substantial damage to State, public or private interests, the punishment shall be rigorous imprisonment from five years to fifteen years and fine not exceeding fifty thousand Birr.

(4) Any person who, in consideration for the performance by a public servant of an act proper to his office, gives or offers him an advantage or a gift before or after the performance of such an act, is punishable, according to the circumstances of the case, with fine, or simple imprisonment, or with rigorous imprisonment not exceeding five years.

(5) Where the crimes specified in the preceding sub-articles are committed by a juridical person, the punishment shall be fine as provided under Article 90 (3).

(6) In Addition to the punishment laid down under this Article, the Court may give an order depriving the criminal, permanently or temporarily, of his right to take part in any contract or transaction with the State.

39. There have been no cases on offering, promising or giving of an undue advantage to foreign public officials or officials of public international organizations.

40. Ethiopia has not criminalized passive foreign bribery.

41. In order to fully implement this article, Ethiopia has identified the need to strengthen its investigative and prosecutorial capacities.

(b) Observations on the implementation of the article

42. Article 427(2) of the Criminal Code criminalizes the offer or giving of bribes to foreign public officials and officials of public international organizations with intent to procure them to perform or omit to perform acts related to international trade in violation of their official duties. With respect to the missing elements of the offence (e.g., promises of bribery, indirect bribery and third party beneficiaries), as explained above, Section 404 should be read in conjunction with the cited provision.

43. It is recommended that Ethiopia consider criminalizing passive bribery by foreign public officials and officials of public international organizations.

(c) Challenges, where applicable

44. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

Inter-agency co-ordination;

Limited capacity (e.g. human/technological/institution/other);

Other issues: Capacity limitations in investigative and prosecutorial activities is the reason for not fully implementing this provision.

(d) Technical assistance needs

45. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

- *Summary of good practices/lessons learned*
- *On-site assistance by an anti-corruption expert*

None of these forms of technical assistance has been provided to Ethiopia to-date.

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 the article

46. Ethiopia cited Articles 412, 413, 415, 665, 675, and 676 of the Criminal Code as relevant.

Criminal Code

Article 412 [Unlawful Disposal of Object in Charge]

(1) Any public servant who, without lawful authority but without intent to appropriate:

(a) opens or permits to be opened, takes or permits to be taken, communicates or hands over to another a packet, envelope or document, securities, or any other object whatsoever received on deposit or under seal; or

(b) makes use of such objects, or authorized another to make use of them, is punishable with fine not exceeding seven thousand Birr or simple imprisonment not exceeding five years, where the act does not fall under a provision prescribing a more severe penalty.

(2) Where the crime had been committed for purposes of speculation, the punishment shall be rigorous imprisonment not exceeding five years and fine.

(3) Where the crime is committed negligently, the punishment shall be fine not exceeding one thousand Birr.

Article 413 [Appropriation and Misappropriation in the Discharge of Duties]

(1) Any public servant who with intent to obtain for himself or to procure for another an undue material advantage;

a) appropriates to himself objects, legal instruments, securities, cash, chattels or any consumable thing whatsoever in the course of a search, seizure or process of confiscation, public auction, sequestration or distraint, or during any other similar procedure; or

b) misappropriates such objects or securities which have been entrusted to him or which have come into his hands by virtue of or in the course of his duties, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding ten years and fine.

(2) Where the extent of advantage obtained, the official capacity or powers of the person corrupted or the extent of the harm to private, public or State interest renders the case of particular gravity, the punishment shall be rigorous imprisonment from seven years to fifteen years and fine not exceeding thirty thousand Birr

(3) Where two or more of the circumstances mentioned in sub-article (2) are present concurrently, the punishment shall be rigorous imprisonment from ten years to twenty-five years and fine not exceeding fifty thousand Birr.

Article 415 [Illegal Collection or Disbursement]

(1) Any public servant who, with intent to obtain an undue advantage for himself:

a) collects or orders the collection of taxes, dues, miscellaneous revenues or incomes, wages, salaries, compensation or other expenses, which he knows not to be due or to be in excess of what is legally due; or

b) hands over or pays less than is due, while consigning or disbursing any object or money, is punishable, according to the circumstances of the case, with simple

imprisonment for not less than one year, or with rigorous imprisonment not exceeding ten years and fine not exceeding fifteen thousand Birr.

(2) Where the crime is committed under one of the circumstances specified in sub-article (2) of Article 414 above, the punishment shall be rigorous imprisonment from seven years to fifteen years and fine not exceeding thirty thousand Birr.

(3) Where the crime is committed under the circumstances specified in Article 414 above, the punishment shall be rigorous imprisonment from ten years to twenty-five years and fine not exceeding fifty thousand Birr.

(4) Where the crime is committed negligently, it is punishable with simple imprisonment and fine.

Article 665 [Theft]

(1) Whoever, with intent to obtain for himself or to procure for another an unlawful enrichment, abstracts a movable or a thing detached from an immovable, the property of another, whether by taking and carrying or by direct appropriation, or by having it pass indirectly to his own property, is punishable according to the circumstances of the case, with simple imprisonment, or with rigorous imprisonment not exceeding five years.

(2) Where the criminal himself has detached the movable object from an immovable property, and while so doing has caused damage to the movable or immovable property, the provisions of Articles 689-691 shall apply concurrently.

(3) Where any person has committed petty abstraction of the property of another of a very small value, he shall be punishable according to the provisions relating to petty offences (Arts. 852 and 853).

Article 675 [Breach of Trust]

(1) Whoever, with intent to obtain for himself or to procure for a third person an unjustifiable enrichment, appropriates, or procures for another, takes or causes to be taken, misappropriates, uses to his own benefit or that of a third person, or disposes of for any similar act, in whole or in part, a thing or a sum of money which is the property of another and which has been delivered to him in trust or for a specific purpose, is punishable, according to the circumstances of the case, with simple imprisonment, or with rigorous imprisonment not exceeding five years.

(2) Property of another includes a sum of money, object or thing of value received by the criminal in consideration of a sum of money, object or thing of value entrusted to him for sale, purchase, exchange or other specific purpose.

(3) The intent to obtain for himself or to procure for a third person an unjustifiable enrichment shall be presumed where the criminal is unable upon call, to produce or repay the thing or sum entrusted, or at the time when he should have returned it or accounted therefore.

Article 676 [Aggravated Breach of Trust]

(1) Where the crime is committed against the property of the state or that of a public organization, or where the criminal is a public official, an appointee or a public trustee or an elected representative, the punishment shall be rigorous imprisonment from five years to fifteen years, and fine not exceeding one hundred thousand Birr.

(2) The crime is punishable with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years where:

- a) The criminal is a tutor, curator, liquidator, legal or financial advisor, agent, attorney, property administrator, or any other person to whom the property is available by virtue of his duties or responsibilities; or
- b) The, criminal: has misused a signed blank document entrusted to him in order to create an Obligation, discharge or any other act capable of imperilling the rights in property of the signatory: or
- c) The crime has been committed by a person making an offer to the public to subscribe in Order to obtain for himself or on behalf of banking, commercial or industrial company or other undertaking, the transfer, of funds or securities.

47. Between the years 2010-2013, the number of cases on embezzlement and misappropriation investigated and prosecuted was 133. The relevant laws used for the prosecution of the cases were Articles 412, 413, 415 and 676 of the Criminal Code. Ethiopia provided the following example of case law:

Federal Ethics and Anti-corruption Commission prosecutor vs. Shuwan Gizaw Adugna
Shuwan Gizaw Adugna was a postman at a governmental office. He was accused of replacing a new engine of a government motorcycle which was entrusted to him by virtue of his position as a postman with an old engine. The crime was detected and investigated. Then, the Federal Ethics and Anti-corruption Commission Prosecutor pressed charges against him and the case is pending trial.

48. Between the years 2010 and 2013, some 316 allegations were received by the Commission. Out of these cases, 133 were fully investigated and prosecuted.

(b) Observations on the implementation of the article

49. The provisions of article 17 of the UNCAC seem to be satisfied by the various quoted provisions with the Ethiopian Criminal Code. The article is implemented.

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 the article

50. With respect to active trading in influence, articles 403 and 427 of the Criminal Code of the Federal Democratic Republic of Ethiopia are relevant.

Criminal Code

Article 403 [Presumption of Intent to Obtain Advantage or to Injure]

Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular Article providing for a crime of corruption perpetrated to obtain or procure undue advantage or to cause injury, such act shall be presumed to have been committed with intent to obtain for oneself or to procure for another an undue advantage or to injure the right or interest of a third person.

Article 427 [Soliciting corrupt practices]

1) Whoever, with intent to procure a public servant to perform or omit an act in violation of the duty proper to his office, gives or offers an advantage or gift to such public servant, is punishable, according to the circumstances of the case, with simple imprisonment, or with rigorous imprisonment not exceeding seven years and fine not exceeding fifteen thousand Birr.

(2) Whoever gives or offers an advantage or gift to official or employee of a foreign State international organization, with intent to procure him to perform or omit an act related to international trade in violation of his official duties, is punishable as provided under sub-article (1).

(3) Where the advantage or gift offered by the criminal is considerable, or where the act has caused substantial damage to State, public or private interests, the punishment shall be rigorous imprisonment from five years to fifteen years and fine not exceeding fifty thousand Birr.

(4) Any person who, in consideration for the performance by a public servant of an act proper to his office, gives or offers him an advantage or a gift before or after the performance of such an act, is punishable, according to the circumstances of the case, with fine, or simple imprisonment, or with rigorous imprisonment not exceeding five years.

(5) Where the crimes specified in the preceding sub-articles are committed by a juridical person, the punishment shall be fine as provided under Article 90 (3).

(6) In Addition to the punishment laid down under this Article, the Court may give an order depriving the criminal, permanently or temporarily, of his right to take part in any contract or transaction with the state.

51. With respect to the passive version of the offence, Ethiopia cited Articles 403, 404 (2), 414, 430, and 431 of the Criminal Code as relevant.

Criminal Code

Article 403 [Presumption of Intent to Obtain Advantage or to Injure]

Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular Article providing for a

crime of corruption perpetrated to obtain or procure undue advantage or to cause injury, such act shall be presumed to have been committed with intent to obtain for oneself or to procure for another an undue advantage or to injure the right or interest of a third person.

Article 404 [Principle]

(2) Any public servant who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right of another, directly or indirectly, accepts or solicits an undue advantage by improperly performing his responsibility or duty; or who, in any other way, misuses the responsibility or public trust vested in him to procure an undue advantage for himself or another; or Any person who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right of another, promises, offers, gives or agrees to give an undue advantage to a public servant; or Any person who gives, or any public servant who accepts, an undue advantage in consideration for an act of public office properly performed or to be performed, shall be deemed to have committed crimes of corruption specified in this Chapter, and be liable to the punishments prescribed in the provisions below.

Article 414[Traffic in official influence]

(1) Any public servant who solicits or accepts a gift or other advantage to procure for another, through the exercise of the influence, real or pretended, he enjoys by reason of his being a public servant:

- a) a situation, an office, employment, declaration, reward or favour within the dispensation of the competent authority; or
- b) contracts, deals, undertakings, orders or other benefits resulting from agreements concluded with the public authorities or with an administration placed under his control or direction; or
- c) in general, an advantage or a favourable decision on the part of a public authority or administration. is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding ten years and fine not exceeding thirty thousand Birr.

(2) Where the purpose of the breach of responsibility or duty solicited, the extent of the advantage received, the official capacity or powers of the person corrupted or the extent of the harm to private, public or State interests renders the case of particular gravity, the punishment shall be rigorous imprisonment from seven years to fifteen years and fine not exceeding fifty thousand Birr.

(3) Where two or more of the circumstances mentioned in subarticle (2) above are present concurrently, the punishment shall be rigorous imprisonment from ten years to twenty-five years and fine not exceeding one hundred thousand Birr.

Article 430[Use of pretended authority]

Whoever, promising to perform certain things, solicits or accepts an undue advantage or gift from another:

- a) by pretending to be still on active duty while he has been suspended, transferred, removed or dismissed from or has quitted his public office; or
- b) by entertaining the belief of becoming a public servant in the future; or

c) by holding himself on to be a public servant, is punishable according to the circumstances of the case, with simple imprisonment, or with rigorous imprisonment not exceeding ten years.

Article 431[Trafficking in private influence]

Whoever, not being a public servant and not being liable to the special provision (Art 414), seeks, exacts a promise or receives sums of money, gifts, presents or other advantages in consideration for exercising his influence, real or pretended, to procure for another any privilege, benefit or advantage which can only be granted by a public servant, is punishable with simple imprisonment for not less than one year or fine not less than two thousand Birr.

52. Between the years 2010 and 2013, the number of cases of trading in influence (both active and passive) investigated and prosecuted was 23. The relevant laws used for the prosecution of the cases were Articles 427 and 431 of the Criminal Code. It was confirmed that the cases involved trading in influence, rather than bribery.
53. The number of corruption cases investigated and prosecuted under Articles 414 and 430 of the Criminal Code was 184. The following two cases exemplify their application.

1. Federal Ethics and Anti-corruption Commission prosecutor vs. Bereket Getachew

Bereket Getachew was not actually a public servant as he claimed to be. But, he pretended to be a public servant at the Ethiopian Commodity Exchange and threatened to close the store of the Testy Trading Share Company for an alleged violation of rules by the latter. In exchange for not taking the action, he demanded 10,000 Birr in bribes. The Federal Ethics and Anti-corruption Commission Prosecution pressed charges against him and the case is pending trial.

2. Federal Ethics and Anti-corruption Commission prosecutor vs. Fiseha Teklet and 10 others

Fiseha Teklet and 10 others who were government officials illegally granted 1,800 square meter of urban land, which was valued at two million Birr, The Federal Ethics and Anti-corruption Commission Prosecutor filed charges against them for soliciting an undue advantage through the exercise of their real influence to solicit illegal benefit for themselves.

(b) Observations on the implementation of the article

54. Ethiopia relies on the general bribery provisions (Article 427 of the Criminal Code) for pursuing cases of (active) trading in influence. The observations under that article are referred to. The abuse of real or supposed influence to obtain an undue advantage from an administration or public authority is not covered under these provisions. However, Ethiopia has adopted corresponding provisions in this regard in articles 28 and 29 (Use of

Pretended Authority and Traffic in Private Influence) of the new Corruption Crimes Proclamation (No. 881/2015).

55. With respect to passive trading in influence, the provisions elicited in Article 18 of UNCAC seem to be covered by the cited articles of the Ethiopian Criminal Code insofar as they deal with trading in influence. It is noted that Article 414 is limited to public servants while Article 431 opens up to persons that are not public servants. It also appears that there is a large difference in the penalties contemplated with a maximum of 25 years imprisonment in the case of public servants but ‘not less than one year or a fine of not less than two thousand Birr’ in the case of civilians that are caught trading in influence. Article 430 of the Criminal Code contemplates a harsher penalty but this is limited to cases where the offender is either an ex-public employee or pretends to be a public employee.
56. The Ethiopian criminal code criminalizes the solicitation of bribes by public servants with various applicable articles as quoted above.

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 the article

57. The Ethiopian Criminal Code and its Articles 403, 407, 411, 416 and 418 were cited as relevant.

Criminal Code

Article 403 [Presumption of Intent to Obtain Advantage or to Injure]

Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular Article providing for a crime of corruption perpetrated to obtain or procure undue advantage or to cause injury, such act shall be presumed to have been committed with intent to obtain for oneself or to procure for another an undue advantage or to injure the right or interest of a third person.

Article 407[Abuse of Power]

(1) Any public servant who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right or interest of another:

- a) misuses his official position or the power proper to his office, whether by a positive act or by a culpable omission; or
- b) exceeds the power with which he is officially invested; or
- c) performs official acts when he is not, or is no longer, qualified to do so, especially in the case or in consequence of incompetence, suspension, transfer, removal from office or its cessation, is punishable, according to the circumstances of the case with

simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding ten years and fine, where there is no express provision in this Code concerning the matter.

(2) Where the purpose of the breach of responsibility or duty solicited, the amount of the money or gifts received in consideration, the official capacity or powers of the person corrupted or the extent of the harm to private, public or State interests renders the case of particular gravity, the punishment shall be rigorous imprisonment from seven years to fifteen years and fine not exceeding fifty thousand Birr.

(3) Where two or more of the circumstances mentioned in subarticle (2) are found concurrently, the punishment shall be rigorous imprisonment from ten years to twenty-five years and fine not exceeding one hundred thousand Birr.

Article 411[Maladministration]

(1) Any public servant who, with intent to obtain for himself or to procure for another an undue advantage, and by using his power or responsibility:

a) improperly takes or ensures for himself, by concluding a contract or by devising other means, an interest in a business or other undertaking, a sale or a purchase, or any other transaction related with his duty; or

b) concludes a supply or public works contract or any other transaction at a price higher than that fixed by the competent authority; or

c) in general, by any means, injures the public interests entrusted to his charge and which it is his duty to protect, is punishable with rigorous imprisonment not exceeding ten years and fine not exceeding fifty thousand Birr.

(2) Where the purpose of the breach of responsibility or duty solicited, the extent of the advantage received, the official capacity or powers of the person corrupted or the extent of the harm to private, public or State interests renders the case of particular gravity, the punishment shall be rigorous imprisonment from seven years to fifteen years and fine not exceeding one hundred thousand Birr.

(3) Where two or more of the circumstances mentioned in subarticle (2) above are present concurrently, the punishment shall be rigorous imprisonment from ten years to twenty-five years and fine not exceeding two hundred thousand Birr.

(4) The punishment shall be simple imprisonment, or rigorous imprisonment not exceeding five years and fine, where the criminal, without intent to obtain an advantage for himself or to procure the same for another:

a) has caused a contract to be concluded, relating to a business or other undertaking, a purchase or sale, or any transaction concerning his department, between his office and an organization in which he himself or his close relative or a person with whom he has a bond of affection is an interested party or a shareholder, or with a charitable organization of which he is a founder or a member; or

b) has purchased certain property or taken part in an auction, while prohibited by law or regulations from so doing, in his own name or in the name of, or together with, another person. "Relative" means a person who is related to the criminal, in accordance with the relevant law, by consanguinity or by affinity.

Article 416 [Undue Delay of Matters]

Any public servant who, with intent to obtain an advantage, directly or indirectly, from any person interested in a matter brought to his attention by reason of his responsibility or duty, or to benefit or injure any party interested in such matter, fails, without good cause, to decide on or delays the matter or abuses the interested party contrary to law, manuals or accepted office practices, shall, apart from the cases penalized as petty offer be punishable, according to the circumstances of case, with fine or simple imprisonment, or with rigorous imprisonment not exceeding five years.

Article 418 [Granting and Approving License Improperly]

Any public servant who intentionally grants or approves a business license or work permit to an ineligible person or to a person not legally entitled to obtain such license or permit, or improperly grants or permits a place where things are to be done, is punishable, according to the circumstances of the case, with simple imprisonment or with rigorous imprisonment not exceeding ten years.

58. In the years 2010-2013, some 2040 allegations were received by the Commission for offences under articles 407 and 411. Out of these cases, 165 were fully investigated and prosecuted. The relevant laws here are Articles 407 and 411. Out of the 165 cases prosecuted, 131 were concluded with conviction, and 56 were concluded with acquittal of the defendant. The numerical difference between the number of allegations received 2040 and the number of cases prosecuted 165 is because of the fact that there were some “unsorted” cases that were not related to corruption.

59. The following case summary was given as an example.

Federal Ethics and Anti-corruption Commission prosecutor vs. Daniel Eshetu and 7 others

Daniel Eshetu and 7 others abused their function as public officials for the purpose of obtaining an undue advantage for themselves. In this case, what the accused who were serving at the Land Administration Office of the Arada Sub-City, did was that they illegally granted governmental land which was valued at 3,277,924.30 Birr to private individuals.

(b) Observations on the implementation of the article

60. Article 19 of UNCAC is covered by the various provisions of law quoted by the Ethiopian authorities. It is noted that 2085 cases were reported in the years 2010 to 2013 which resulted in 171 prosecutions.

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 the article

61. Articles 403, 419 and 663 of the Criminal Code were cited as relevant.

Criminal Code

Article 403 [Presumption of Intent to Obtain Advantage or to Injure]

Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular Article providing for a crime of corruption perpetrated to obtain or procure undue advantage or to cause injury, such act shall be presumed to have been committed with intent to obtain for oneself or to procure for another an undue advantage or to injure the right or interest of a third person.

Article 419[Possession of Unexplained Property]

- (1) Any public servant, being or having been in a public office, who:
 - a) maintains a standard of living above that which is commensurate with the official income from his present or past employment or other means; or
 - b) is in control of pecuniary resources or property disproportionate to the official income from his present or past employment or other means, shall, unless he gives a satisfactory explanation to the Court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be punished, without prejudice to the confiscation of the property or the restitution to the third party, with simple imprisonment or fine, or in serious cases, with rigorous imprisonment not exceeding five years and fine.
- (2) Where the Court, during proceeding under sub-article (1)(b), is satisfied that there is reason to believe that any person, owing to his closeness to the accused or other circumstances, was holding pecuniary resource or property in trust for or otherwise on behalf of the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been under the control of the accused.

Article 663 [Presumption of Unlawful or Unjustifiable Enrichment]

- (1) Where the law requires, in order that there be a crime, that the criminal shall have acted with intent to obtain for himself or to procure for a third person an unlawful enrichment, there is a presumption that the act was done in order to obtain or procure a benefit or an unjustifiable advantage.
- (2) In such event, the crime is completed from the time when such special intent, joined to the material elements, is proved, notwithstanding that the intended enrichment has not taken place. Repayment or the making good of the damage, even if unsolicited, after such time, does not vitiate the crime, but the Court may take account thereof in determining the sentence (Art. 79 (e)).

62. Between the years 2010 and 2013, the number of cases on investigated and prosecuted was 10 and the legislation applied was Article 419 of the Criminal Code of Ethiopia. As an example the following case was cited:

Federal Ethics and Anti-corruption Commission prosecutor vs. Yared Getaneh

Yared Getaneh was a Judge at the Federal First Instance Court. He owned two villas, two cars, and 600,000 Birr. Given his income, owning such assets was almost impossible. The situation was brought to the attention of the Federal Ethics and Anti-corruption Commission. The prosecutor requested the accused to reasonably explain the source of his assets but the latter failed to do so. As a result, the prosecutor filed charges against the accused and the case is pending trial.

63. Between the years 2010 and 2013, some 42 allegations were received by the Commission. Out of these cases, 10 were fully investigated and prosecuted.

(b) Observations on the implementation of the article

64. Article 20 of the UNCAC addresses the criminalization of illicit enrichment. Ethiopia has cited Articles 403, 419 and 663 of the Criminal Code as the relevant articles that cover this provision. It was explained that Article 663 applies to all corruption crimes, not just illicit enrichment.
65. It is noted that the Articles 419 and 663 cover this requisite adequately in respect of any unexplained enrichment. Ethiopian law requires a suspect to identify the source of his wealth or be punished in default with up to 5 years imprisonment and a fine.

Article 21 Bribery in the private sector

Subparagraph (a)

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;

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

66. Ethiopia noted that it has partially implemented the provision and indicated that Article 427 of the Criminal Code [Soliciting of Corrupt practices] is being amended in such a way that it includes corruption in the private sector. Furthermore, Ethiopia cited Article 27 (Facilitating Act of Bribery) of the new Corruption Crimes Proclamation (No. 881/2015).
67. One of the major reasons that necessitated the amendment of the Criminal Code on Corruption Offences was because Article 427 of the Criminal Code is not broad enough to cover the crime of bribery in the private sector. Therefore, the new Corruption Crimes

Proclamation(No. 881/2015), under Article 27, criminalizes bribery in the private sector as a corruption offence.

68. There have been no cases on the promise, offering, or giving an undue advantage to any person working in the private sector.

(b) Observations on the implementation of the article

69. Ethiopia has partially criminalized bribery in the private sector in Article 427 of the Criminal Code. Moreover, Article 27 of the new Corruption Crimes Proclamation (No. 881/2015) partially corresponds to the elements of the article under review in that it covers persons facilitating the bribery of persons employed in the private sector. However, this provision seems to require the involvement of a (third party) instigator of the bribery. See also the observations under article 21(b) below.

Article 21 Bribery in the private sector

Subparagraph (b)

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:

(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 the article

70. Ethiopia noted it has partially implemented the provision through Article 703 of the Criminal Code. Furthermore, it cited Article 10(Bribery) of the new Corruption Crimes Proclamation (No. 881/2015)as applicable.

Criminal Code

Article 703 [Aggravated Case]

2) Where the criminal solicits or accepts any kind of advantage from another in consideration for the performance or omission of an act in violation of his responsibility or duty, he shall be punishable with simple imprisonment for not less than one year, or rigorous imprisonment not exceeding seven years and fine not exceeding twenty thousand Birr. In grave cases, the punishment shall be rigorous imprisonment for not less than five years, and fine not exceeding one hundred thousand Birr.

(3) Any person who, for the performance of an act proper to his responsibility or duty, solicits or obtains an advantage or exacts a promise before or after the performance of such an act, is punishable, according to the circumstances of the case, with simple imprisonment for not less

than one year, or with rigorous imprisonment not exceeding five years and fine not exceeding ten thousand Birr.

(4) In the case of fraudulent mismanagement of State interests, corrupt practices or acceptance of undue advantage committed by a public servant or official, the special provisions (Arts. 409, 410 and 412) shall apply.

71. Between 2010 and 2012, the number of criminal cases investigated and prosecuted was 31. The relevant law used for the prosecution of the cases was Article 703 of the Criminal Code.

(b) Observations on the implementation of the article

72. Article 703 of the Ethiopian Criminal Code seems to partially cover the requisites of paragraph (b) of article 21. Moreover, Article 10 (Bribery) of the new Corruption Crimes Proclamation (No. 881/2015) covers the solicitation and acceptance of bribes by employees of “public organizations,” which is defined as “any organ in the private sector which in whatever way administers money, property or any other resource collected from members or from the public or any money collected for the benefit of the public which includes appropriate company, but does not include: a) religious organization; b) political party; c) international organization; and d) edir or other similar traditional or religious associations” (article 2(4), Corruption Crimes Proclamation).

(c) Challenges, where applicable

73. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

- *Limited capacity (e.g. human/technological/institution/other): Dealing with corruption in the private sector is a new endeavour. Therefore, assistance in building capacity of the staff of the Commission would be needed.*
- *Limited resources for implementation: financial assistance in this endeavour is also required.*

(d) Technical assistance needs

74. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

On-site assistance by an anti-corruption expert.

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 the article

75. Ethiopia noted that it has partially implemented the provision and cited Article 702 of its Criminal Code in addition to the above-cited Article 703 as relevant. Furthermore, Ethiopia indicated that Article 15 (Appropriation and Misappropriation in the Discharge of Duties) of the new Corruption Crimes Proclamation (No. 881/2015) would also apply.

Criminal Code

Article 702 [Mismanagement of Private Interests]

Whoever, being legally or contractually bound to watch over or to manage the property rights of another, intentionally causes prejudice to such property interest he watches over or to the service he renders to the undertaking he works for by misusing his powers or by failing in his duties, is punishable with simple imprisonment or fine.

...

(2) Where the act is committed negligently, the punishment shall be fine, or simple imprisonment not exceeding six months

(3) Where the criminal has committed the crime with intent to obtain for himself or to procure for another a benefit in property, the punishment shall be simple imprisonment for not less than one year, and a fine not exceeding thirty thousand Birr.

76. Between 2010 and 2012, the number of criminal cases investigated and prosecuted was 31. The relevant law used for the prosecution of the cases was Article 702 of the Criminal Code.

(b) Observations on the implementation of the article

77. Article 702 of the Ethiopian Criminal Code seems to cover this provision adequately. Moreover, Article 15 of the new Corruption Crimes Proclamation (No. 881/2015) further covers appropriation and misappropriation by persons in the private sector.

(c) Challenges, where applicable

78. Ethiopia has identified limited capacity as a challenge and issue in fully implementing the provision under review:

- *Limited capacity (e.g. human/technological/institution/other): Dealing with corruption in the private sector is a new endeavour. Therefore, assistance in building capacity of the staff of the Commission would be needed.*

(d) Technical assistance needs

79. Ethiopia has indicated that a summary of good practices/lessons learned, if available, would assist it in better implementing the article under review

None of these forms of technical assistance has been provided to Ethiopia to-date.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (I)

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;*

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

80. Article 29 (1) (a) of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 is relevant here.

29. Money laundering

1/ Any person who knows or should have known that a property is the proceeds of a crime and who:

- a) Converts or transfers the property for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

81. Between 2010 and 2014, the number of criminal cases of money laundering investigated and prosecuted was 61 and the number of convictions was 47. The relevant law used for the prosecution of the cases was Article 684 of the Criminal Code (which has since been repealed by article 29 of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013).

82. Since the money laundering offence as specified in the previous Article 684 of the Criminal Code is applicable to all sub-paragraphs of UNCAC article 23, the relevant data available is cumulative. Therefore, the aggregate number of the cases is provided as presented by the different government departments, including Revenue and Customs Authority, Federal Police Commission, Ministry of Justice and the Investigation and Prosecution Department of the FEACC.

Case Example

Federal Ethics and Anti-Corruption Commission Prosecutor vs. Abdulkerim Adem and 18 others.

The accused, who was the former employee of the Ethiopian Commodity Exchange, used the money of his employer (Ethiopian Commodity Exchange) for buying a new house. He was expected to deposit the three million Birr at the National Bank of Ethiopia. The

prosecutor of the Federal Ethics and Anti-corruption Commission filed charges against him and he was found guilty by the Court. He was sentenced to rigorous imprisonment of 23 years and a fine of 70,0000 Birr.

(b) Observations on the implementation of the article

83. Article 29 of the Money Laundering Proclamation No. 780 contains provisions to satisfy the requisites of the UNCAC provision under review. Ethiopia has provided statistics on money-laundering investigations and prosecutions from 2010 to 2014. It is noted that the quoted statistics do not differentiate between the various UNCAC provisions under review.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

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) (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;

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

84. Ethiopia cited Article 29 (1) (b) of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013.

**Money Laundering
Article 29**

1/ Any person who knows or should have known that a property is the proceeds of a crime and who:

...

b) Conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to the property;

(b) Observations on the implementation of the article

85. The requisites of article 23 sub-paragraph 1(a)(ii) are covered by Article 29(1)(b) of the Ethiopian AML proclamation.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

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:

(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;

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

86. Article 29 (1) (c) of Ethiopia's Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 has been quoted as relevant here.

Article 29. Money Laundering

1/ Any person who knows or should have known that a property is the proceeds of a crime and who:

c) Acquires, possesses or uses the property;

(b) Observations on the implementation of the article

87. This provision is also covered by the provision of the said Article 29 of the Ethiopian AML proclamation.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

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:

(b) Subject to the basic concepts of its legal system:

(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.

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

88. Article 29 (1) (d) of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 is relevant here.

Article 29. Money Laundering

1/ Any person who knows or should have known that a property is the proceeds of a crime and who:

d) Participates in the commission, conspires to commit, attempts to commit or aids, abets, facilitates or counsels the commission of any of the elements of the offence mentioned in paragraphs(a) to (c) of this sub-article;

(b) Observations on the implementation of the article

89. This provision under review is covered in the aforementioned article 29.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (a) and (b)

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;

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

90. Ethiopia indicated that Article (2) (4) of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 is relevant here and that it provides a broad definition:

Article 2

(4)“predicate offence” means any offence capable of generating proceeds of crime and punishable at least with simple imprisonment for one year;

(b) Observations on the implementation of the article

91. The definition of ‘predicate offence’ given in Ethiopian law provides for a broad range of offences that carry a minimum of one year imprisonment as a penalty. It was confirmed by Ethiopia that this threshold covers all UNCAC offences.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

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

(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;

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

92. Article 29 (3) (c) of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 is relevant here.

Money Laundering

Article 29

3/ In applying the provisions of sub-article (1) of this Article:

c) The predicate offence also includes actions committed outside of the national territory if they would have constituted offences if they had been committed within the territory of Ethiopia;

(b) Observations on the implementation of the article

93. The provision under review is legislatively implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

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

(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;

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

94. Ethiopia indicated that it had not to date provided copies of its laws to the United Nations. It cited Article 29 (1) and (2) of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013.

(b) Observations on the implementation of the article

95. Ethiopia has not made the requisite notification to the United Nations. It is encouraged to send the requested information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

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

(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 the article

96. Ethiopia informed that its domestic system does not contain such principles and cited Article 29 (3) (d) of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013.

Money Laundering Article 29

3/ In applying the provisions of sub-article (1) of this Article:

d) The offence of money laundering shall also apply to persons who have committed the predicate offence;

(b) Observations on the implementation of the article

97. Ethiopia appears to have no reservations on self-laundering of proceeds of crime; hence everybody involved in the laundering process is liable to prosecution. The provision is legislatively implemented.

(c) Challenges, where applicable

98. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

- *Inter-agency co-ordination*
- *The Financial Reporting Center is new, work is needed to determine how it can maximize the effectiveness of its interaction with law enforcement agencies.*
- *Limited capacity (e.g. human/technological/institution/other)*
- *Specific work is needed to train investigators how to use analyses developed by the Financial Reporting Center and to train prosecutors on how to charge the anti-money laundering offences.*

(d) Technical assistance needs

99. Ethiopia has indicated that on-site assistance by an anti-corruption expert, if available, would assist it in better implementing the article under review:

Ethiopia has received technical assistance from UNODC (with further assistance scheduled), the World Bank Financial Market Integrity Unit and the Royal Denmark Embassy.

The World Bank signed a concept note with the Financial Intelligence Centre on providing support in building the capacity of public institutions that are engaged in law enforcement activities.

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 the article

100. Ethiopia has cited Articles 40, 445 and 855 of the Criminal Code, as well as Article 29 of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 (quoted under article 23 above) as relevant here.

Criminal Code

Article 40 [Accessory after the Fact]

Whoever after a crime has been committed assists a criminal either by hiding him or helping him to escape prosecution or punishment or by receiving the proceeds of his crime, shall be punished in accordance with the provisions of the Special Part of this Code dealing with such acts (Arts. 445, 460 and 682).

Article 445 [Harbouring and Aiding]

Whoever knowingly saves from prosecution a person who has fallen under a provision of criminal law, whether by warning him or hiding him, by concealing or destroying the traces or instruments of his crime, by misleading the investigation, or in any other way, is punishable with simple imprisonment or fine.

Article 855 [Failure to Notify the Competent Authority and Concealment of Property]

Whoever omits to notify the competent authority, as soon as circumstances and material conditions enable him so to do;

(a) upon his finding an object mislaid or lost by another person, or a treasure (Art. 680); or

(b) upon acquiring or receiving in any capacity whatsoever objects of any nature originating, without his knowledge, from a theft or another offence against another person's property, the felonious origin of which he subsequently suspected, knew or ascertained, is punishable with fine or arrest not exceeding one month.

101. Ethiopia referred to the statistics on money laundering under article 23(1) above. No separate statistics on concealment were available. The following case was cited as an example:

Federal Ethics and Anti-corruption Commission prosecutor vs. Aychew Tefeta and others

Aychew Tefeta obtained 6,694,833.33 Million Birr through corruption. He built a new hotel with this money in the name of his mother. Aychew, together with his accomplice, were charged with money laundering, including concealment.

(b) Observations on the implementation of the article

102. Article 24 of the UNCAC deals with the criminalization of the act of hiding or retaining property when it is known that the property in question comes from a crime. Ethiopia has cited Articles 40, 445 and 855 of the Criminal Code and Article 29 of the Money Laundering Proclamation as relevant to this article. The article is legislatively implemented.

Article 25 Obstruction of Justice

Subparagraph (a)

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;

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

103. Ethiopia cited Articles 444 and 455 of the Criminal Code and Article 27 (1) of Proclamation No. 433/2005 as applicable here.

Criminal Code

Article 444 [Crimes against Whistleblowers or Witnesses]

(1) Whoever assaults suppresses or harms any person who gives information or evidence to justice authorities or is a witness in criminal cases, is punishable with simple imprisonment or fine.

(2) Where the crime has entailed grave harm to the body or health of the victim or, his death, the relevant provision concerning such matters shall apply concurrently.

Article 455 [Provocation and Suborning]

(1) Whoever, by gifts, promises, threats, trickery or deceit, misuse of his personal influence or any other means, induces another to make a false accusation, to give false testimony or to make a false report, application or translation before the concerned organ in judicial or quasi-judicial proceedings, is punishable, even where the act solicited has not been performed, with simple imprisonment, unless he is punishable for incitement in accordance with the provisions of the General Part (Art. 35).

(2) Whoever, by violence, intimidation or by promising or offering or giving undue advantage causes another to make false accusation or give false testimony or obstructs, through interference, the giving of testimony or the production of evidence in relation to a crime punishable with rigorous imprisonment for more than two years or obstructs law enforcement officials or public servants while exercising their official duties in relation to the same crime, is punishable with rigorous imprisonment not exceeding seven years.

Proclamation 433/2005 [Establishment of the FEACC]

Article 27(1)[Penalty]

Whosoever attempts to influence, harm or punish or who influences, harms or punishes any person who gives evidence or provides information relating to corruption offences to the Commission, organs of judicial administration, head of a Public office, or a Public enterprise shall be punishable with rigorous imprisonment not less than three years and not exceeding fifteen years; and with fine not less than Birr six thousand and not exceeding Birr twenty five thousand Birr.

104. Between 2010 and 2011, the number of criminal cases investigated and prosecuted involving obstruction of persons who give evidence or information to the FEACC or organs of judicial administration was 6. The relevant law used for the prosecution of the cases was Article 27 of the Commission's Establishment Proclamation No. 433/2005. As an example of implementation, Ethiopia provided the following case summary:

Federal Ethics and Anti-corruption Commission prosecutor vs. Employees of the Revenue and Customs Authority and traders

Some employees of the Revenue and Customs Authority connived with some traders to ensure that the latter would be able to evade 18 million Birr in tax payments. The crime was investigated by the Commission and charges were brought against the accused persons. The accused persons, on their part, managed to falsely accuse the key witness for the case through perjury in order to interfere with in giving of testimony against them. Then, the key witness was arrested for the fabricated crime and taken to a remotest area some 628 kilometers from the Capital where the real corruption case was initiated. This intrigue among the suspected persons was brought to the attention of the Commission, which managed to follow up the case and ensured the release of the key witness. The witness gave his testimony and the accused persons were sentenced to rigorous imprisonment. Those who were involved in the perjury crime were also punished.

(b) Observations on the implementation of the article

105. The provisions of article 25 seem to be satisfied by the above mentioned Ethiopian laws. No statistics on the implementation of the cited provisions of the Criminal Code were available.

Article 25 Obstruction of Justice

Subparagraph (b)

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

(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 the article

106. Ethiopia indicated that Article 27 (6) of Proclamation No. 433/2005 and Article 449(1) of the Criminal Code are both relevant here. Moreover, Ethiopia referred to Article 2(6)(b) of the new FEACC Establishment Proclamation (No. 883/2015).

Proclamation 433/2005[Establishment of the FEACC]

Article 27 (6) [Penalty]

Whosoever obstructs or attempts to obstruct the activities of the Commission shall be punishable with rigorous imprisonment not less than two years and not exceeding ten years; and with fine not less than Birr five thousand and not exceeding Birr twenty thousand. Where the offence is accompanied by violence, the maximum penalty prescribed in this sub-article shall be imposed.

Criminal Code

Article 449[Contempt of Court]

(1) Whoever, in the course of a judicial inquiry, proceeding or hearing,

(a) in any manner insults, holds up to ridicule, threatens or disturbs the Court or a judge in the discharge of his duty; or

(b) in any other manner disturbs the activities of the Court, is punishable with simple imprisonment not exceeding one year, or fine not exceeding three thousand Birr. The Court may deal with the crime summarily.

107. Between 2010 and 2013, the number of criminal cases investigated and prosecuted was 4. The relevant law used for the prosecution of the cases was Article 27 of the Commission's Establishment Proclamation No. 433/2005. The following case summary was provided as an example of implementation:

Federal Ethics and Anti-corruption Commission prosecutor vs. Biru Balcha

Biru Balcha threatened the investigators of the Commission with the intention of interfering with their investigative duties. Biru Balcha was then charged with intimidation and sentenced to imprisonment.

(b) Observations on the implementation of the article

108. It is noted that the laws quoted concern the FEACC and the consequences of using force or intimidation against its officers as well as threats against the judiciary, which are covered under article 449 of the Criminal Code.
109. Moreover, under Article 2(6)(b) of the new FEACC Establishment Proclamation (No. 883/2015), obstruction of the powers and duties of FEACC in respect of corruption cases falls under the mandate of the FEACC.
110. It was confirmed during the country visit that there are no specific provisions in the law penalizing obstruction of police officers or other law enforcement officers. It is recommended that Ethiopia establish or strengthen relevant protections against retaliation for police and other law enforcement officers.
111. It was confirmed that there have been very few cases of obstruction of FEACC officers. No statistics on the implementation of the cited provisions of the Criminal Code were available.

Article 26 Liability of legal persons

Paragraphs 1 to 3

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.

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

112. Articles 23(3), 34, 90, and 405 of the Criminal Code of the Federal Democratic Republic of Ethiopia and Article 2 (5) of Proclamation No.434/2005 are relevant here.

Criminal Code

Article 23 [Crimes]

(3) Notwithstanding the provision of sub-article (2) of this Article, a juridical person shall be criminally liable to punishment under the conditions laid down in Article 34 of this Code.

Article 34 [Participation of a Juridical Person in a Crime]

(1) A juridical person other than the administrative bodies of the State is punishable as a principal criminal, an instigator or an accomplice where it is expressly provided by law. A juridical person shall be deemed to have committed a crime and punished as such where one of its officials or employees commits a crime as a principal criminal, an instigator or an accomplice in connection with the activity of the juridical person with the intent of promoting its interest by an unlawful means or by violating its legal duty or by unduly using the juridical person as a means.

(2) The juridical person is punishable with fine under sub-article (3) or sub-article (4) of Article 90 of this Code; and, where necessary, an additional penalty may be imposed to suspend, close or wind up the juridical person.

(3) The punishment of the juridical person shall not exclude the penalty to be imposed on its officials or employees for their personal criminal guilt.

(4) For the purpose of this Article "juridical person" means a body which has governmental or non-governmental, public or private structure and includes any legally recognized institution or association set up for commercial, industrial, political, religious or any other purpose.

Article 90 [Fine; Principles to be Applied When Fine Imposed]

(3) When the penalty provided, for by the Special Part of this Code is only imprisonment and the criminal is a juridical person, the punishment shall be a fine not exceeding ten thousand Birr for a crime punishable with simple imprisonment not exceeding five years, a fine of up to twenty thousand Birr for a crime punishable with rigorous imprisonment not exceeding five years, a fine of up to fifty thousand Birr for a crime punishable with rigorous imprisonment more than five years but not exceeding ten years, a fine of up to the general maximum laid down in sub- article (1) for a crime punishable with rigorous imprisonment exceeding ten years.

...

(4) Where only fine is provided for in the Special Part of this Code, and where the criminal is a juridical person, the fine shall be five-fold.

Article 405 [The Concurrent Application of Administrative Penalties and Compensation]

Conviction or acquittal under the provisions of this Chapter shall not exclude liability for damages and/or administrative penalties.

Proclamation No. 434/2005 [The Revised Proclamation to Provide for Special procedure and Rules of Evidence on Anti-Corruption]

Article 2 (5)

"Person" means any natural or juridical person. Therefore, this proclamation is applicable either to natural or legal persons depending up on the circumstance.

113. Ethiopia noted that between 2010 and 2013, the number of criminal cases investigated and prosecuted was 4. The relevant laws used for the prosecution of the cases was Article

34, 90 and 23 (3) of the Criminal Code and provided the following case summary as an example of implementation:

Federal Ethics and Anti-corruption Commission prosecutor vs. Sheba Metal Casting
Sheba Metal Casting Share Company allegedly stole power worth 65,336,214.33 Birr from the Ethiopian Electric Power Corporation. The case was investigated and charges were brought against the suspect. The case involved both civil and criminal liabilities against the Share Company and individuals involved in this criminal activity. The employees of the Ethiopian Electric Power Corporation who conspired with the Share Company in the execution of the criminal act were also charged. The company was fined to 500,000 Birr and confiscation of property. The individuals involved were sentenced including for tax evasion.

(b) Observations on the implementation of the article

- 114. Ethiopia has established the criminal, administrative and civil liability of legal persons for UNCAC offences, as evidenced by the cited legal provisions and case example.
- 115. Article 34(3) of the Criminal Code covers the provisions of UNCAC article 26(3) with regard to the liability of natural persons and a relevant case example was provided.
- 116. The provisions under review are implemented.

Article 26 Liability of legal persons

Paragraph 4

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 the article

- 117. In addition to the above-cited Article 34 of the Ethiopian Criminal Code, Ethiopia also cited Article 90 of the Criminal Code as applicable.

Criminal Code

Article 90[Fine; Principles to be Applied When Fine Imposed]

(1) Fine is paid in money, and is forfeited to the State; subject to any provision of the law to the contrary, it may extend from ten Birr to ten thousand Birr. However, in the case of a juridical person fine may extend from one hundred up to five hundred thousand Birr.

(2) In fixing the amount of the fine, the Court shall take into consideration the degree of guilt, the financial condition, the means, the family responsibilities, the occupation and earnings therefrom, the age and health of the criminal.

(3) When the penalty provided, for by the Special Part of this Code is only imprisonment and the criminal is a juridical person, the punishment shall be a fine not exceeding ten thousand Birr for a crime punishable with simple imprisonment not exceeding five years, a fine of up to twenty thousand Birr for a crime punishable with rigorous imprisonment not exceeding five years, a fine of up to fifty thousand Birr for a crime punishable with rigorous imprisonment more than five years but not exceeding ten years, a fine of up to the general maximum laid down in sub- article(1) for a crime punishable with rigorous imprisonment exceeding ten years.

(4) Where only fine is provided for in the Special Part of this Code, and where the criminal is a juridical person, the fine shall be five-fold.

Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013

Article 33 [Penalties Applicable to Legal Persons]

1/ Any legal person other than government organs:

a) on whose behalf or for whose benefit money laundering or financing of terrorism has been committed by any natural person, acting either individually or as part of a team, who has a leading position within it, based on a power of representation of the legal person or an authority to exercise control within the legal person; or

b) where lack of supervision of or control over a natural person acting under its authority has made possible the commission of money laundering or financing of terrorism on its behalf or for its benefit;

shall, irrespective of the conviction of those individuals as perpetrators or accomplices to the offence, be punished by a fine of an amount equal to ten times the fine specified for natural persons under Article 29 or Article 31 of this Proclamation.

(b) Observations on the implementation of the article

118. Article 90 of the Criminal Code is quoted as being relevant here. From reading this article, it is noted that it covers the requisites of article 26(4) of UNCAC insofar as proportionality is concerned. However, the adequacy of the applicable fines in cases of corruption is questionable, in particular with respect to article 90(1) of the Criminal Code, which provides for fines for legal persons from 100 up to 500,00 Birr. It is recommended that Ethiopia review the applicable penalties, in particular as the AML Proclamation provides for much more substantial penalties of ten times the fine specified for natural persons for money laundering (e.g., 100,000 to 150,000 Birr).

119. There have been few corruption cases against companies, and only one case example was provided. It is recommended that Ethiopia ensure the full implementation of the cited measures against legal persons in practice.

Article 27 Participation and attempt

Paragraph 1

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.

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

120. Ethiopia cited Articles 32, 33, 35, 36, 37, 38, 39, 40 and 41 of the Criminal Code as applicable under the present provision.

Criminal Code

Article 32

(1) Any person shall be regarded as having committed a crime as a principal criminal and punished as such if:

- (a) he actually commits the crime either directly or indirectly, in particular by means of an animal or a natural force; or
- (b) he without performing the criminal act itself fully associates himself with the commission of the crime and the intended result; or
- (c) he employs an infant or a person who is mentally deficient or unaware of the circumstances, for the commission of a crime or compels another person to commit a crime.

(2) Where the crime committed goes beyond the intention of the criminal he shall be tried in accordance with Article 58(3).

(3) Where two or more persons are involved as principal criminals in the commission of a crime, each shall be liable to the punishment attaching thereto. The Court shall take into account the provisions governing the effect of personal circumstances (Art. 41) and those governing the award of punishment according to the degree of individual guilt (Art. 88).

Article 33

An accused person may be prosecuted as a principal criminal when, by his acts, he fully participated with knowledge and intent in the commission of a crime which can be committed only by certain specified persons, in particular by a member of the Defence Forces in the case of military crimes, or by a public servant in respect of crimes against public office, or only by a male person in the case of rape.

Article 35

Where two or more persons commit a crime in concert, the person who is proved to have taken no part in the commission of the crime shall not be punished. However, where a crime such as conspiracy or brawl is committed by a group of persons, the person whose presence in the group is proved shall be exempt from punishment only if he proves that he has taken no part in the commission of the crime.

Article 36

(1) Whoever intentionally induces another person whether by persuasion, promises, money, gifts, and threats or otherwise to commit a crime shall be regarded as guilty of having incited the commission of the crime.

(2) The person who incited the commission of a crime shall be liable to punishment provided the crime was at least attempted.

(3) The punishment to be imposed shall be that provided by law for the intended crime. It may be reduced within the limits specified by law if the circumstances of the case justify such a reduction (Art. 179).

(4) When the person who committed the crime went beyond what was intended by the instigator, the latter shall be liable to punishment only for the crime he intended or could foresee (Art. 58(3)). The actual criminal shall alone be answerable for the more serious crime which he committed.

Article 37

(1) An accomplice is a person who intentionally assists a principal criminal either before or during the carrying out of the criminal design, whether by information, advice, supply of means or material aid or assistance of any kind whatsoever in the commission of a crime.

(2) An accomplice in an intentional crime shall always be liable to punishment.

(3) The accomplice shall be liable to punishment provided the crime was at least attempted.

(4) The punishment to be imposed shall be the punishment for the crime in so far as such crime does not go beyond the accomplice's intention (Art. 58(3)); The Court may, taking into account the circumstances of the case, reduce the punishment in respect to an accomplice within the limits specified by law (Art. 179).

(5) When the person who committed the crime went beyond what was intended by the accomplice the latter shall be liable to punishment only for the crime he intended or could foresee (Art. 58(3)). The actual criminal shall alone be answerable for the more serious crime which he committed.

Article 38

(1) Where two or more persons enter into an agreement to commit a crime the provisions regarding participation and aggravation of punishment due to the above-mentioned circumstances are applicable (Art. 84(1)(d)).

(2) The foregoing provision shall, however, not affect the provisions contained in the Special Part of this Code relating to conspiracies against the essential interests of the State and its defence, the forming of unlawful associations and the participation therein, as well as to the organization of gangs or associations of wrongdoers (Art. 257, 274, 300 and 478).

Article 39

(1) Failure to report the preparation, attempt or commission of a crime or of the person who committed the crime, shall not be liable to punishment as an act of an accessory after the fact or an accomplice except in the cases expressly provided by law (Art. 254 and 335).

(2) The provisions regarding the failure to report to the authorities in the cases specified under Article 443 shall apply.

(3) The above-mentioned obligations are to be construed in a restricted manner.

Article 40

Whoever after a crime has been committed assists a criminal either by hiding him or helping him to escape prosecution or punishment or by receiving the proceeds of his crime, shall be punished in accordance with the provisions of the Special Part of this Code dealing with such acts (Arts. 445, 460 and 682)

Article 41

In case of, participation whether as principal or secondary participant in a crime, each of the participants shall be punished for his own act, according to the extent of his participation, his degree of guilt and the danger which his act and his person represent to society. Special circumstances or personal incidents or relationships which have the effect of excluding punishment or justify its reduction or increase are not transmissible to another person. They operate to the benefit or the detriment solely of the person to whom they attach.

121. Between 2010 and 2011, the number of criminal cases investigated and prosecuted was 4. The relevant laws used for the prosecution of the cases were Article 32, 33, 36, 37, 38 and 40) of the Criminal Code and Ethiopia provided the following case summary as an example of implementation:

Federal Ethics and Anti-corruption Commission prosecutor vs. Mulu Adugna and 4 Others

Mulu Adugna and 4 other accomplices, who were the employees of Yeka Sub-city of the Addis Ababa City Administration, conspired with private individuals and illegally granted 19,649 square meter of government land valued at 45 million Birr. They were charged under Articles 407 and 411 of the Criminal Code and the case is pending.

(b) Observations on the implementation of the article

122. Article 27 of the UNCAC is split into three paragraphs which concern the criminalization of complicity, the attempt to commit the crime and preparatory acts to commit the crimes under this convention. The Ethiopian authorities quoted Articles 32, 33, 35, 36, 37, 38, 39, 40 and 41 of the Criminal Code as being relevant here. From reading the texts quoted, the requisites of UNCAC article 27 seem to be satisfied under Ethiopian law with the exception of provisions for preparatory acts – vide below.

123. The provision is implemented.

Article 27 Participation and attempt

Paragraph 2

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.

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

124. Articles 27 and 30 of the Criminal Code were referenced by Ethiopia as relevant here.

Criminal Code

Article 27

(1) Whoever intentionally begins to commit a crime and does not pursue or is unable to pursue his criminal activity to its end, or who pursues his criminal activity to its end without achieving the result necessary for the completion of the crime shall be guilty of an attempt. The crime is deemed to be begun when the act performed clearly aims, by way of direct consequence, at its commission.

(2) An attempted crime is always punishable save as is otherwise provided by law. A mere attempt to instigate or assist in a crime does not come within the provisions of the law unless it is expressly provided to the contrary.

(3) Without prejudice to the provisions of Article 117, in the case of an attempted crime the criminal is liable to the punishment attaching to the crime he intended to commit: Provided that if circumstances so justify the Court may reduce the punishment within the limits provided by law (Art. 179).

Article 30

When the acts done in an attempt to commit a crime in themselves constitute a separate crime the punishment attaching thereto shall be applied.

125. Between 2010 and 2011, the number of criminal cases investigated and prosecuted was 2. The relevant law used for the prosecution of the cases was Article 27 and the following case summary was cited as an example of implementation:

Federal Ethics and Anti-corruption Commission prosecutor vs. Mogus and other 6 defendants

The management of the Development Bank of Ethiopia attempted to grant loans without following the Bank's procedures for granting loans. This was brought to the attention of the FEACC and the latter investigated the case and charged the suspects with attempt.

(b) Observations on the implementation of the article

126. From the texts quoted above, it seems that the requirements of article 27 of the UNCAC are covered. Two cases are quoted as having been prosecuted.

Article 27 Participation and attempt

Paragraph 3

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 the article

127. Article 26 of the Criminal Code was noted as applicable to the current provision.

Criminal Code

Article 26

Acts which are committed to prepare or make possible a crime, particularly by procuring the means or creating the conditions for its commission are not usually punishable, however, such acts are punishable where:

- (a) in themselves they constitute a crime defined by law; or
- (b) they expressly constitute a special crime by law owing to their gravity or the general danger they entail.

128. As a principle, preparation is not a crime in Ethiopia. Therefore, there are no cases on this to exemplify implementation of the provision under review.

(b) Observations on the implementation of the article

129. It was confirmed that, except as provided in Article 26 of the Criminal Code, preparatory acts are not criminalized under Ethiopian law. For corruption-related offences, the act must at least amount to an attempt. Hence, the requirement of article 27 (3) does not appear to be covered.

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 the article

130. Ethiopia cited Articles 216, 217, 218, 219, 220, 221 and 222 of the Criminal Code as relevant here.

Criminal Code

Article 216

(1) Unless otherwise provided by law, in all criminal cases the prosecution and the criminal action shall be barred and may no longer be instituted or brought upon the expiration of the legal period of time stated below. Limitation extinguishes the liability to punishment in respect to any of the participants. As soon as the limitation period has elapsed neither a conviction nor penalties or measures may be pronounced.

(2) Even where the defendant fails to raise the barring of the charge by a period of limitation the Court or the Prosecutor shall, at any time, consider the barring of the charge by limitation.

Article 217

- (1) The limitation period of a criminal action shall be as follows:
- (a) twenty-five years for crimes punishable with death or rigorous imprisonment for life;
 - (b) twenty years for crimes punishable with rigorous imprisonment exceeding ten years but not exceeding twenty-five years;
 - (c) fifteen years for crimes punishable with rigorous imprisonment exceeding five years but not exceeding ten years;
 - (d) ten years for crimes punishable with rigorous imprisonment not exceeding five years;
 - (e) five years for crimes punishable with simple imprisonment exceeding one year;
 - (f) three years for crimes punishable with simple imprisonment not exceeding one year.
- (2) In respect of concurrent crimes:
- (a) the period of limitation for one of the crimes shall apply to all of them where the maximum penalty of each crime is the same;
 - (b) the period of limitation for the most serious crime shall apply to the other crimes where the maximum penalties of the concurrent crimes are different.

Article 218

Subject to the provision of Article 213, the period of limitation of any crime punishable upon complaint shall be two years.

Article 219

- (1) Limitation periods shall be determined on the basis of the maximum penalty provided by the provision of the Special Part without regard to the extenuating or aggravating circumstances involved in the case.

Where the law penalizes the act with several penalties to be applied either alternatively or concurrently the periods shall be calculated on the basis of the most severe penalty.

- (2) The limitation period shall begin to run from the day on which the criminal first exercised his criminal activity. If the criminal act was committed repeatedly the period shall begin to run from the day on which the last act was performed; if it was pursued over a period of time the period shall begin to run from the day on which it ceased. Where achieving a given result is one of the constituents of the crime the period shall begin to run on the day on which this result occurred.

Article 220

- (1) Limitation shall be temporarily suspended as long as there subsists a bar in law or in fact. It shall also be suspended where a charge has been instituted and the case is undergoing a judicial proceeding, or where the decision in the criminal case against the defendant cannot be given until other proceedings have been completed. Upon removal of the bar the period of limitation shall revive and continue its course.

- (2) In all cases where the law requires the lodging of a complaint for the institution of a prosecution the absence of this formality shall not prevent the limitation period from

running. Similarly, any act of the criminal voluntarily done to hinder the institution or continuation of the prosecution shall not prevent the limitation period from running.

Article 221

The limitation period shall be interrupted by any order, act or decision for purposes of, search, summons, prosecution or investigation in relation to the crime or the criminals. Upon each interruption the whole period of limitation shall begin to run afresh. The interrupting act shall be absolute as to its effect; it is effectual towards all the participants in the crime, whether known or unknown.

Article 222

Whatever the circumstances may be the prosecution and the criminal action shall be barred in all cases when a period equal to double the ordinary period of limitation provided by law (Art. 217) has elapsed or, in cases where a special period applies (Art. 218), when such a period has been exceeded by half.

Proclamation No. 433/2005 [Establishment of the FEACC]

Article 20

1. Disciplinary measure shall not be taken against an officer who has committed an offense entailing simple disciplinary penalty unless such measure is taken with six months, excluding the time required for investigation from the time the breach of discipline is known.

2. No disciplinary charge shall be brought against an officer who has committed an offense entailing rigorous disciplinary penalty unless such disciplinary charge is brought within a year from the time the commission of the offense is known.

3. The official who has failed to take the measures specified under Sub-Article 1 or 2 of this Article shall be held responsible.

131. Serious crimes are given longer period of limitation in Ethiopia. Corruption is considered as a serious crime and is, therefore, given longer period of limitation. The period of limitations for corruption and the maximum and minimum penalties for corruption crimes are indicated in a table below.

No.	Type of Corruption offence	Minimum penalties	Maximum penalties	Period of limitation for the maximum penalty
1.	Abuse of power (Article 407)	With simple imprisonment for not less than 1 year and fine	15 years of rigorous imprisonment and fine not exceeding 50,000 Birr	20 years
2	Corrupt Practices (Article 408)	With simple imprisonment for not less than 1 year and fine	25 years of rigorous imprisonment and fine not exceeding 100,000 Birr	20 years

3	Acceptance of undue advantages (Article 409)	With simple imprisonment for not less than 1 year and fine	15 years of rigorous imprisonment and fine not exceeding 30,000 Birr	20 years
4	Corruption committed by arbitrators and other persons (Article 410)	With simple imprisonment for not less than 1 year and fine	15 years of rigorous imprisonment and fine not exceeding 30,000 Birr	20 years
5	Maladministration (Article 411)	With rigorous imprisonment not exceeding 10 years and fine not exceeding 50,000 Birr	25 years of rigorous imprisonment and fine not exceeding 200,000 Birr	20 years
6	Unlawful disposal of object in charge (Article 412)	With simple imprisonment not exceeding five years and fine not exceeding 7,000 Birr	Rigorous imprisonment not exceeding five years and fine	10 years
7	Appropriation and misappropriation in the discharge of duties (Article 413)	With simple imprisonment for not less than 1 year	Rigorous imprisonment not exceeding 25 years and fine not exceeding 50,000 Birr	20 years
8	Traffic in official influence (Article 427)	With simple imprisonment for not less than 1 year	25 years of rigorous imprisonment and fine not exceeding 100,000 Birr	20 years
9	Illegal collection or disbursement (Article 415)	With simple imprisonment for not less than 1 year	25 years of rigorous imprisonment and fine not exceeding 50,000 Birr	20 years
10	Undue delay of matters (Article 416)	With fine or simple imprisonment according to the circumstance of the case	Rigorous imprisonment not exceeding five years	10 years
11	Taking of things of value without or with inadequate consideration (Article 417)	With simple imprisonment not exceeding five years	With simple imprisonment not exceeding five years	5 years
12	Granting and approving license improperly (Article	With simple imprisonment	With rigorous imprisonment not	15 years

	418)		exceeding 10 years	
13	Possession of unexplained property (Article 419)	Without prejudice to confiscation of property, with simple imprisonment or fine	Without prejudice to confiscation of property, with rigorous imprisonment not exceeding five years and fine	10 years
14	Soliciting of corrupt practices (Article 427)	With simple or rigorous imprisonment not exceeding 7 years and fine not exceeding 15,000 Birr	With rigorous imprisonment from five to fifteen years and fine not exceeding 50,000 Birr	20 years.
15	Giving things of value without or with inadequate consideration (Article 428)	With simple imprisonment not exceeding five years	With simple imprisonment not exceeding five years	Five years
16	Acting as a go-between (Article 429)	With simple imprisonment,	With rigorous imprisonment not exceeding 10 years and fine	15 years
17	Use of pretended authority (Article 430)	With simple imprisonment	With rigorous imprisonment not exceeding 10 years and fine	15 years
18	Traffic in Private influence (Article 431)	Punishable with simple imprisonment for not less than one year or fine not less than 2000 Birr	Punishable with simple imprisonment for not less than one year or fine not less than 2000 Birr	Five years
19	Corrupt electoral practices (Article 468)	Punishable with rigorous imprisonment not exceeding five years and fine	Punishable with rigorous imprisonment not exceeding five years and fine	10 years
20	Forgery or falsification of public or military documents (Article 379)	Rigorous imprisonment not exceeding 15 years	In very serious cases life imprisonment	25 years
21	Aggravated breach of trust (Article 676) (1)	Rigorous imprisonment	Rigorous imprisonment from	20 years

		from five to fifteen years and fine not exceeding 100,000 Birr	five to fifteen years and fine not exceeding 100,000 Birr	
22	Money Laundering and aiding (Article 684)	With simple imprisonment not exceeding six months	From five to fifteen years and fine not exceeding 100,000 Birr	20 years
23	Aggravated fraudulence (Article 696) (a)	Rigorous imprisonment not exceeding fifteen years and fine not exceeding 50,000 Birr	Rigorous imprisonment not exceeding fifteen years and fine not exceeding 50,000 Birr	20 years

132. As an example of implementation, Ethiopia provided the following case summary:

Federal Ethics and Anti-corruption Commission prosecutor vs. Yaregal Aysheshum

A certain individual was entrusted with a government house for a limited period of time. He then connived with some public servants (accomplices) and transferred the title deed in his own name. The investigation was finalized but the case was closed due to period of limitation.

(b) Observations on the implementation of the article

133. From the table provided above, it seems that Ethiopian law provides a lengthy statute of limitations for corruption offences.

134. The self-imposed absence of the offender is not considered a bar at law that would stop the running of the period of limitation. While it is noted that under Ethiopian law any investigative steps taken interrupt the running of the limitations period, Ethiopia is encouraged to calculate the period of limitations from the time of discovery and not the commission of an offence and to allow for interruption or suspension where the alleged offender has evaded the administration of justice.

135. It was confirmed by Ethiopia that one corruption case has been barred by the expiry of the limitations period to date.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

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.

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

136. Ethiopia cited Articles 82, 84, 88, 189 and 190 of the Criminal Code as relevant here.

Criminal Code

Article 82

(1) The Court shall reduce the penalty, within the limits allowed by law (Art. 179), in the following cases:

- (a) When the criminal who previously of good character acted without thought or by reason of lack of intelligence, ignorance or simplicity of mind;
- (b) When the criminal was prompted by an honorable and disinterested motive or by a high religious, moral or civil conviction;
- (c) When he acted in a state of great material or moral distress or under the apprehension of a grave threat or a justified fear, or under the influence of a person to whom he owes obedience or upon whom he depends;
- (d) When he was led into grave temptation by the conduct of the victim or was carried away by wrath, pain or revolt caused by a serious provocation or an unjust insult or was at the time of the act in a justifiable state of violent emotion or mental distress;
- (e) When he manifested a sincere repentance for his acts after the crime, in particular by affording succor to his victim, recognizing his fault or delivering himself up to the authorities, or by repairing, as far as possible, the injury caused by his crime, or when he on being charged, admits every ingredient of the crime stated on the criminal charge.

(2) When the law, in a special provision of the Special Part, has taken one of these circumstances into consideration as a constituent element or as a factor of extenuation of a privileged crime, the Court may not at the same time allow for the same circumstance to reduce the penalty applicable thereto.

Article 84

(1) The Court shall increase the penalty as provided by law (Art.183) in the following cases;

- (a) When the criminal acted with treachery, with perfidy, with a base motive such as envy, hatred, greed, with a deliberate intent to injure or do wrong, or with special perversity or cruelty;
- (b) When he abused his powers, or functions or the confidence, or authority vested in him;
- (c) when he is particularly dangerous on account of his antecedents, the habitual or professional nature of his crime or the means, time, place and circumstances of its perpetration, in particular if he acted by night or under cover of disturbances or catastrophes or by using weapons, dangerous instruments or violence;
- (d) when he acted in pursuance of a criminal agreement, together with others or as a member of a gang organized to commit crimes and, more particularly, as chief, organizer or ringleader;

(e) when he intentionally assaulted a victim deserving special protection by reason of his age, state of health, position or function, in particular a defenseless, feeble-minded or invalid person, a prisoner, a relative, a superior or inferior, a minister of religion, a representative of a duly constituted authority, or a public servant in the discharge of his duties.

(2) When the law, in a special provision of the Special Part, has taken one of the same circumstances into consideration as a constituent element or as a factor of aggravation of a crime, the Court may not take this aggravation into account again.

Article 88

(1) The Court shall determine the penalties and measures in conformity with the provisions of the General Part of this Code and the special provisions defining crimes and their punishments.

(2) The penalty shall be determined according to degree of individual guilt, taking into account dangerous disposition of the criminal, antecedents, motive and purpose, his personal circumstances and standard of education, as well as the gravity of the crime and the circumstances of its commission.

Article 189.- Cumulation of Different Extenuating and Aggravating Circumstances.

In case of different extenuating and aggravating circumstances, the Court shall determine the penalty as provided below:

(1) In the event of concurrent general aggravating and extenuating circumstances the Court shall first fix the penalty having regard to the aggravating circumstances (Art. 183) and then shall reduce the penalty in light of the extenuating circumstances (Arts. 179, 180).

(2) Where in a case of recidivism the criminal has at the same time been convicted of concurrent crimes the Court shall first assess sentence for the concurrent crimes and then increase it having regard to recidivism.

(3) When there exist different types of aggravating and extenuating circumstances specified in sub-article (1) and (2) above, the Court shall first fix the penalty having regard to the aggravating circumstances and then shall reduce the penalty in light of the extenuating circumstances.

Section II. – Suspension of Penalty

Article 190.- Principle.

When the Court, having regard to all the circumstances of the case, considers that conditional suspension of the penalty will promote reformation and reinstatement of the criminal, it may order conditional suspension of the sentence as provided hereinafter. Such an order implies an appeal to the cooperation of the criminal for his own reform and may at any time be revoked if circumstances show that it is not justified.

137. The penalty for corruption offences in Ethiopia is always handed taking into consideration the degree of guilt and gravity of the crime. Therefore, all corruption cases are treated in line with this legal principle. As examples of implementation, Ethiopia provided the following case summaries:

FEACC Prosecutor vs. Abdulkereim Adem and others

The Commission's prosecutor brought a charge against Abdulkereim Adem, a public official, for aggravated breach of trust. The accused, who was a licensed agent in the country's coffee market, sold the coffee he received from exporters in his capacity as an agent for 2,863,501.36 Birr and misappropriated the money. The case was brought to the attention of the Commission and charges were pressed against him. The court found him guilty of the crime and handed him 23 years of rigorous imprisonment and fined him 70,000 Birr.

FEACC Prosecutor vs. Abinet Takele and others [example of minor offence]

The prosecutor of the Commission brought a charge against Abinet Takele, a public official employed in a public enterprise. The accused was a senior loan analyst at the Commercial Bank of Ethiopia, for abuse of power. According to the prosecutor, the accused used his power to grant a 3-million Birr to loan Jemal Shibru illegally. The accused was found guilty of the crime by the relevant court of law and was sentenced to a one year imprisonment. He was also fined 2000 Birr.

138. One can see the relatively bigger penalty given for the grave offence mentioned in the first case and the much simpler penalty handed to the offence of the minor crime in the second. Ethiopia cited the cases to illustrate that the sanctions given take into account the gravity of the offences.

139. In terms of criminal sanctions, the aggregate data attached in this reporting general (e.g. see under UNCAC article 15 (a)) is also relevant here. Between 2010 and 2012, the Commission referred 1,136 cases to different public offices and public enterprises for administrative measures. The relevant public offices and public enterprises on their part took measures against 104 and notified the Commission that such measures were taken. The remaining cases are either unsorted or pending. The administrative measures taken included the following:

- Dismissal,
- Demotion,
- Transfer,
- Fine of salary,
- Oral or written warning,
- Recovering assets, and
- Others.

(b) Observations on the implementation of the article

140. As noted above in respect of the individual UNCAC offences, the option of "simple imprisonment," i.e. 10 days to 3 years, as opposed to "rigorous imprisonment" (one year up to life) for certain corruption offences, including bribery under Article 427 of the Criminal Code, raises concerns. Moreover, certain offences carry the possibility of a fine

in lieu of imprisonment; for example, where the bribe is given or offered in exchange for an act that is proper to the public servant's office, the punishment under Article 427(4) of the Criminal Code is either a fine, simple imprisonment or rigorous imprisonment up to five years. The possibility of a fine to punish such acts of bribery also raises concerns.

141. In this context, representatives explained during the country visit that the level of fines was increased in the new anti-corruption legislation that was adopted in 2015, and that a possible penalty of confiscation was also introduced in the amendments.
142. It was explained during the country visit that judges exercise discretion in considering mitigating and aggravating circumstances in accordance with Articles 82, 84 and 88 of the Criminal Code and the sentencing guidelines of the Federal Supreme Court. Representatives of the judiciary further stated that there is some uncertainty in punishment due to the wide range of sentences, and that therefore the Supreme Court has developed sentencing guidelines, which are also applicable to corruption cases.
143. In light of the observations made above, it is recommended that Ethiopia harmonize the punishment for UNCAC offences to reflect the varying degree of offences. Moreover, Ethiopia should monitor the imposition of penalties by the judiciary in light of existing sentencing guidelines, to ensure the effective application of the applicable sanctions.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

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.

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

144. Ethiopia cited Article 54 (5) and (6) of the FDRE Constitution and Articles 14 and 611 of the Criminal Code together with Article 35 of the Institution of Ombudsman Establishment Proclamation 211/22000. Article 57 of the Proclamation to Amend the Electoral Law of Ethiopia (Proclamation No. 532/2007) was also cited as applicable here.

FDRE Constitution

Article 54 (5) and (6)

5. No member of the House may be prosecuted on account of any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds.

6. No member of the House may be arrested or prosecuted without the permission of the House except in the case of flagrante delicto.

Article 63- Immunity of Members of the House of the Federation

1. No member of the House of the Federation may be prosecuted on account of any vote he casts or opinion he expresses in the House, nor shall any administrative action be taken against any member on such grounds.

2. No member of the House of the Federation may be arrested or prosecuted without the permission of the House except in the case of flagrante delicto.

Criminal Code

Article 14

(1) Subject to the provision of Article 13, this Code shall apply to a member of the Ethiopian diplomatic or consular service, an Ethiopian official or agent who cannot be prosecuted at the place of commission of the crime by virtue of international principles of immunity, where he committed in a foreign country a crime punishable both under the Ethiopian Code and under the law of the country where it was committed.

(2) Where, according to either the foreign law or this Code, the crime is punishable upon a formal complaint no proceedings may be instituted where such complaint has not been lodged.

Article 611

Members of the constitutionally established legislature, executive or judiciary are not susceptible to legal proceedings on the ground of injury to honour done by information or statements, correct as to form, given or made by them in conformity with their duties and in the regular discharge of their duties.

Institution of Ombudsman Establishment Proclamation 211/22000

Article 35 - Immunity

No:

1) appointee, or

2) investigator of the Institution may be detained or arrested without the permission of the House or the Chief Ombudsman, respectively, except when, caught in flagrante delicto for a serious offence.

Proclamation to Amend the Electoral Law of Ethiopia (Proclamation No. 532/2007)

Article 57- Immunities of Candidates

1/ No candidate shall, during the course of election, be arrested except in the case of flagrant delicto for a serious offence.

2/ Where candidates allegedly commit an offence in situations other than those specified under Sub Article (1) of this Article, legal action be taken against them only after the electoral results are officially announced by the Board.

3/ Without prejudice to the provision in sub article (2) above, a winner shall be held liable for the alleged crime during the election if his immunity has been lifted off by a concerned council.

145. Between 2010 and 2011, the number of criminal cases investigated and prosecuted involving members of parliament accused of corruption offences was 4. Based on concrete evidences provided by the FEACC, their immunities were lifted by the relevant organs. Then, the defendants were subject to criminal legal actions.

146. As examples of the implementation of the provision under review, the following instances were cited:

- The immunity of the Former President of the Benshangul-Gumuz Regional State was lifted and he was then charged for a corruption offence. The case is still pending.
- In other instances where the issue of immunities arose, for example, the Former Prime Minister of Ethiopia, Tamrat Layne, was involved in corruption and his immunity was lifted as a result. He was then prosecuted and was found guilty of corruption crimes. He was sentenced to prison following his conviction.
- Some members of the parliament were suspected of committing corruption and hence their immunity was lifted by the very parliament in which they were members. Following that, it was possible to prosecute them. Upon the request of the Commission, the parliament deliberated on the issue of lifting the immunity of members of the parliament who were suspected of committing corruption. There is a parliamentary minute on this deliberation.
- The immunity of a member of Parliament charged with land matters was lifted in order for his arrest to be effected. The person was ultimately acquitted of the charges brought against him.

(b) Observations on the implementation of the article

147. It was confirmed during the country visit that the President and Prime Minister, as members of Parliament who are also ministers, have immunity. Moreover, most ministers also enjoy criminal immunity. In respect of members of Parliament, it was explained that the procedure for lifting immunities is that a request must be made to Parliament through the Speaker if there is a suspicion and that a relevant committee of the Parliament will consider the matter. It was stated that there have been no cases to date where the immunity of a member of Parliament had not been lifted following a relevant request being lodged.

148. Ethiopian officials also stated that the procedure for lifting immunities in corruption cases was specified in the new legislation that was adopted in 2015. In this context, they cited Article 56 of the Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation(No. 882/2015), which provides that the Head of FEACC may request the House of People's Representatives or State Council for the lifting of immunity on matters that fall within its powers.

149. It is recommended that Ethiopia review and consider revising the scope of immunities of public officials, in particular ministers and members of parliament, as well as the applicable procedures for lifting such immunities, and that it ensure that such persons are effectively investigated and prosecuted. The provisions on lifting immunity in the new legislation should facilitate the lifting of immunities, not just clarify the process by which such requests are lodged with Parliament.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

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.

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

150. Articles 40, 41, 42, and 43 of the Criminal Procedure of Ethiopia are relevant here. The Directive of the Investigation and Prosecution Directorate also deals with this issue in more detail.

Criminal Procedure Code

Article 40 - Duty to institute proceedings

1) Subject to the provisions of Article 42, the public prosecutor shall institute proceedings accordance with the provisions of this chapter whenever he is of the opinion that there are sufficient grounds for prosecuting the accused.

Article 41 - Doubtful cases

Where it is not clear whether proceedings should be instituted, the public prosecutor shall refer the matter for instructions to the advocate general.

Article 42 - Cases where proceedings cannot be instituted

1) No proceedings shall be instituted where:

- a) The public prosecutor is of the opinion that there is no sufficient evidence to justify a conviction; or
- b) There is no possibility of finding the accused and the case is one which may not be tried in his absence; or
- c) The prosecution is barred by limitation or the offence is made the subject of a pardon or amnesty; or
- d) The public prosecutor is instructed not institute proceedings in the public interest by the Minister by order under his hand.

2) On no other grounds may the public prosecutor refuse to institute proceedings.

3) The public prosecutor shall institute proceedings in cases affecting the government when so instructed by the Minister.

Article 43 - Form of Refusal

1) A refusal to institute a proceeding under Article 42 shall be in writing and shall record clearly the reasons for such refusal.

2) A copy thereof shall be sent to the appropriate person mentioned in Article 47 and to investigative police officer.

151. Between 2010 and 2011, the investigations of 393 corruption cases were finalized. Of the total number of cases investigated, 141 (36% of the total) were closed on the discretion of the Commission because the outcome of the investigation showed that they were not sufficiently corroborated with evidence. 67 of the cases (17% of the total), were referred to investigators for further investigation and substantiation. 12 cases (3% of the total), were referred to other investigative bodies for further investigation.

(b) Observations on the implementation of the article

152. Article 42 (1)(d) and (3) of the Criminal Procedure Code places a certain amount of discretion in the hands of an elected politician not to institute proceedings in the public interest. In respect of corruption cases, it was explained during the country visit that the Minister in the cited sections refers to the Commissioner of the Federal Ethics and Anti-Corruption Commission (FEACC), and this was specified in the Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation(No. 883/2015), which provides in article 2(9)(14) for the power of the FEACC Commissioner to “withdraw, in accordance with law, corruption investigation and charges as well as corruption cases pending in the court of law”. It was explained that there have been no instances where the Commissioner declined to prosecute a corruption case under the above cited provisions. However, the Commissioner’s decision not to prosecute is not subject to any form of independent review.

153. It was explained during the country visit that complaints against prosecutorial decisions in corruption cases could be made by aggrieved persons to the Commissioner of the FEACC, but that there was no possibility of legal redress in a court of law. There have been cases where such complaints have been filed.

154. In view of the wide discretion accorded to prosecuting authorities, in particular elected officials, under the applicable legislation, it is recommended that Ethiopia revisit the existing procedures and adopt measures to ensure that prosecutorial discretion is subject to adequate safeguards and exercised to maximize the effectiveness of law enforcement measures, pending the adoption of a relevant regulation in accordance with the FEACC Proclamation.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

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.

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

155. Ethiopia cited Article 19 of the FDRE Constitution, Article 4 of the Special Procedure and Rules of Evidence Proclamation, and Article 63 of the Criminal Procedure Code as implementing the provision under review.

FDRE Constitution

Article 19

1. Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.
2. Persons, arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.
3. Persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court. On appearing before a court, they have the right to be given prompt and specific explanation of the reasons for their arrest due to the alleged crime committed.
4. All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reasons for their arrest. Where the interest of justice requires, the court may order the arrested person to remain in custody or, when requested, remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial.
5. Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.
6. Persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.

Proclamation 434/2005 [The Revised Proclamation to Provide for Special procedure and Rules of Evidence on Anti-Corruption]

Article 4

- 1/An arrested person for a corruption offence may apply to court to be released on bail. An arrested person charged with a corruption offence punishable for more than 10 years may not be released on bail. The investigator may release, on bail, with or without surety, a person arrested for corruption offenses where;
- a) it is doubtful that the offence complained of has been committed, or
 - b) it is doubtful that the arrested person has committed the offence. complained of, or
 - c) the offence for which the person arrested is not punishable with rigorous imprisonment.
- 3/ An arrested person who is not released according to sub article 2 of this Article may apply to court to be released on bail.

4/Without prejudice to the provision in sub article 1 of this Article, the court may not allow an application to be released on bail of the accused or the suspect as per sub-article 3 of this article, where;

- a) the suspect or the accused, if released on bail, is likely to abscond
- b) the suspect or the accused, if released on bail, is likely to tamper with evidence or commit other offences.

Criminal Procedure Code

Article 63

(1) Whosoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.

(2) No person shall be released on bail unless he has entered into a bail bond, with or without sureties, which, in the opinion of the Court, is sufficient to secure 'his attendance at the court when so required to appear.

(3) Nothing in this Article shall affect the provisions of Art. 67.

156. Between 2010 and 2011, bail was denied to more than 100 suspected persons in order to ensure their presence in the criminal proceedings. The relevant law used for denying bail was Article 4 of the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005.

(b) Observations on the implementation of the article

157. It was explained that as a typical bail condition, usually the court will ask the accused to deposit a certain amount of money as security. The articles quoted seem to cover the requisites of this provision.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

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.

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

158. The Preamble of the Criminal Code of Ethiopia and Articles 113, 190, 191, 201, 202, and 229 of the same Code are relevant. Articles 11 and 13 (4), (5), and (7) of the Procedure for Pardon Proclamation (No. 395/2004) were also cited.

Preamble of the Criminal Code

Punishment can deter wrongdoers from committing other crimes; it can also serve as a warning to prospective wrongdoers. Although imprisonment and death are enforced in

respect of certain crimes the main objective is temporarily or permanently to prevent wrongdoers from committing further crimes against society. And in such cases with the exception of the death sentence even criminals sentenced to life imprisonment can be released on parole before serving the whole term; in certain crimes convicts can be released on probation without the pronouncement of sentence or without the enforcement of the sentence pronounced. This helps wrongdoers to lead a peaceful life and it indicates the major place, which the Criminal Law has allocated for their rehabilitation.

Criminal Code

Article 113 - Conditional Release before Expiry of Period of Sentence.

(1) Before the expiry of a sentence of imprisonment, the prisoner may be released on probation, if his conduct has been satisfactory and other conditions laid down by law (Art. 202) have been fulfilled. Before being released the prisoner may be required to live on probation in a penitentiary or labour settlement or other similar establishment.

The law relating to the execution of sentences and the regulations relating to prisons shall lay down the conditions and the manner of putting into effect the provisions of this Article.

Article 190

When the Court, having regard to all the circumstances of the case, considers that conditional suspension of the penalty will promote the reform and reinstatement of the criminal, it may order conditional suspension of the sentence as provided hereinafter. Such an order implies an appeal to the cooperation of the criminal for his own reform and may at any time be revoked if circumstances show that it is not justified.

Article 191

When the criminal has no previous conviction and does not appear dangerous and where his crime is punishable with fine (Art. 90), compulsory labour (Arts. 103 and 104) or simple imprisonment for not more than three years (Art. 106), the Court, after having convicted the criminal, may suspend sentence and place the criminal on probation, where it is of the opinion that such decision will lead to the reform of the criminal. No conviction shall be entered when a criminal is placed on probation and does not break the conditions of his probation.

Article 201

In all cases where a penalty or measure entailing loss of liberty provided by this Code is imposed anticipatory conditional release may be awarded by way of probation at the end of the period of enforcement provided by law, when the general requirements therefore are satisfied (Art. 202). Conditional release must be regarded as a means of reform and social reinstatement. It must be deserved by the criminal to whom it is applied and must be awarded only in cases where it affords a reasonable chance of success.

Article 202

(1) Where a prisoner has served two-thirds of a sentence of imprisonment or twenty years in case of life imprisonment, the Court may, on the recommendation of the management of the institution or on the petition of the criminal, order conditional release:

- (a) if, during the requisite period of performance of the penalty or the measure entailing loss of liberty, the criminal, by his work and conduct, gave tangible proof of his improvement; and
- (b) if he has repaired, as far as he could reasonably be expected to do, the damage found by the Court or agreed with the aggrieved party; and
- (c) if the character and behaviour of the criminal warrant the assumption that he will be of good conduct when released and that the measure will be effective. (2) Notwithstanding the foregoing provisions, conditional release shall not be granted to persistent recidivists.

Article 229

(1) Unless otherwise provided by law, a sentence may be remitted in whole or in part or commuted into a penalty of a lesser nature or gravity by an act of pardon of the competent authority. Pardon may apply to all penalties and measures, whether principal or secondary and whatever their gravity, which are enforceable.

(2) The conditions of pardon shall be governed by the relevant provisions of public law. The order granting pardon may determine the conditions to which it is subjected and its scope.

159. In Ethiopia, in general, when the court or a Board of Pardon reviews the application of the convicted person, or prison administration for early release, it always takes in to account the gravity of the offence.
160. The Criminal Law of FDRE provides that detainees who show acceptable standards of behaviour and whose release is believed to be worthwhile shall be released on parole.
161. Although the right to parole requires various criteria, detainees are entitled to parole only in a condition where they are believed to have repented their past and showed the required behavioral change and readiness to rejoin the society and support themselves as well as victims of their action.
162. Articles 113 and 201 of the FDRE Criminal Law provide that a detainee can be released on parole provided he shows acceptable behavior or meets other legal requirements. On the other hand, it is also provided in the same law that the concerned body (the detention centre) shall submit the detention center's application together with its own views to the court which may order that the detainee be released on parole.
163. Just like parole, releasing detainees on pardon is also a process whereby sentences of convicted detainees shall be terminated on the basis of their behavioral reform when this is confirmed by the courts. With the exception of certain offences specified in Article 28, the FDRE Constitution indicates that other offences are also entitled to pardon rights.

Accordingly, the Government has been granting pardon to detainees that meet the pardon requirements.

164. Article 229 (1) of the 2005 FDRE Criminal Law provides that, unless prohibited by another law, prison sentences passed by courts can be terminated, partly or fully, by pardon. Similarly, regional administrative councils have provided in their constitutions that they can release detainees on pardon.

165. According to the Human Rights Commission Report, a total of 18,246 detainees Country-wide have been released on pardon in 2010-2011. Of these 767 are women detainees.

(b) Observations on the implementation of the article

166. The cited measures address the requirements of the provision under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

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.

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

167. Ethiopia noted that the provision under review is implemented through Articles 66, 67, 68, 69 and 70 of the Civil Servants Proclamation No. 515/2005.

Civil Servants Proclamation No. 515/2005 Disciplinary Measures and Grievance Procedure

Article 66

The objectives of disciplinary penalty shall be to rehabilitate a delinquent civil servant when he can learn from his mistakes and become a reliable civil servant or to discharge him when he becomes recalcitrant.

Article 67

1) Depending on the gravity of the offence, one of the following penalties may be imposed on a civil servant for breach of discipline:

- a) oral warning;
- b) written warning;
- c) fine up to one month's salary;
- d) fine up to three month's salary;
- e) down grading up to the period of two years;

f) dismissal.

2) The penalties specified under Sub-Article (1) (a)-(c) of this Article shall be classified as simple disciplinary penalties.

3) The penalties specified under Sub-Article (1) (d) - (f) of this Article shall be classified as rigorous penalties.

4) A civil servant who is demoted in accordance with Article (1) (e) of this Article and upon the lapse of his period of punishment, shall be reinstated:

a) to a similar available vacant post, without any promotion procedures;

b) in absence of a vacant post, he shall be reinstated to a similar post without any promotion procedures when it becomes available at a later time.

5) After a disciplinary measure has been taken on a civil servant, such measure shall remain in his record:

a) for two years, where the penalty is simple;

b) for five years, where the penalty is rigorous.

Article 68

Rigorous disciplinary penalties may be imposed for the following offences:

1) to undermine one's duty by being disobedient, negligent or tardy or by non-observance of working procedures;

2) deliberate procrastination of cases or mistreatment of clients;

3) to deliberately obstruct work or to collaborate with others in committing such offence;

4) unjustifiable repeated absenteeism or non-observance of office hours in spite of being penalized by simple disciplinary penalties;

5) to initiate physical violence at the place of work;

6) neglect of duty by being alcoholic or drug addict;

7) to accept or demand bribes;

8) to commit an immoral act at the place of work;

9) to commit an act of theft or breach of trust;

10) to commit an act of misrepresentation or fraudulent act;

11) to inflict damages to the property of the government due to an intentional act or negligence;

12) abuse of power;

13) to commit sexual violence at the place of work;

14) to commit any breach of discipline of equal gravity with the offences specified under this Article.

Article 69

1) A government institution shall establish a disciplinary committee which shall investigate disciplinary charges brought against civil servants and thereby submit recommendations to the concerned officials.

2) Disciplinary measures may be taken irrespective of any court proceedings or decision.

Article 70

- 1) Any civil servant will be suspended from duty if it is presumed that:
 - a) he may obstruct the investigation by concealing, damaging or destroying evidence related to the alleged offence; or
 - b) he may commit additional offence on the property of the government institution; or
 - c) the alleged offence is so grave as to demoralize other civil servants or negatively affect the public trust towards civil servants;
 - d) the disciplinary offence may lead to dismissal.
- 2) A civil servant can be suspended from duty and may not get his salary according to Subarticle (1) of this Article only for a maximum period of not exceeding two months.
- 3) The decision given in accordance with Subarticle (2) of this Article shall be notified to the civil servant in writing, with the grounds and duration of his suspension signed by the Head of the government institution.
- 4) Unless a decision of dismissal is rendered against a suspected civil servant, the salary withheld at the time of suspension shall be paid to him without interest.
- 5) The suspension of a civil servant shall not deprive him of other rights and duties that are not affected by the suspension.

168. In the year 2013, disciplinary measures were taken against ten civil servants who were accused of committing corruption offences. They were given warnings, fines, demotions and dismissals. The following case summary was given as an example of the implementation of the provision.

Ethiopian Pharmaceuticals Fund and Supply Agency vs. Bianna Absa

The accused was serving at the above-mentioned Agency as the Head of the Supply Department. Pharmaceuticals worth 3,966, 296 Ethiopian Birr went missing under his supervision and he was held accountable for that. Upon the finalization of the investigation, it was decided by the Discipline Committee that he should be dismissed. He appealed against the decision to the Administrative Tribunal which was under the Ministry of Civil Service. But, the appellate tribunal gave verdict in favour of the Agency, upholding the decision taken to dismiss him.

169. The statistical data on this sub-paragraph is found scattered in every public offices and public enterprise. Public offices take measures against public officials involved in such offences. When the offence is corruption, the Federal Ethics and Anti-Corruption Commission handles it.

(b) Observations on the implementation of the article

170. The articles quoted from Ethiopian law provide for the suspension of the suspect for a maximum of two months under certain conditions, including if it is presumed that he may interfere in the process that he is undergoing. Moreover, article 67 allows for the demotion and dismissal of a civil servant, even if the accused person is acquitted criminally. The disciplinary and criminal processes in Ethiopia are separate and run in parallel, in accordance with Article 405 of the Criminal Code.

Article 405. The Concurrent Application of Administrative Penalties and Compensation

Conviction or acquittal under the provisions of this Chapter shall not exclude liability for damages and/or administrative penalties.

171. It was confirmed during the country visit that disciplinary measures against accused persons are taken by an administrative tribunal under the Ministry of Civil Service. Examples include the Ethiopian Pharmaceuticals Fund case cited above.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a) and (b)

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.

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

172. Ethiopia cited Articles 123 and 124 of the Criminal Code of Ethiopia and Article 14 (2) of the Civil Servants Proclamation (No. 515/2005).

Criminal Code

Article 123

Where the nature of the crime and the circumstances under which the crime was committed justify such an order, and the criminal has, by his unlawful act or omission, shown himself unworthy of the exercise of any of the following rights, the Court may make an order depriving the criminal of:

- (a) his civil rights, particularly the right to vote, to take part in any election or to be elected to a public office or office of honour, to be a witness to or a surety in any deed or document, to be an expert witness or to serve as assessor; or
- (b) of his family rights, particularly those conferring the rights of parental authority, of tutorship or of guardianship; or
- (c) his rights to exercise a profession, art, trade or to carry on any industry or commerce for which a license or authority is required.

Criminal Code

Article 124

(1) Any deprivation (Art.123) may be permanent or temporary and where temporary shall be from six months to five years. In fixing the period in each case the Court shall take into consideration the gravity of the crime, the antecedents and character of the criminal, the danger of a relapse into crime, the need for, and utility of the deprivation or the probable effect of the punishment and the interests of society.

(2) A sentence of death or of rigorous imprisonment carries with it the deprivation of all civil rights. When deciding a sentence of rigorous imprisonment, the Court shall determine the duration of the deprivation of civil rights. Subject to the exercise of pardon (Art.229) and amnesty (Art. 230) or reinstatement (Arts.232-237) such deprivation shall be permanent in the case of a sentence of death or of rigorous imprisonment for life.

Federal Civil Servants Proclamation

Article 14 (2)

“any person who has been convicted by a court of competent jurisdiction of breach of trust, theft, or fraud shall not be eligible to be a civil servant.”

173. Ethiopia indicated that, in general, there are some instances whereby courts gave their verdicts banning the convicted offenders from holding public offices and participating in elections. For example, in two corruption cases taken to court by the Commission, a competent court deprived the offenders of their rights to vote and be elected.

174. Similar to the case of offences in public offices, there is a practice by courts in Ethiopia to bar convicted offenders from holding office in a government enterprise.

(b) Observations on the implementation of the article

175. It was explained during the country visit that convicted persons may be precluded from employment in a State-owned enterprise in accordance with the provisions of Proclamation No. 377/2003 - Labour Proclamation.

176. However, with respect to a disqualification from holding public office, the reviewers note that corruption-related offences are not included in the list of offences in Article 14(2) of the Federal Civil Servants Proclamation. It is recommended that Ethiopia consider amending its legislation in this regard.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

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

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

177. Ethiopia cited Article 405 of the Criminal Code.

Criminal Code

Article 405

Conviction or acquittal under the provisions of this Chapter, shall not exclude liability for damages and/or administrative penalties.

(b) Observations on the implementation of the article

178. The provisions of sub-paragraph 8 are amply covered by Article 405 of the Ethiopian Criminal Code.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

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 the article

179. Ethiopia cited the Preamble of the Criminal Code as well as Articles 107, 111 (1), 121, 190, 201 and 209 of the Criminal Code.

Preamble of the Criminal Code

Punishment can deter wrongdoers from committing other crimes; it can also serve as a warning to prospective wrongdoers. Although imprisonment and death are enforced in respect of certain crimes the main objective is temporarily or permanently to prevent wrongdoers from committing further crimes against society. And in such cases with the exception of the death sentence even criminals sentenced to life imprisonment can be released on parole before serving the whole term; in certain crimes convicts can be released on probation without the pronouncement of sentence or without the enforcement of the sentence pronounced. This helps wrongdoers to lead a peaceful life and it indicates the major place, which the Criminal Law has allocated for their rehabilitation.

Criminal Code

Article 107

Wherever by reason of local administrative difficulties the execution of a sentence of simple imprisonment is not possible or the carrying out of such sentence is not conducive to the reform or the rehabilitation of the criminal, the Court may, in respect of crimes for which the Special Part of this Code provides for a term of simple imprisonment not exceeding six months, inflict a sentence of compulsory labour (Art. 103 or 104) instead of the sentence of simple imprisonment. The provisions of this

Article shall have effect notwithstanding that no provision is made in the Special Part for the application of a sentence of compulsory labour instead of one of simple imprisonment.

Criminal Code

Article 111

(1) A prisoner serving a sentence with deprivation of personal liberty shall be under an obligation to do work and such obligation is an essential element in the sentence.

A prisoner in good health shall be compelled to do such work as will be assigned by the Director of Prisons. Such work shall be suitable to the prisoner's ability and shall be of such nature as to reform and educate the prisoner and to be conducive to his rehabilitation.

Article 121

Secondary punishments shall not be applied except together with and subject to a principal punishment. Any such punishments shall apply only when the Court has expressly so directed. Any such punishments may be applied whenever the general provisions of law have been fulfilled notwithstanding that no provision is specifically made for the application of such punishment in any particular case. In deciding the application of secondary penalties, the Court shall be guided by their aim and the result they would achieve on the safety and rehabilitation of the criminal.

Article 190

When the Court, having regard to all the circumstances of the case, considers that conditional suspension of the penalty will promote the reform and reinstatement of the criminal, it may order conditional suspension of the sentence as provided hereinafter. Such an order implies an appeal to the cooperation of the criminal for his own reform and may at any time be revoked if circumstances show that it is not justified.

Article 201

In all cases where a penalty or measure entailing loss of liberty provided by this Code is imposed, anticipatory conditional release may be awarded by way of probation at the end of the period of enforcement provided by law, when the general requirements therefore are satisfied (Art. 202); Conditional release must be regarded as a means of reform and social reinstatement. It must be deserved by the criminal to whom it is applied and must be awarded only in cases where it affords a reasonable chance of success.

Article 209

(1) The duties of the charitable organizations consist in affording criminals who have to readjust themselves to life in the community, either during a period of suspension or after their conditional or final release from a penalty or a measure entailing loss of liberty, counsel, guidance and moral and material assistance with a view to achieving the purpose of reinstatement which is aimed at, and forestalling a future relapse. The appointed charitable organization may, in particular, place the protected persons in employment or find for them, or assist them in finding, work, an employer, lodgings or

relief, direct them as to the proper use of their savings or earnings and, generally, give them every other support necessary to enable them to lead an honest life.

(2) It shall exercise regular supervision over them but with such discretion as is proper so as not to, risk impairing their rehabilitation, and report to the Court and to the competent authorities whenever necessary.

180. There is no statistical data on the implementation of this provision.

(b) Observations on the implementation of the article

181. Rehabilitation is well provided for in the above quoted articles of Ethiopian law but a lack of data precludes the possibility of seeing how this is applied to persons found guilty of corruption.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

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;

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

182. Ethiopia cited Articles 98, 100 and 404 of the Criminal Code, Articles 2 (2) and 29 of the Revised Special Procedure Proclamation of the Commission, as well as Article 7 of the Revised Establishment Proclamation of the Commission as applicable. Article 35 of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation was also deemed relevant.

Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation 434/2005

Article 2(2)

"Property acquired by the commission of corruption offence" means any property which the offender owns or possesses directly or indirectly as a result of the commission of the corruption offence, and includes any such property or money which has been donated directly or indirectly by the offender, put under someone's custody or hidden somewhere;

Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation 434/2005

Article 29

The court shall issue a confiscation order proportionate to the property acquired by the corruption offence.

Criminal Code

Article 98 [Confiscation]

(1) Subject to the following provisions of this Article, where the law makes provision for confiscation the Court may order the confiscation of the estate, or part thereof, of the criminal.

(2) Any property which the criminal has acquired, directly or indirectly, by the commission of the crime for which he was convicted shall be confiscated. An order of confiscation may also apply to any property lawfully acquired by the criminal.

(3) Confiscation shall not affect:

(a) domestic articles normally in use, instruments of trade or profession and agricultural implements, necessary for the livelihood of the criminal and his family;

(b) such amount of foodstuffs and of money as are necessary for the support of the family of the criminal for a period of not less than six months or for such longer period as the Court, having regard to the particular circumstances of the case and for reasons to be given in its judgment, considers just;

(c) goods, forming part of a family inheritance, of which the criminal cannot freely dispose by gift, will or in any other manner;

(d) half of the common property with regard to the innocent spouse of the criminal, as well as the personal goods of the innocent spouse, children or other persons of which the criminal has, by law or custom, the charge, administration, management or power to dispose.

Article 100 [Forfeiture to the State]

(1) Any material benefits given or intended to be given to an criminal to commit a crime shall be forfeited to the State. If they no longer exist in kind the person who received them shall refund their value.

(2) Any fruits of a crime shall be forfeited to the State where its owner or any other claimant is not found within five years starting from the date of publication of notice having been made concerning the recovery of the property in accordance with the usual procedure. Where the property is likely to be spoiled or become unfit for use it shall be sold in accordance with the usual procedure and the money shall be entrusted to a competent authority for a period not exceeding five years.

Article 404 [Principle]

(4) Any public servant shall, in addition to the punishment under the provision infringed, forfeit the profit, money or property unlawfully obtained, or pay its equivalent value where the profit or property is not found.

Proclamation 433/2005 Revised FEACC Establishment Proclamation

Article 7

The Commission shall have the powers and duties to

6/ To freeze, by court order, the assets of any person who may be under investigation for corruption; and cause, through court order, the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state or dispose same by or without public auction

Proclamation No. 780/2013 Prevention and Suppression of Money Laundering and Financing of Terrorism

Article 35 [Confiscation]

1/ In the event of a conviction for money laundering or a predicate offence, or financing of terrorism, an order shall be issued by the court for the confiscation of:

- a) funds or property constituting the proceeds of crime, including property intermingled with or exchanged for such proceeds;
- b) funds or property constituting income and other benefits obtained from the proceeds of crime;
- c) the instrumentalities;
- d) funds or property referred to from paragraph (a) to (c) of this sub-article that has been transferred to any party, unless the court finds that the owner of such property acquired them by paying fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds, and that he was unaware of its illicit origin; or
- e) property of the perpetrator of the offence the value of which corresponds to that of the proceeds of crime.

2/ The court may also order confiscation of funds or property belonging to directly or indirectly to a person convicted of money laundering or a predicate offence or financing of terrorism, which were acquired during a period of five years prior to being charged with the offence, if there are reasonable grounds indicating that such funds or property are the result of the offence of which the person was convicted, and the person failed to prove that the property was obtained legally.

3/ If, in case where an offence involving money laundering or a predicate offence, or financing of terrorism, is established by the court and the perpetrator thereof cannot be convicted because he is unknown, he absconded or died, the court may nevertheless order the confiscation of the seized funds or property if sufficient evidence is adduced that it constitutes proceeds of crime or instrumentalities.

4/ The confiscation order shall specify the property concerned and contain the necessary details to identify and locate it.

5/ The court may invalidate any legal instrument, the purpose of which is to avoid the confiscation of the property pursuant to sub-article (1) of this Article; provided, however, that if the invalidated legal instrument is entered into for value the acquiring party acting in good faith shall be reimbursed only for the amount actually paid.

183. As examples of implementation, Ethiopia provided the following statistics on assets confiscated in corruption cases under the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation 434/2005:

- 2009-2010, more than 2 million Birr, 7 vehicles, 15 buildings, thousands of hectare of urban land
- 2010/2011, more than 4 million Birr, 41 buildings, 8 vehicles, and 70 thousand hectares of urban land
- 2011/2012, more than 71 million Birr, 90 buildings, 104 thousand hectares of urban land, 48 vehicles, and other heavy machineries.
- 2012/2013, more than 400 million Ethiopian Birr.

184. The following additional statistics were provided. The chart shows the number and type of assets that were confiscated by FEACC and the Federal Police respectively. The next chart shows that number and types of assets frozen/seized over the same period. As the chart shows, measures were applied mainly in corruption cases.

Asset Confiscation	July 2010-June 2011	July 2011-June 2012	July 2012-June 2013	July 2013-March 2014
FEACC				
Cash (in Birr)	650,553.39	13,734,666.60	21,256,663.28	8,429,348.66
Land	600,295.80	318,147.35	1,945	
Car		23		3
House		9		
Factory & business organization				9
Federal Police				
Cash (in Birr)		148,500		

Asset Confiscation	July 2010-June 2011	July 2011-June 2012	July 2012-June 2013	July 2013-March 2014
FEACC				
Cash (in Birr)	67,876,334.30	917,347.39	3,901,255.52	124,492,704.70
Cash (in US\$)			15,115,026.41	
Land	1,842,205	4,449.87	108,709.30	1050
Car	109	14	32	34
House	71	33	70	151
Factory & business organization	26	5	8	22
Federal Police				
Cash (in Birr)		221,000		
Cash (in US\$)	50			

185. Furthermore, Ethiopia also referred to the statistical data provided in tabular form under the bribery section, article 15 of this report.

(b) Observations on the implementation of the article

186. Confiscation of proceeds of crime is possible in accordance with provisions in the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation 434/2005, the Criminal Code and the Revised FEACC Establishment Proclamation 433/2005. It was confirmed during the country visit that value based confiscation is covered by Articles 404 and 100, read together with Article 98 of the Criminal Code, as well as Article 29 of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation 434/2005. Provisions on value based confiscation are also included in the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation of 2015.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

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:

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

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

187. Ethiopia referred to the above-cited Articles 98, 100 and 404 of the Criminal Code of Ethiopia, as well as Article 29 of the Revised Special Procedure and Rules of Evidence Proclamation as applicable. Furthermore, the Ethiopian law treats both the proceeds of crime and the instruments used for the commission of the crime in similar manner and does not treat them in isolation.

188. In the context of the seizure of instruments of crime, Ethiopia referred to Article 140 of the Criminal Code, which applies to corruption crimes as a result of Article 3 of the Criminal Code.

Criminal Code

Article 140.- Seizure of Dangerous Articles.

(1) The Court shall order the seizure of all articles having been used or likely to be used for the commission of, a crime, or which have been obtained as the result of a crime, when they endanger public order, safety, health or decency. It may order that the seized articles be either destroyed, rendered useless or handed over to a police or a criminological institute.

(2) Interests of innocent third parties shall be protected and weapons or instruments the possession of which is not forbidden by law shall be returned to their owner.

Criminal Code

Article 3.- Other Penal Legislation.

Nothing in this Code shall affect regulations and special laws of a criminal nature:

Provided that the general principles embodied in this Code are applicable to those regulations and laws except as otherwise expressly provided therein.

189. As examples of implementation, Ethiopia informed that between 2010 and 2011, computers and other equipment used for the Commission of various corruption offences were confiscated and returned to the Government. The following is a list of those properties confiscated:

- Computer system unit model: dx2290M/E2160Hnem/512L/8D (total number of units 13)
- ACER brand Computers (total number of computers 11)
- NORSAT8525, C-BAND, Digital DRO (total number 3)
- C-BAND 5W BUC, MODEL NJT5669, (total number 3)
- Other telecommunication tools.

(b) Observations on the implementation of the article

190. It was confirmed during the country visit that instrumentalities of crime are not covered by the confiscation provisions in Ethiopia's legislation except in respect of money laundering offences under Article 35 of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation and in respect of instruments used or likely to be used for the commission of a crime that endangers public order, safety, health or decency. It is recommended that Ethiopia amend its legislation in this regard.

Article 31 Freezing, seizure and confiscation

Paragraph 2

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.

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

191. Ethiopia indicated that Articles 42, 46, 8 and 9 of the Revised Special Procedure and Rules of Evidence Proclamation of the Commission, Article 7 of the Revised Establishment Proclamation of the Commission and Article 33 of the Criminal Procedure Law of Ethiopia are applicable.

Revised FEACC Establishment Proclamation

Article 7

The Commission shall have the powers and duties to freeze, by court order, the assets of any person who may be under investigation for corruption; and cause, through court order, the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state or dispose same by or without public auction;

**The Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation
Article 42**

An investigator or a prosecutor may apply to the court to obtain or gain access to relevant material, from any person other than the suspect, in order to establish whether the suspect has benefited from criminal conduct or to get evidence regarding the amount of benefits or its where about.

Article 46

- a) Where it is necessary for the investigation of corruption offence, head of the appropriate organ may order the interception of correspondence by telephone, telecommunications and electronic devices as well as by postal letters.
- b) Where it is necessary, evidence gathered through video camera, sound recorder, and similar electronic devices may be produced as evidence.
- c) An order given “shall indicate the offence which gives rise to the interception, and the duration of the interception, and, if it is a telephone or telecommunication, the link to be intercepted, unless decides otherwise, the duration of the interception may not exceed four months.”

Article 8

1/Without prejudice to article 10 of this Proclamation, a court may issue a restraining order against any property acquired by the commission of corruption offence.

2/An investigator or a prosecutor may, supported by an affidavit, apply to the court for a restraining order against any property acquired by the commission of corruption offence,

3/ An application for a restraining order may be made before or after the institution of a criminal proceeding.

Proclamation 434/2005 The Revised Proclamation to Provide for Special Procedure and Rules of Evidence on Anti-Corruption

Article 9

1/ Notwithstanding that there is no evidence that the property is acquired as a result of the corruption offence, where an investigator or prosecutor made an application for a restraining order supported by an affidavit indicating that the suspect is enriched or others suffered as a result of the corruption offence being investigated or charged, the court may give a restraining order prohibiting the sale, assignment and/or transfer of any money deposited in any bank in the name of the suspect or any other property of the suspect proportionate to the amount of enrichment by the suspect or injury suffered by others.

2/ Unless it is impossible to execute, the restraining order given according to sub article I of this Article may not affect the right to use of the suspect.

Criminal Procedure

Article 33

A search warrant may be issued by any court. No search warrant shall be issued unless the court is satisfied that the purposes of justice or of any inquiry, trial or other proceedings under this Code will be served by the issue of such warrant. Every search warrant issued shall specify the property to be searched for and seized and no investigating police officer or member of the police may seize any property other than that specified in such warrant. On seizing any property such investigating police officer or member of the police shall make a list of the property seized and where possible shall have the list checked and signed by an independent person. Any property seized which is required for the trial shall be preserved in a safe place until handed over to the court as an exhibit. Any property not so required may be returned to the person from whom it was taken and a receipt shall be taken.

192. As examples of implementation, Ethiopia informed that between 2010 and 2011, the Commission took measures to identify, trace, freeze, and seize properties believed to be obtained through corruption for the purpose of eventual confiscation. The following proceeds of corruption have been identified, traced, froze, and seized through such measures:

- 1,246,537.57 square meter of land;
- 68,881,498.02 Birr in cash;
- 111 Kilogram of gold (estimated at 69,000,000 Birr);
- 110 houses with different standards;
- 3 factories;
- 170,000 square meter of coffee plantation and
- Two combine harvesters.

(b) Observations on the implementation of the article

193. Ethiopian investigators are empowered by law to search for and seize assets as long as appropriate warrants are obtained. Moreover, the FIC is mandated under Article 36 of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation to freeze and seize assets.

Proclamation No. 780/2013 Prevention and Suppression of Money Laundering and Financing of Terrorism

Article 36 [Freezing and Seizing]

1/ The court may, either at its own initiatives or at the request of the public prosecutor, issue order of freezing or seizing, including other appropriate provisional measures, intended to preserve availability of funds or property and instrumentalities that may be subject to confiscation in accordance with Article 35 of this Proclamation.

2/ The provision of sub-article (1) of this Article shall apply without prejudice to the rights of third parties acquired in good faith.

3/ Any provisional measure imposed pursuant to sub-article (1) of this Article may be lifted at any time by the court that ordered the measure on its own initiative or at the request of the public prosecutor, the suspect or person claiming rights to the property.

Article 31 Freezing, seizure and confiscation

Paragraph 3

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.

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

194. Ethiopia cited Article 17 and 100 (2) of the Revised Special Procedure and Rules of Evidence Proclamation as relevant here.

Revised Special Procedure and Rules of Evidence Proclamation

Article 100 (2)

Where the property is likely to be spoiled or become unfit for use it shall be sold in accordance with the usual procedure and the money shall be entrusted to a competent authority for a period not exceeding five years.

Article 17

1/ Where it appears to the court to be just and convenient, it may, with respect to the property on which a restraining order is issued,

- a) appoint a receiver of the property;
- b) remove any person from the possession or custody of the property;
- c) commit the same to the possession, custody or management of the receiver;
- d) confer upon the receiver the power for preservation, management and improvement of the property.

2/ The court may confer upon the receiver all such powers, as to bringing and defending suits, and for the collection of the rents, profits and any other income thereof, the investment and disposal of such rents, profits, or income, for useful purposes, or such other powers as the court thinks fit.

3/ Upon issuing an order in accordance with Sub-Article (I) and (2) of this article, the court shall have regard to the amount of the probable costs of his appointment and may, before making the appointment, direct such inquiries on these or other matters to be made as it thinks fit.

4/ If the person to be appointed as a receiver pursuant to Sub-Article I(a) of this article is a natural person, such person shall be of good character, with integrity and who has no bond of relationship by consanguinity or affinity or conflict of interest.

5/ If a person to be appointed as a receiver pursuant to Sub-Article I (a) of this article is a juridical person, it has to be verified that its financial account for the last three years is clean and there is no conflict of interest.

195. As examples of implementation, Ethiopia informed that between 2010 and 2013, the following properties which have been frozen and seized were administered by appointed receivers (competent authorities) in accordance with the Article 17 of the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation:

- 65 million Birr in cash;
- a steel mills factory;
- a ten-room house which was rented for businesses and residences.

196. Ethiopia further informed that reports were submitted to competent courts periodically.

(b) Observations on the implementation of the article

197. The legal framework for asset management is limited. There are limited provisions in place allowing for the appointment of a court receiver to manage property subject to a

restraining order. In practice, the management of property before the issuance of a court order is done by investigating agencies, including FEACC and the police, in accordance with Proclamation No. 649/2009, the Ethiopian Federal Government Procurement and Property Administration Proclamation. However, there are no policies guiding the investigating and prosecuting agencies in the process.

198. It is recommended that Ethiopia adopt measures to strengthen the administration of frozen, seized and confiscated property, including proceeds and instrumentalities of crime to address the observations made above.

199. In this context it was confirmed that the newly adopted Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation (No. 882/2015) in article 2(8)(34)(3) provides for the collection, sale and disposal of confiscated assets by appropriate organs, namely FEACC and/or the regional commissions.

Article 31 Freezing, seizure and confiscation

Paragraph 4

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.

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

200. Ethiopia noted as relevant the afore-cited Articles 98 and 100 of the Criminal Code, Article 7 of the Revised Establishment Proclamation of the Commission and Article 29 of the Revised Special Procedure and Rules of Evidence Proclamation of the Commission.

201. As examples of implementation, between 2010 and 2011, the following properties which were proceeds of crime and had been transformed or converted into other properties were also eventually confiscated:

- a) A bus;
- b) Two villas;
- c) A ground plus three. Ground plus one, and a ground plus four buildings and
- d) 28,000 Birr.

(b) Observations on the implementation of the article

202. The provision under review is addressed through measures on value based confiscation in Articles 404 and 100, read together with Article 98 of the Criminal Code, as well as Article 29 of the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation 434/2005.

Article 31 Freezing, seizure and confiscation

Paragraph 5

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.

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

203. Ethiopia cited Articles 98 and 100 of the Criminal Code of Ethiopia and Article 29 of the Revised Special Procedure and Rules of Evidence Proclamation of the Commission as relevant.

Article 98 Criminal Code

(1) Subject to the following provisions of this Article, where the law makes provision for confiscation the Court may order the confiscation of the estate, or part thereof, of the criminal. (2) Any property which the criminal has acquired, directly or indirectly, by the commission of the crime for which he was convicted shall be confiscated. An order of confiscation may also apply to any property lawfully acquired by the criminal.

(3) Confiscation shall not affect:

- (a) domestic articles normally in use, instruments of trade or profession and agricultural implements, necessary for the livelihood of the criminal and his family;
- (b) such amount of foodstuffs and of money as are necessary for the support of the family of the criminal for a period of not less than six months or for such longer period as the Court, having regard to the particular circumstances of the case and for reasons to be given in its judgment, considers just;
- (c) goods, forming part of a family inheritance, of which the criminal cannot freely dispose by gift, will or in any other manner;
- (d) half of the common property with regard to the innocent spouse of the criminal, as well as the personal goods of the innocent spouse, children or other persons of which the criminal has, by law or custom, the charge, administration, management or power to dispose.

Article 100 Criminal Code

(1) Any material benefits given or intended to be given to a criminal to commit a crime shall be forfeited to the State. If they no longer exist in kind the person who received them shall refund their value. (2) Any fruits of a crime shall be forfeited to the State where its owner or any other claimant is not found within five years starting from the date of publication of notice having been made concerning the recovery of the property in accordance with the usual procedure. Where the property is likely to be spoiled or become unfit for use it shall be sold in accordance with the usual procedure and the money shall be entrusted to a competent authority for a period not exceeding five years.

Article 7 Proclamation 433/2005 Revised FEACC Establishment Proclamation

The Commission shall have the powers and duties to 6/ To freeze, by court order, the assets of any person who may be under investigation for corruption; and cause, through

court order, the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state or dispose same by or without public auction;.

Article 29 Proclamation No. 434/2005

The court shall issue a confiscation order proportionate to the property acquired by the corruption offence, where the accused is found guilty.

(b) Observations on the implementation of the article

211. The provision under review is addressed through measures on value based confiscation in Articles 404 and 100, read together with Article 98 of the Criminal Code, as well as Article 29 of the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation 434/2005.

Article 31 Freezing, seizure and confiscation

Paragraph 6

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.

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

204. Ethiopia cited Article 100 of the Criminal Code of Ethiopia and Article 29 of the Revised Special Procedure and Rules of Evidence Proclamation as relevant. Furthermore, the newly adopted amendment to the same Proclamation (No. 882/2015) has incorporated specific provisions covering this sub-paragraph in article 2(5).

Article 100 of the Criminal Code

(1) Any material benefits given or intended to be given to a criminal to commit a crime shall be forfeited to the State. If they no longer exist in kind the person who received them shall refund their value.

(2) Any fruits of a crime shall be forfeited to the State where its owner or any other claimant is not found within five years starting from the date of publication of notice having been made concerning the recovery of the property in accordance with the usual procedure. Where the property is likely to be spoiled or become unfit for use it shall be sold in accordance with the usual procedure and the money shall be entrusted to a competent authority for a period not exceeding five years.

Article 29 Proclamation No. 434/2005

The court shall issue a confiscation order proportionate to the property acquired by the corruption offence, where the accused is found guilty.

205. As an example of implementation, Ethiopia referred to a gold scam case, where the Commission has requested the confiscation of income or other benefits derived from proceeds of corruption crime, worth around 22,000,000 Birr. The case is still pending.

(b) Observations on the implementation of the article

206. The provision under review is addressed through measures on value based confiscation in Articles 404 and 100, read together with Article 98 of the Criminal Code, as well as Article 29 of the Revised Anti-corruption Special Procedure and Rules of Evidence Proclamation 434/2005. It was explained that in practice, FEACC uses Article 29 of Proclamation No. 434/2005 to pursue income and benefit, and that interest is also recouped.

Article 31 Freezing, seizure and confiscation

Paragraph 7

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.

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

207. Ethiopia cited Articles 15 (1), 17(1), 20 (1), and 24 (1) of the Proclamation No. 780/2013, together with Articles 7 (5) and 12 (g) of Proclamation No. 433/2005 as applicable.

Articles 7 (5) and 12 (g) Proclamation No.433/2005

The Commission shall have the powers and duties of:

7 (5) Where there is reasonable suspicion in connection with corruption offences, to investigate and obtain information about, with the order of the commissioner, any bank account of suspected persons; and cause the attachment, with court order of same where necessary;

...

12 (g) to issue warrants to search and obtain information there from, of any bank account of any person or organization if there is reasonable suspicion that such irrelevant to a case under investigation.

Proclamation No. 780/2013

Article 15 (1)

The Center shall have the power to obtain from any person subject to the reporting obligation in accordance with Article 17 of this Proclamation any additional information it deems useful for the accomplishment of its functions.

Article 17 (1)

Financial institutions and designated non-financial businesses and professions, that suspect or have reasonable grounds to suspect that funds or property are the proceeds of crime, or are related or linked to, or are to be used for financing of terrorism shall be required to submit promptly reports setting forth their suspicions to the Center. This obligation shall also apply to attempted transactions.

Article 20 (1)

Under no circumstance shall financial institutions and designated non-financial businesses and professions, their directors, officers and employees disclose to their customers or third parties that:

- a) information concerning suspected money laundering or financing of terrorism will be, is being or has been provided to the Center; or
- b) a money laundering or financing of terrorism investigation will be, is being or has been carried out.

Article 24 (1)

No criminal, civil or administrative proceedings for breach of banking or professional secrecy or contract may be instituted against financial institutions and designated non-financial businesses and professions or their directors, officers or employees who in good faith submit reports or provide information in accordance with the provisions of this Proclamation.

208. Ethiopia indicated that any information in connection with the ongoing investigation of corruption offences can be sought from banks by the Commissioner of the FEACC by letter or by court order, where necessary. In line with this, information was sought by the Commissioner of FEACC in a number of cases and the required information was obtained without bank secrecy being an obstacle. While this is practised frequently in dealing with corruption offences, data has not been systematically collected on this.

(b) Observations on the implementation of the article

209. The provisions of article 31(7) of the UNCAC are covered by Ethiopian law as quoted above.

Article 31 Freezing, seizure and confiscation

Paragraph 8

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.

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

210. Ethiopia cited Article 419 of the Criminal Code of Ethiopia and Article 35 (2) of Proclamation No. 780/2013 as relevant.

Criminal Code

Article 419 Possession of Unexplained Property.

- (1) Any public servant, being or having been in a public office, who:
- a) maintains a standard of living above that which is commensurate with the official income from his present or past employment or other means; or
 - b) is in control of pecuniary resources or property disproportionate to the official income from his present or past employment or other means, shall, unless he gives a satisfactory explanation to the Court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be punished, without prejudice to the confiscation of the property or the restitution to the third party, with simple imprisonment or fine, or in serious cases, with rigorous imprisonment not exceeding five years and fine.
- (2) Where the Court, during proceeding under sub-article (1)(b), is satisfied that there is reason to believe that any person, owing to his closeness to the accused or other circumstances, was holding pecuniary resource or property in trust for or otherwise on behalf of the accused, such resources or property shall, in the absence of evidence to the contrary, be presumed to have been under the control of the accused.

Proclamation No. 780/2013

35.(2) The court may also order confiscation of funds or property belonging to directly or indirectly to a person convicted of money laundering . or a predicate offence or financing of terrorism, which were acquired during a period of five years prior to being charged with the offence, if there are reasonable grounds indicating that such funds or property are the result of the offence of which the person was convicted, and the person failed to prove that the property was obtained legally.

211. Ethiopia indicated that between 2010 and 2013, the number of allegations received, cases fully investigated, and offenders prosecuted was 42, 12, and 8 respectively.

(b) Observations on the implementation of the article

212. It was explained that Article 419(1)(b), which allows for punishment of unexplained wealth “without prejudice to the confiscation of the property” can be used to address the requirements of the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 9

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

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

213. Ethiopia cited Articles 358 and 418 of the Civil Procedure Code of Ethiopia as well as Article 101 of the Criminal Code as relevant.

Civil Procedure Code

Article 358

Any person who should or could have been made a party to a suit and whose interests are affected by a judgment in the suit may, if he was not a party to such suit either in person or through a representative, file an opposition to such judgment at any time before such judgment is executed.

Article 418

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit: Provided that no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Any claim or objection under sub-art. (1) shall be made by presenting a written application to the court executing the decree.

(3) The claimant or, objector shall adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

(4) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection.

Criminal Code

Article 101

Where a crime has caused considerable damage to the injured person or to those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation. To this end they may join their civil claim with the criminal suit. Such claim shall be governed by the provisions laid down in the Criminal Procedure Code.

214. Ethiopia cited the following case.

In the **Sheba Mills Factory case**, the Commission was in the process of recovering the assets lost to corruption from the Sheba Mills factory (hereafter referred to as “the company”) which lost the case. In the meantime, Dashen Bank, which was a bona fide party in this case, showed up and claimed that it had granted loan amounting 20 million Birr to the company and demanded that its preferential right in recovering the money lent be respected. Afterwards, the Commission and the bank agreed in principle to share the assets of the company.

(b) Observations on the implementation of the article

215. From the reply given above, it seems that bona fide third parties have recourse to the law to protect their interests in cases when a confiscation order has been given by the Ethiopian courts.

(c) Challenges, where applicable

216. Ethiopia has identified the following challenges and issues in fully implementing the article under review:
Limited capacity (e.g. human/technological/institutional).

(d) Technical assistance needs

217. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Capacity-building programmes for authorities responsible for identifying and tracing such property or instrumentalities
2. On-site assistance by a relevant expert

Ethiopia has received the following form of technical assistance and indicated that the expansion of such assistance would help it adopt the measures described in the article under review.

The World Bank provided training to the staffers of the Commission, Ministry of Justice, Financial Intelligence Center, and Revenue and Customs Authority on using money laundering tools for corruption cases.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

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.

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

218. Ethiopia has cited Article 27 of the Commission's Revised Establishment Proclamation and 444 of the Criminal Code of Ethiopia as relevant. In addition, Articles 53 and 54 of the Commission's Special Procedure and Rules of Evidence Proclamation are also applicable. Article 2 (1) and (2) of Proclamation No. 699/2010 and Article 4 of the same Proclamation are also applicable.

Article 27 Revised Proclamation for establishment of the FEACC

Unless it is punishable with more severe penalty under other laws;

1/ Whosoever attempts to influence, harm or punish or who influences, harms or punishes any person who gives evidence or provides information relating to corruption offences to the Commission, organs of judicial administration, head of a Public office, or a Public enterprise shall be punishable with rigorous imprisonment not less than three years and not exceeding fifteen years; and with fine not less than Birr six thousand and not exceeding Birr twenty five thousand.

Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005

Article 53

Illegality of Reprisal

1/ Any reprisal taken against a whistle-blower or witness for making or attempting to make a disclosure or a testimony shall be illegal.

2/ Every government office shall establish a procedure to protect its employees from reprisal.

Article 54

Suspension of Reprisal Measure

1/ Where the person against whom a reprisal measure has been taken is an employee, he may apply to the court or to any appropriate organ for a suspension.

2/ Where the court or the appropriate organ which has received the application in accordance with sub-article (1) of this Article has ascertained the existence of a reprisal measure; it shall give forthwith a provisional ruling to suspend such measure.

3/ Where the appropriate organ instituted a criminal charge against the person who has taken a reprisal measure, the suspension order shall remain in force until the case is disposed.

4/ Any party aggrieved by the injunction order may apply to court. Until the court disposes the case, the suspension shall remain in force.

Proclamation No 699/2010 A Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences

Article 2

Definitions

In this Proclamation, unless the context otherwise requires:

1/ “whistleblower or witness” means a person who has given or agrees to give information or has acted or agrees to act as a witness in the investigation or trial of an offence;

2/ “protected person” means a witness, a whistleblower or a family member of a witness or a whistleblower who has entered into a protection agreement with the Ministry;

Article 3 (cited below)

Article 4

Types of Protection Measures

1/ The following protection measures may be employed for a protected person separately or in combination, as the case may be:

- a) physical protection of person and property;
- b) providing a secure residence including relocation; c) concealing identity and ownership;
- d) change of identity;
- e) provision of self-defense weapon;
- f) immunity from prosecution for an offence for which he renders information;
- g) prohibiting an accused person from reaching the protected person’s residence, work place or school before or after a final judgment is delivered on the crime for which information is given;
- h) not to disclose the identity of a witness until the trial process begins and the witness testifies;
- i) hearing testimony in camera;
- j) hearing testimony behind screen or by disguising identity;
- k) producing evidence by electronic devices or any other method;
- l) unless it is deemed confidential, providing information regarding the progress of investigation on what has been whistle blown and advice to a whistleblower;
- m) providing transport allowance and per diem to a witness summoned to testify; n) covering relocation cost where the protection measure entails relocation;
- o) suspension or revocation of retaliatory administrative measures or taking any other compensatory measure;
- p) provision of medical treatment free of charge at government hospitals in case of injury sustained as a result of retaliatory measure;
- q) covering costs of basic needs in case of incapacity to work as a result of retaliatory measure;
- r) in case of death as a result of retaliatory measure, covering funeral expenses and provision of pecuniary subsidy to family;
- s) assisting the protected person to secure job and education opportunity;
- t) providing or causing the provision of counselling service to the witness or whistleblower.

2/ Notwithstanding the provisions of subarticle (1) of this Article, a protected person may not be issued with professional certificate that he does not rightly possess for the sake of protection.

Article 444 Criminal Code

(1) Whoever assaults, suppresses or harms any person who gives information or evidence to justice authorities or is a witness in criminal cases, is punishable with simple imprisonment or fine.

(2) Where the crime has entailed grave harm to the body or health of the victim or his death, the relevant provision concerning such matters shall apply concurrently.

219. Between 2010 and 2013, the Commission received 188 applications for protection from alleged from retaliation or intimidation. These numbers represent combined requests involving witnesses and whistle-blowers (UNCAC article 33 below). Some 105 of those applicants received the protection as per their requests and the applications of 60 were denied for insufficiency of substantiation of their claims. The applications of the remaining applicants are under further review. The relevant provisions used for the protection were Article 53 and 54 of the Revised Anti-corruption Procedure and Rules of Evidence Proclamation.

(b) Observations on the implementation of the article

220. It was confirmed during the country visit that the newly adopted Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation (No. 882/2015) in article 2(2)(7) includes experts, auditors and investigators in the category of persons covered as witnesses and whistle-blowers, as such persons are not covered by the existing provisions protecting witnesses in Proclamation No 699/2010.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

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;

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

221. The Proclamation No 699/2010 A Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences, was indicated as applicable to the provision under review.

Article 3

1/ The protection under this Proclamation shall be applicable with respect to testimony or information given or investigation undertaken on a suspect punishable with rigorous imprisonment for ten or more years or with death without having regard to the minimum period of rigorous imprisonment:

- a) where the offence may not be revealed or established by another means otherwise than by the testimony of the witness or the information of the whistleblower; and
- b) where it is believed that a threat of serious danger exists to the life, physical security, freedom or property of the witness, the whistleblower or a family member of the witness or the whistleblower.

2/ Notwithstanding the provisions of subarticle (1) of this Article, the Ministry and the Commission may also extend the protections provided under sub-article (1), (1), (m), (o), (p) and (t) of Article 4 of this Proclamation to witnesses and whistleblowers who are not protected persons.

Article 4

Types of Protection Measures

1/ The following protection measures may be employed for a protected person separately or in combination, as the case may be:

- a) physical protection of person and property;
- b) providing a secure residence including relocation;
- c) concealing identity and ownership;
- d) change of identity;
- e) provision of self-defense weapon;
- f) immunity from prosecution for an offence for which he renders information;
- g) prohibiting an accused person from reaching the protected person's residence, work place or school before or after a final judgment is delivered on the crime for which information is given;
- h) not to disclose the identity of a witness until the trial process begins and the witness testifies;
- i) hearing testimony in camera;
- j) hearing testimony behind screen or by disguising identity;
- k) producing evidence by electronic devices or any other method;
- l) unless it is deemed confidential, providing information regarding the progress of investigation on what has been whistle blown and advice to a whistleblower;
- m) providing transport allowance and per diem to a witness summoned to testify;
- n) covering relocation cost where the protection measure entails relocation;
- o) suspension or revocation of retaliatory administrative measures or taking any other compensatory measure;
- p) provision of medical treatment free of charge at government hospitals in case of injury sustained as a result of retaliatory measure;
- q) covering costs of basic needs in case of incapacity to work as a result of retaliatory measure;

- r) in case of death as a result of retaliatory measure, covering funeral expenses and provision of pecuniary subsidy to family;
- s) assisting the protected person to secure job and education opportunity;
- t) providing or causing the provision of counseling service to the witness or whistleblower.

2/ Notwithstanding the provisions of subarticle (1) of this Article, a protected person may not be issued with professional certificate that he does not rightly possess for the sake of protection.

222. Ethiopia informed that the following protection has been afforded in the National Bank case (2008-2009): the witness was kept in a hotel for four months and protection was afforded in cooperation with the police.
223. In practice, FEACC can apply for protective measures to be provided by the police, which has the necessary manpower. However, such physical protections are rarely afforded in criminal cases in Ethiopia due to the required coordination and the fact that retaliation is rarely detected or reported.

(b) Observations on the implementation of the article

224. The provisions of this sub-article are covered by article 4 of the 2010 Whistle-blowers' Proclamation. The reviewers recommend that Ethiopia take steps to strengthen the protection of witnesses, experts and victims in corruption cases. In this context they welcome the swift implementation of the new anti-corruption law, which will provide enhanced witness and whistle-blower protection (e.g., coverage of experts), expand FEACC's mandate to the private sector, increase penalties for corruption and include provisions on plea bargaining/withdrawal of cases. They further acknowledge that implementation of the law will require Directives to ensure adequate oversight and transparency. Focus should be especially on implementing the witness/whistle-blower protections, and FEACC should ensure that appropriate mechanisms are set up for whistle-blower reporting, as well as the protection of whistle-blowers in the private sector (see article 33 below).

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

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:

(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.

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

225. Ethiopia again referenced the above-cited Article 4 of Proclamation 699/2010 and as an example of implementation noted that in a 2012 corruption case involving a Pakistani witness and citizen (resident in Ethiopia), in camera testimony was taken outside of the general court room. However, such protection is rarely provided in Ethiopia.

(b) Observations on the implementation of the article

226. Article 4 of the aforementioned Proclamation 699/2010 provides for this requisite.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

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.

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

227. Ethiopia informed that it has partially implemented the provision under review through Proclamation No 699/2010 A Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences' Article 27(2) by which "The government may conclude bilateral or multilateral treaties in order to provide effective protection to witnesses and whistle blowers."

228. While the legal framework allows the government to conclude such agreements is in place, no such agreements have been concluded until the finalization of this report. The Government will be concluding such agreements with other countries in order to fully implement the provision under review.

(b) Observations on the implementation of the article

229. As stated in the cited Proclamation, Ethiopia has the ability to conclude arrangements with other countries, although it has not done so to date.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

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

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

230. The Proclamation No 699/2010 A Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences, was indicated as applicable to the provision under review.

Article 2

Definitions

In this Proclamation, unless the context otherwise requires:

- 1/ “whistleblower or witness” means a person who has given or agrees to give information or has acted or agrees to act as a witness in the investigation or trial of an offence;
- 2/ “protected person” means a witness, a whistleblower or a family member of a witness or a whistleblower who has entered into a protection agreement with the Ministry.

Article 3

1/ The protection under this Proclamation shall be applicable with respect to testimony or information given or investigation undertaken on a suspect punishable with rigorous imprisonment for ten or more years or with death without having regard to the minimum period of rigorous imprisonment:

- a) where the offence may not be revealed or established by another means otherwise than by the testimony of the witness or the information of the whistleblower; and
- b) where it is believed that a threat of serious danger exists to the life, physical security, freedom or property of the witness, the whistleblower or a family member of the witness or the whistleblower.

2/ Notwithstanding the provisions of subarticle (1) of this Article, the Ministry and the Commission may also extend the protections provided under sub-article (1), (1), (m), (o), (p) and (t) of Article 4 of this Proclamation to witnesses and whistleblowers who are not protected persons.

231. Ethiopia further stated that there is no protection programme in place at present.

(b) Observations on the implementation of the article

232. Proclamation 699/2010 does not provide for the possibility of protecting victims as the protections are limited to witnesses and whistleblowers (Article 3(2)). It was explained that in practice victims are expected to file a report in order to receive protections as whistleblowers or to participate as witnesses in the case. Moreover, nothing in the most recent amendments to the anti-corruption law extends protections to victims of corruption. It is recommended that Ethiopia adopt measures to ensure the protection of victims in corruption cases.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

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 the article

233. Ethiopia cited Article 20 (6) and (7) of the FDRE Constitution and Article 154 of the Criminal Procedure Code of Ethiopia as relevant.

Constitution of Ethiopia

Article 20 (6) and (7)

Rights of Persons Accused

6. All persons have the right of appeal to the competent court against an order or a judgment of the court which first heard the case.

7. They have the right to request for the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand.

Criminal Procedure Code

Article 54

Principle

(1) Where a person has been injured by a criminal offence, he or his representative may at the opening of the hearing apply to the court trying the case for an order that compensation be awarded for the injury caused. The application shall be in writing and shall specify the nature and amount of the compensation sought. He shall not on filing his application pay that prescribed court fees as though it were a civil case.

(2) The person making the application shall be shown the list of the witnesses to be called by the prosecution and defence and shall be asked whether he wishes additional witnesses to be called. Where he wishes additional witnesses to be called, he shall be required 'to' pay the prescribed fees for the issue of witness summonses as though it were a civil case.

(3) The provisions of this chapter shall apply to public and private prosecutions.

(4) Where the person making the application acts in the capacity of private prosecutor, he shall specify which witnesses he calls in support of the prosecution and which he calls in support of his civil claim the provisions of sub-articles (1) and (2) shall apply.

(b) Observations on the implementation of the article

234. Ethiopian law allows a victim to claim compensation at no cost by filing a claim for damages at the beginning of a case. There is, however, a cost to be paid when it is necessary to produce witnesses to the claim for damages so this may be obstructive to the ease with which a victim may claim damages. The Constitutional protections are applicable to all persons, including victims of crime.

(c) Challenges, where applicable

235. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

Limited capacity (e.g. human/technological/institution/other; please specify);

Limited awareness of state-of-the-art programmes and practices for witness and expert protection

Limited resources for implementation (e.g. human/financial/other; please specify);

(d) Technical assistance needs

236. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

Summary of good practices/lessons learned;

Capacity-building programmes for authorities responsible for establishing and management witness and expert protection programmes;

On-site assistance by an anti-corruption expert;

None of these forms of technical assistance has been provided to Ethiopia to-date.

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 the article

237. Ethiopia referred to Article 27 of the Commission's Revised Establishment Proclamation and 444 of the Criminal Code of Ethiopia as relevant. In addition, Articles 53 and 54 of the Commission's Special Procedure and Rules of Evidence Proclamation are also applicable, as well as Articles 4 and 7 of the Functioning of Ethics Liaison Units Regulation No. 144/2008.

Revised Proclamation for establishment of the FEACC

Article 27

Unless it is punishable with more severe penalty under other laws; 1/ Whosoever attempts to influence, harm or punish or who influences, harms or punishes any person who gives evidence or provides information relating to corruption offences to the Commission, organs of judicial administration, head of a Public office, or a Public enterprise shall be punishable with rigorous imprisonment not less than three years and not exceeding fifteen years; and with fine not less than Birr six thousand and not exceeding Birr twenty five thousand.

Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005

Article 53 - Illegality of Reprisal

1/ Any reprisal taken against a whistle-blower or witness for making or attempting to make a disclosure or a testimony shall be illegal.

2/ Every government office shall establish a procedure to protect its employees from reprisal.

Article 54 - Suspension of Reprisal Measure

1/ Where the person against whom a reprisal measure has been taken is an employee, he may apply to the court or to any appropriate organ for a suspension.

2/ Where the court or the appropriate organ which has received the application in accordance with sub-article (1) of this Article has ascertained the existence of a reprisal measure; it shall give forthwith a provisional ruling to suspend such measure.

3/ Where the appropriate organ instituted a criminal charge against the person who has taken a reprisal measure, the suspension order shall remain in force until the case is disposed.

4/ Any party aggrieved by the injunction order may apply to court. Until the court disposes the case, the suspension shall remain in force.

Article 2 Proclamation No 699/2010 A Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences

Definitions

In this Proclamation, unless the context otherwise requires:

1/ “whistleblower or witness” means a person who has given or agrees to give information or has acted or agrees to act as a witness in the investigation or trial of an offence;

2/ “protected person” means a witness, a whistleblower or a family member of a witness or a whistleblower who has entered into a protection agreement with the Ministry;

Criminal Code

Article 444

(1) Whoever assaults, suppresses or harms any person who gives information or evidence to justice authorities or is a witness in criminal cases, is punishable with simple imprisonment or fine.

(2) Where the crime has entailed grave harm to the body or health of the victim or his death, the relevant provision concerning such matters shall apply concurrently.

The Functioning of Ethics Liaison Units Council of Ministers Regulation No. 144/2008

Article 4 - Objectives

Ethics liaison Units shall have the objectives to:

- 1/ endeavor to create public employees who do not condone corruption by promoting ethics and anticorruption education, work discipline, professional ethics, consciousness of serving the public and sense of duty among employees;
- 2/ prevent corruption and impropriety in public offices and public enterprises;
- 3/ endeavor to cause acts of corruption and impropriety be exposed and investigated and appropriate actions are taken against the perpetrators.

Article 7 - Functions

An Ethics Liaison Unit shall:

- 1/ raise the awareness of officers and staff of a public office or public enterprise on anticorruption policies, anti-corruption laws, regulations and directives, good conduct and harmful effects of corruption;
- 2/ follow up the observance of anti-corruption policies, anti-corruption laws and rules and procedures of the public office or public enterprise; and advise the head of the public office or the public enterprise on their implementation;
- ...
- 6/ record and report to the Commission and make the head of the public office or public enterprise know the same immediately, any incident of corruption it has observed or brought to its attention through whistle blowing, and follow up the status of the case;
- 7/ advise the head of the office or enterprise on ways of promoting ethics, strengthening sense of duty and the protection of employees from reprisal measures so as to encourage disclosure of corruption, and follow-up the implementation of same;
- 8/ receive and verify reports on ethical violations in accordance with the rules and directives of the office or the enterprise and submit to the head of the office or enterprise recommendations on further investigation and measures to be taken, and follow-up the implementation of same;
- 9/ where it believes that the ethical violation referred to in sub-article (8) of this Article is serious or it is found to be serious after investigation, report same to the Commission immediately and make the head of the public office or public enterprise know the same;
- 10/ where it believes that rules and procedures are violated with respect to recruitment, promotion, transfer or training of employees, procurement of goods or services or the execution of other contracts, it shall report to the head of the office or enterprise with its recommendation on the rectification of the irregularities, and follow up the implementation of same;
- 11/ oversee that no influence is made on an employee who exposed corruption and ethical infractions; report to the head of the office or enterprise with concrete evidence the act of any person who influence or punish or attempted to influence or punish such employee, and follow up measures taken against him, where the influence is from the head of the office or enterprise, it shall report to the Commission or the relevant organ of investigation;
- ...

238. Ethiopia noted as examples of implementation that between 2010 and 2013, the Commission received 188 applications for protection from alleged from retaliation or

intimidation. These numbers represent combined requests involving whistleblowers and witnesses (UNCAC article 32 above). Some 105 of those applicants received the protection as per their requests and the applications of 60 were denied for insufficiency of substantiation of their claims. The applications of the remaining applicants are under further review. The relevant provisions used for the protection were Article 53 and 54 of the Revised Anti-corruption Procedure and Rules of Evidence Proclamation.

(b) Observations on the implementation of the article

239. Any person who believes that he is the subject of a reprisal action due to the fact that he has testified or reported an issue may apply to the Ethiopian court to have the measure suspended or reversed. Hence, the spirit of article 33 of the UNCAC seems to be satisfied, although it is noted that the existing protections do not extend to persons who report corruption in the private sector.

240. As noted above, the reviewers welcome the swift implementation of the new anti-corruption law, which will provide enhanced witness and whistle-blower protection. They further acknowledge that focus should be especially on implementing the witness/whistle-blower protections, and FEACC should ensure that appropriate mechanisms are set up for reporting, as well as for the protection of whistle-blowers in the private sector.

(c) Challenges, where applicable

241. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

Limited capacity (e.g. human/technological/institution/other; please specify);

Limited resources for implementation (e.g. human/financial/other; please specify);

(d) Technical assistance needs

242. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

Capacity-building programmes for authorities responsible for establishing and managing protection programmes for reporting persons

On-site assistance by an anti-corruption expert;

None of these forms of technical assistance has been provided to Ethiopia to-date.

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 the article

243. Ethiopia informed that Articles 15 (8), 16 (3), 30, 32 and 75 of the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009 are relevant to the provision under review.

Proclamation No. 649/2009

Article 15 (8)

The Functions of the Agency are to:

(8) maintains and distributes a list of suppliers who by reason of having seriously neglected their obligations under a public procurement contract, or having provided false information about their qualifications or having committed the act of the kind referred to in Article 16(3) and 32(2) of this Proclamation have been debarred from participating in public procurement by the Agency;

Article 16 (3)

In the exercise of its functions, the Agency shall have the power to:

give warning to or suspend for a definite or indefinite period of time from participating in public procurement: candidates, suppliers or persons involved in the disposal of public property where it proves that they have offered a price higher than the market or committed an act contravening the provisions of this Proclamation and the directives to be issued by the Minister;

Article 30

Rejection of Bids, Proposals and Quotations

1) Public bodies may for one or more of the following reasons reject in whole or in part bids, proposals or quotations at any time prior to the conclusion of procurement contract where:

- a) there is proof of error in the procurement proceeding which could affect the outcome of the bid;
- b) it is ascertained that the procurement has no use in enabling the public body to obtain a better technical or economic advantage as a result of a change of work plan or another alternative representing a better option to meet the requirement of the public body;
- c) bidders fail to meet the minimum criteria set forth in the bid document;
- d) the minimum price offered in the bid does not match with the market price circulated by the Agency and the public body expected that it can get a better price advantage by re-advertising the bid;
- e) the price offered by the successful bidder exceeds the budgetary allocation made for the procurement and the public body cannot make up for the deficiency from any other source;
- f) it is proved that the bidding is not sufficiently competitive as a result of connivance among candidates.

Article 32

Rules of Ethics in Public Procurement and Property Administration

1) Subject to the details to be specified in the directive to be issued by the Minister, personnel engaged in public procurement or property administration shall have to observe the following rules of ethics in the discharge of their duties:

- a) the obligations to notify any actual or possible conflict of interest and isolate oneself from any processes involving such conflict;
- b) to give candidates and suppliers equal opportunity of competition and performance;
- c) keep in secret any confidential information concerning the public body, candidate or supplier which he/she came to know on account of his/her duty;
- d) to reject any gift or offer of an employment opportunity or anything of monetary value or service;
- e) to report to the law enforcement agencies any intended or completed action of corruption and contribute to the effort to fight corruption and malpractice;
- f) demonstrate concern to public resource and property.

2) Any candidate or supplier shall have to refrain from any act contravening the process of public procurement and property disposal. Without prejudice the provisions of Chapter Fifteen of this Proclamation, any candidate or supplier shall have the responsibility:

- a) with an intention to influence the decision or action of the head or staff member of the public body or persuade the public body to change its established practice of procurement and property disposal, not to give directly or indirectly gifts of any kind in the form of inducement, not to promise to give gifts, not to offer employment opportunity or anything of monetary value or service;
- b) with an intention to mislead a procurement proceeding not to present a falsified document or not to withhold information he/she should have disclosed;
- c) not to connive with another candidate in an act of false competition in order to get unfair advantages;
- d) to report to the law enforcement agencies any intended or completed action of corruption which he came to know during the procurement proceedings and contribute to the effort to fight corruption and malpractice.

244. The relevant law used for blacklisting suppliers is Article 15 (8) of the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009. The grounds for blacklisting are given hereunder:

- a) Negligence of contractual obligations;
- b) Providing false information;
- c) Contravening procurement laws and regulations;
- d) Providing any form of inducement, including gifts;
- e) Submitting falsified documents;
- f) Withholding information that should have been disclosed;
- g) Conniving with another candidate in an act of false completion in order to get unfair advantages, and
- h) Failure to report to the law enforcement agencies any intended or completed action of corruption which they come to know during the procurement proceedings and contribute to the effort to fight corruption and malpractice.

245. Contracts were annulled based on the above-mentioned provisions. The number of companies blacklisted since 27 June 2012 at the federal level, mainly in connection with corrupt practices and other improprieties, is 31. The grounds for the blacklisting of the companies are:

- a) bribing procurement officers;
- b) Submitting forged documents;
- c) Submitting forged materials;
- d) Failure to supply goods according to the contract;
- e) Failure services according to the contract;
- f) Providing low quality equipment;
- g) Due to Misconduct and
- h) Other grounds.

246. The number of contracts which were annulled due to corruption for the years 2010 and 2011 is 3. This data refers to the cases handled by the Commission. Through the Commission's investigation, it was found out that the tendering processes for the formation of procurement contracts was tainted with corruption, resulting in the rescinding of the contracts.

(b) Observations on the implementation of the article

247. Ethiopia has adopted measures for blacklisting of companies and contract rescission in the Ethiopian Federal Government Procurement and Property Administration Proclamation No. 649/2009. Moreover, it was explained that the general conditions of contract provide for the automatic annulment of contracts on the grounds of unethical or illegal behavior. The withdrawal of licenses by the licensing authorities on grounds of corruption or criminal activity is also possible.

248. In the context of the implementation of the present article, Ethiopia may wish to enhance the existing blacklisting procedures by providing for information exchange from FEACC to the procurement authority with regard to investigations or convictions of persons and companies, to ensure that relevant information is communicated to the procurement authority.

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 the article

249. Ethiopia has indicated that Articles 101 and 405 of the Criminal Code, 2027 and 2028 of the Civil Code, and 33 of the Civil Procedure Code are relevant.

Criminal Code

Article 101

Where a crime has caused considerable damage to the injured person or to those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation. To this end they may join their civil claim with the criminal suit. Such claim shall be governed by the provisions laid down in the Criminal Procedure Code.

Article 405

Conviction or acquittal under the provisions of this Chapter shall not exclude liability for damages and/or administrative penalties.

Civil Code

Article 2027

(1) Irrespective of any undertaking on his part, a person shall be liable for the damage he causes to another by an offence.

(2) A person shall be liable, where the law so provides, for the damage he causes to another by an activity in which he engages or by an object he possesses.

(3) A person shall be liable where a third party for whom he is answerable in law incurs a liability arising out of an offence or resulting from the law.

Article 2028

Whosoever causes damage to another by an offence shall make it good.

Civil Procedure Code

Article 33

(1) Any person capable under the law may be a party to a suit.

(2) No person may be a plaintiff unless he has a vested interest in the subject-matter of the suit.

(3) No person may be a defendant unless the plaintiff alleges some claim against him.

250. As examples of implementation, Ethiopia noted that in principle, the prosecution can join a civil claim to a criminal claim. In addition, a civil person can file a claim independently. For example, in a corruption case proceeding, a high court gave a judgment saying that a civil claim on damages be separately instituted from the corruption case under litigation. The Commission appealed to the Supreme Court for the reversal of this decision requiring the high court to try the civil and criminal cases jointly. The Supreme Court accepted the Commission's argument and decided that the trial court should adjudicate both the civil and the criminal case jointly.

(b) Observations on the implementation of the article

251. From the articles of law quoted above, it seems that the principle set out in article 35 of the UNCAC is satisfied as one can ask the courts for compensation both in the civil as well as the criminal instance.

(c) Challenges, where applicable

252. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

Limited capacity (e.g. human/technological/institution/other; please specify);

(d) Technical assistance needs

253. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

Other assistance (please specify).

Ethiopia indicated that there is a need for awareness raising. Also, often when prosecutors try to join two claims, the court orders them to file the cases separately and therefore, training is needed for judges and prosecutors on this point.

None of these forms of technical assistance has been provided to Ethiopia to-date.

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 the article

254. Articles 3, 4, 7, 8, 9, 14, and 21 of the Commission's Establishment Proclamation No. 433/2005 were noted as relevant to the provision under review.

Revised Federal Ethics and Anti-Corruption Commission Proclamation

Article 3

Establishment of the Commission

1/ The Federal Ethics and Anti-Corruption Commission (hereinafter referred to as "the Commission") is hereby established as an independent Federal Government body.

2/ The Commission shall be accountable to the Prime Minister.

Article 4

Independence of the Commission

Notwithstanding the provisions of Sub-Article 2 of Article 3 of this Proclamation, the Commission shall be free from any interference or direction by any person with regard to cases under investigation or prosecution or to be investigated or prosecuted.

Article 7

Powers and Duties of the Commission

The Commission shall have the powers and duties:

- 1/ In cooperation with relevant bodies, to combat corruption and other impropriety by creating awareness through educating the public about the effects of corruption and the promotion of ethics in public service and in the society;
- 2/ In cooperation with relevant bodies, to prevent corruption by studying or causing to be studied the practices and procedures in Public Offices and Public Enterprises to secure the revision of methods of work which may be conducive to corrupt practices as well as follow up their implementation; and inform or remind the relevant body, when deemed essential, to take the proper measures or give decision, and advise or assist on same, upon request, any other persons;
- 3/ To investigate or cause the investigation of any complaints of alleged or suspected serious breaches of the codes of ethics in public offices or public enterprises; and follow up the taking of proper measures;
- 4/ To investigate and prosecute or cause the investigation and the prosecution of any alleged or suspected corruption offences specified in the criminal code or in other laws where they are committed by public officials or public employees or other persons in Public Offices or Public Enterprises, or in the Regional offices relating to subsidies granted by the Federal Government to the Regions;
- 5/ Where there is reasonable suspicion in connection with corruption offences, to investigate and obtain information about, with the order of the commissioner, any bank account of suspected persons; and cause the attachment, with court order of same where necessary;
- 6/ To freeze, by court order, the assets of any person who may be under investigation for corruption; and cause, through court order, the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state or dispose same by or without public auction;
- 7/ In cooperation with relevant bodies, to register or cause the registration of the assets and financial interests of public officials and other public employees compellable to do so as specified by law;
- 8/ In cooperation with relevant bodies, to facilitate the condition, for the protection of physical and job security of witnesses and whistleblowers, provide protection of the same in accordance with the law.
- 9/ To establish and implement, upon approval, procedures and standards for the selection of awards, upon competition, of persons or offices who are successful in fighting and preventing corruption;
- 10/ Apart from legislative and judicial bodies, to ensure the preparation or to prepare and monitor the implementation of codes of ethics for Public Offices and Public Enterprises; to provide upon request, advice to legislative and judicial bodies in establishing their own codes of ethics;
- 11/ In cooperation with relevant bodies, to coordinate other components of the ethical infrastructures;

- 12/ In cooperation with relevant bodies, to undertake research on ethics and corruption; give support to other similar activities and to publish reports and technical studies to further the purpose of the commission;
- 13/ In cooperation with relevant bodies, to follow up and ensure the enforcement of anti-corruption laws and give advice on the implementation of same;
- 14/ To provide the necessary support to the Public Offices and Public Enterprises in the establishment of ethics liaison units;
- 15/ To provide the necessary advice and support to the regions;
- 16/ To liaise and cooperate with national, regional and international bodies with similar objectives;
- 17/ To own property, enter into contract, to sue and be sued in its own name;
- 18/ To perform such other duties as may be defined by law and undertake other activities necessary for the attainment of its objectives;

Article 8

Investigation of Corruption Offences by Other Organs

- 1/ The Commission may delegate, in whole or in part, to Federal or Regional crime investigation bodies, as the case may be, a general investigation power of corruption cases, other than grand corruption, from that it is vested under sub art 4 of Article 7 of this Proclamation.
- 2/ Any Federal or Regional crime investigation body that is not delegated under sub article 1 of this Article shall begin investigation of any alleged or suspected corruption offences falling under the competence of the commission. It shall, however, inform the commission of same forthwith.
- 3/ The Commission may, upon receipt of the report as specified in sub article 2 of this Article
 - a) investigate the matter by itself, or
 - b) cause its investigation, including grand corruption, be undertaken by the reporting investigation organ or other organ, as the case may be. Details shall be provided for in directives to be issued by the commission.
- 4/ Where the Commission fails to react on the report it received under sub article 2 of this Article, the organ commencing investigation shall finish and send same to the competent organ.
- 5/ The Commission may cause the investigation of corruption offences it has started investigating be undertaken by other investigating organs. Any such organ shall undertake the investigation.
- 6/ The Commission shall issue directives concerning the manners of reporting of corruption offences investigation carried out by other investigating bodies as provided in sub-articles 2 to 5 of this article and notify same to all concerned investigating bodies.

Article 9

Prosecution of Corruption Offences by Other Justice Organs

- 1/ The Commission may delegate, in whole or in part, to Federal or Regional prosecution offices or regional anti- corruption institutions, as the case may be, its power of corruption prosecution.

2/ Regional anti-corruption or prosecution offices may institute corruption offence proceedings in the regional offices relating to subsidies granted by the federal government to the regions. The Commission, when it deems necessary, may at any time substitute the Regional anti-corruption office or prosecutor and enter into the proceeding.

Article 10

Organization of the Commission

The commission shall have:

1. A Commissioner to be appointed by the house of peoples' representatives upon nomination by the Prime Minister;
2. A Deputy Commissioner to be appointed by the Prime Minister; and
3. The necessary staff.

Article 14

Term of Office and Removal from Office of the Commissioner and the Deputy Commissioner

1/ The term of appointment of the Commissioner or the Deputy Commissioner shall be for six years; he may, however, be reappointed where necessary.

2/ Once appointed, the Commissioner or the Deputy Commissioner may not be removed, except on his own will, from his office unless;

- a) he has violated the provisions of the relevant code of conduct;
- b) he has shown manifest incompetence and inefficiency
- c) he can no longer carry out his responsibilities on account of mental or physical illness.

Article 21

Budget

The budget of the commission shall be allocated by the Government.

255. As a follower of federal arrangement, Ethiopia has anti-corruption institutions specialized to tackle corruption at the federal and regional levels. At the federal level, there is the Federal Ethics and Anti-corruption Commission, which is in charge of fighting and preventing corruption at the federal level. At regional levels, all the nine regional states have established their own anti-corruption institutions, which are duty-bound to combat corruption in their respective regions. The Establishment Proclamations of the Federal and Regional Anti-Corruption Commissions clearly stipulate the independence of the institutions. For example, Articles 4 and 14 of the Establishment Proclamation of the FEACC are about the independence of the Commission. Regional institutions have similar provisions on independence. These institutions have all the legal frameworks and investigative and prosecutorial powers in place to fight and prevent corruption in their respective jurisdictions.

256. As for resources, the federal and regional governments allocate budget to these institutions within their means and to the extent possible. Additionally, the institutions have receiving support from donors and the country's partners in their struggle against corruption. Particularly, the support that the recently-expired multi-donor Democratic

Institutions Programme (DIP) extended to the anti-corruption institutions is worth-mentioning.

257. The Commission has a training Directive. In accordance with this Directive, all departments of the Commission assess their training needs and submit their results of their assessments to the Human Resource Management Directorate, specifying their training needs and priorities. Then, the Directorate draws up a training plan based on the information it receives and allocates budget for the training. The training could be given either in the Country or outside the Country. 2011/2012, 290 employees of the Commission received various trainings in and outside the Country. The regional institutions also have similar training programmes both at the regional level and in coordination with the FEACC.

258. In relation to information on the measures adopted to ensure the independence of the specialized body, Ethiopia noted that the independence of the anti-corruption institutions is legally guaranteed. For example, Article 4 of the FEACC Establishment Proclamation states that the Commission shall be free from any interference or direction by any person with regard to cases under investigation or prosecution or to be investigated or prosecuted. Article 14 of the same proclamation provides that Term of Office and Removal from Office of the Commissioner and the Deputy Commissioner:

1/ The term of appointment of the Commissioner or the Deputy Commissioner shall be for six years; he may, however, be reappointed where necessary.

2/ Once appointed, the Commissioner or the Deputy Commissioner may not be removed, except on his own will, from his office unless;

a) he has violated the provisions of the relevant code of conduct;

b) he has shown manifest incompetence and inefficiency;

c) he can no longer carry out his responsibilities on account of mental or physical illness.

259. In practice, the anti-corruption institutions have not faced any serious interference in connection with their anti-corruption activities so far.

(b) Observations on the implementation of the article

260. The Federal Ethics and Anti-Corruption Commission (FEACC) is accountable to the Prime Minister (Article 3(1) of the Revised FEACC Proclamation). However, the independence of the Commission is provided for in Article 4 of the same Proclamation. Appointment of the FEACC Commissioner is by the House of Peoples' Representatives upon nomination by the Prime Minister (Article 10) and he may not be removed on grounds other than as provided for in Article 14.

261. Concerning the mandate and operation of the Ethiopian Federal Police, reference was made to the following provision:

Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011

3. Establishment

1/ The Ethiopian Federal Police Commission (hereinafter the "Commission") is hereby established as an autonomous federal government organ having its own legal personality.

2/ The Commission shall be accountable to the Ministry of Federal Affairs.

11. Budget

The Commission's budget shall be allocated by the government.

14. Human Resource Administration

1/ The Commission shall recruit, train, employ and administer police officers in accordance with regulations to be issued by the Council of Ministers.

262. It was explained that in practice the Federal Police investigates simple corruption cases not involving public officials, by delegation from FEACC, and these cases are prosecuted by FEACC. For cases involving public officials, the police will notify FEACC of any relevant reports and the case may be investigated either by FEACC or by the police in partial delegation from FEACC. For more complex cases, joint investigations by FEACC and the police may be done, in accordance with the Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011. The police and FEACC investigators have participated in joint trainings.

263. It is recommended that Ethiopia continue to enhance the capacity and resources of the criminal justice institutions engaged in the fight against corruption and money laundering, including FEACC, the police and the Financial Intelligence Center (FIC), especially under the mandates of the new anti-corruption laws, as well as for institutions responsible for international cooperation (see chapter IV below).

264. Based on the discussion during the country visit, it is also recommended that Ethiopia take measures to strengthen the legal and operational independence of the FIC.

(c) Challenges, where applicable

265. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

Limited capacity (e.g. human/technological/institution/other);

The FEACC investigators do not receive specialized training, though some have specializations in cybercrime or anti-money laundering. There is a need for capacity building and training, including at the international level, of investigative and prosecutorial staff at FEACC, the police, Ministry of Justice and the Ethiopian Revenues and Customs Authority (ERCA), as well as the judiciary.

(d) Technical assistance needs

266. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

On-site assistance by an anti-corruption expert;

Ethiopia has received the following form of technical assistance:

There is a need for capacity building and training, including at the international level, of investigative and prosecutorial staff at FEACC, the police, Ministry of Justice and ERCA, as well as the judiciary. There is also a need for enhanced cooperation among the law enforcement agencies in Ethiopia, including FEACC, the police, Ministry of Justice and ERCA, in the investigation and prosecution of corruption offences.

The DIP has sponsored capacity building programmes in the areas of

- Investigation and prosecution
- Ethics and anti-corruption education
- Coordination of anti-corruption efforts
- Corruption Prevention
- Assets disclosure and registration
- Others.

Ethiopia noted that the extension of such assistance would assist it to further adopt measure described in the provision under review.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

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.

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

267. Ethiopia cited Article 406 of the Criminal Code of Ethiopia, Article 43 of the Revised Special Procedure and Rules of Evidence Proclamation, and Article 7 (8) and (9) of the Revised Establishment Proclamation of the Commission as relevant to the provision under review.

Criminal Code

Article 406

(1) Whoever, having taken part in a corruption crime, supplies vital information on the crime committed and the role of participants therein, before the matter is taken to Court, may be exempted by the competent organ from prosecution in accordance with this Criminal Code.

(2) Special procedures shall be laid down in the Criminal Procedure Code concerning the assessment of the vitality of the information and the conditions for exemption from prosecution of the person who has disclosed the crime.

Proclamation Number 434/2005 The Revised Proclamation to Provide for Special Procedure and Rules of Evidence on Anti-Corruption

Article 43

Immunity from Prosecution

1/ Any person who has been involved in corruption offence and who, before the case is taken to the court, provides substantial evidence as to the offence and the role of his partners, may be given immunity by the Commissioner of the Federal Ethics and Anti-Corruption Commission or the Head of the Appropriate Organ.

2/ For the purpose of this Article "Substantial Evidence" means evidence:

- a) sufficient to bring conviction, or
- b) that serves as a basis to lead to other evidences, or
- c) corroborating other evidences, sufficient to bring conviction and in its absence, conviction is unlikely.

3/ Where the suspect is given immunity, the appropriate organ shall certify it in writing. The appropriate organ may not use the evidence acquired in accordance with this Article against the suspect.

4/ Where the suspect fails to provide the evidence or give testimony according to the agreement, the decision to give immunity shall be revoked.

5/ The testimony of the person who has been given immunity from prosecution shall have equal weight as the testimony of ordinary witness.

6/ Any person who is given immunity according to this Article shall, however, be made to return the benefits he derives therefrom.

Revised Federal Ethics and Anti-Corruption Commission Proclamation

Article 7

Powers and Duties of the Commission

The Commission shall have the powers and duties: ...

8/ In cooperation with relevant bodies, to facilitate the condition, for the protection of physical and job security of witnesses and whistleblowers, provide protection of the same in accordance with the law.

9/ To establish and implement, upon approval, procedures and standards for the selection of awards, upon competition, of persons or offices who are successful in fighting and preventing corruption.

268. As examples of implementation, Ethiopia cited the following case:

Federal Ethics and Anti-corruption Commission prosecutor vs. Behailu

A certain engineer who participated in a criminal act (illegal granting of urban land in Addis Ababa) was encouraged to provide information vital for the prosecution of other principal offenders in the crime in return for exempting him from prosecution for limited

number of charges. Similar treatments are made to encourage participants of an offence to cooperate with the Commission in recovering the proceeds of corruption or prosecuting criminal offenders.

269. In a similar vein, the police applies the same protection measures in delegated cases as those available to FEACC under Article 4 of the Whistleblower Proclamation No 699/2010 (cited above). These protections are also available to cooperating defendants.
270. FEACC has established a rewarding scheme that can provide rewards to persons or offices selected, upon competition, who are successful in fighting and preventing corruption. Rewards can also be given to cooperating offenders. Ethiopia has a rewarding scheme directive which is applicable for members of the National Anti-corruption Coalition, civil society organizations, ethics liaison units, and other individuals. Additionally, the newly adopted Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation No. 883/2015 is broader in scope than the one mentioned above. According to the new Proclamation (article 2(7)), public offices and public enterprises, civil society organizations and NGOs, and individuals may be rewarded for their active participation in the struggle against corruption. The rewards include certificates, a letter recognizing the contribution made by the person rewarded, things of material value, and some amount of money.
271. FEACC also pays the costs of travel and other subsistence of suspects who cooperate in its investigations.
272. The Customs and Revenue Authority (ERCA) does not have powers to grant immunity from prosecution to cooperating offenders. However, they can issue financial incentives that lead to the recovery of foregone customs and other successful leads in investigations and prosecutions.
273. Between 2010 and 2012, seven suspects who were allegedly involved in corruption offences became witnesses for the Commission in exchange for immunity from prosecution. This figure was taken from three of the Teams from the Investigation and Prosecution Directorate.

(b) Observations on the implementation of the article

274. The ability to offer immunity from prosecution is available to Ethiopian investigators and collaborators of justice may be rewarded for their cooperation in combatting corruption.
275. As noted above, the reviewers welcome the swift implementation of the new anti-corruption law, which includes provisions on plea bargaining/withdrawal of cases. They further recommend that Ethiopia ensure that persons who collaborate with the investigating and prosecuting authorities receive adequate protections in accordance with the article under review, the existing protections are applicable to cooperating persons only insofar as they are considered witnesses or whistle-blowers by the FEACC.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

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.

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

276. Ethiopia quoted Article 82 of the Criminal Code of Ethiopia as relevant:

Criminal Code

Article 82

General Extenuating Circumstances.

(1) The Court shall reduce the penalty, within the limits allowed by law (Art. 179), in the following cases:

- (a) when the criminal who previously of good character acted without thought or by reason of lack of intelligence, ignorance or simplicity of mind;
- (b) when the criminal was prompted by an honourable and disinterested motive or by a high religious, moral or civil conviction;
- (c) when he acted in a state of great material or moral distress or under the apprehension of a grave threat or a justified fear, or under the influence of a person to whom he owes obedience or upon whom he depends;
- (d) when he was led into grave temptation by the conduct of the victim or was carried away by wrath, pain or revolt caused by a serious provocation or an unjust insult or was at the time of the act in a justifiable state of violent emotion or mental distress;
- (e) when he manifested a sincere repentance for his acts after the crime, in particular by affording succour to his victim, recognizing his fault or delivering himself up to the authorities, or by repairing, as far as possible, the injury caused by his crime, or when he on being charged, admits every ingredient of the crime stated on the criminal charge.

(2) When the law, in a special provision of the Special Part, has taken one of these circumstances into consideration as a constituent element or as a factor of extenuation of a privileged crime, the Court may not at the same time allow for the same circumstance to reduce the penalty applicable thereto.

277. As an example of implementation, Ethiopia noted that the engineer mentioned under Article 37 (1) was also the beneficiary of the mitigating scheme. He was exempted from being prosecuted for certain offences (as mentioned under subparagraph 3 of this Article) and at same time he was given mitigation for certain crimes he had committed with other co-offenders.

278. Prosecutors will take into account circumstances, such as if the object of the crime has been returned, in making a recommendation about the gravity of the offence for sentencing, as permitted by Article 82(e) of the Criminal Code.

279. Ethiopia noted that there are no statistics available on this provision as the data is unsorted.

(b) Observations on the implementation of the article

280. The subject of mitigating punishment within the parameters of a corruption investigation is covered by Article 82 of the Ethiopian Criminal Code.

281. It was explained that a system of plea bargaining was foreseen under the newly adopted Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation No. 883/2015, which provides in article 2(9)(14) for the power of the FEACC Commissioner to “withdraw, in accordance with law, corruption investigation and charges as well as corruption cases pending in the court of law”.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

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.

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

282. Article 4 (f) of Proclamation No.699/2010 and Article 43 of the Commission's Special Procedure and Rules of Evidence Proclamation No. 434 were cited as relevant to the provision under review.

Proclamation to provide for the Protection of Witnesses and Whistleblower of Criminal Offences

4. The following protection measures may be employed for a protected person separately or in combination, as the case may be:

...

f) immunity from prosecution for an offence for which he renders information;

The Revised Proclamation to Provide for Special Procedure and Rules of Evidence on Anti-Corruption

Article 43

1/Any person who has been involved in corruption offence and who, before the case is taken to the court, provides substantial evidence as to the offence and the role of his

partners, may be given immunity by the Commissioner of the Federal Ethics and Anti-Corruption Commission or the Head of the Appropriate Organ.

2/ For the purpose of this Article "Substantial Evidence" means evidence:

- a) sufficient to bring conviction, or
- b) that serves as a basis to lead to other evidences, or
- c) corroborating other evidences, sufficient to bring conviction and in its absence, conviction is unlikely.

3/ Where the suspect is given immunity, the appropriate organ shall certify it in writing. The appropriate organ may not use the evidence acquired in accordance with this Article against the suspect.

4/ Where the suspect fails to provide the evidence or give testimony according to the agreement, the decision to give immunity shall be revoked.

5/ The testimony of the person who has been given immunity from prosecution shall have equal weight as the testimony of ordinary witness.

6/ Any person who is given immunity according to this Article shall, however, be made to return the benefits he derives therefrom.

Criminal Code

Article 406

(1) Whoever, having taken part in a corruption crime, supplies vital information on the crime committed and the role of participants therein, before the matter is taken to Court, may be exempted by the competent organ from prosecution in accordance with this Criminal Code.

(2) Special procedures shall be laid down in the Criminal Procedure Code concerning the assessment of the vitality of the information and the conditions for exemption from prosecution of the person who has disclosed the crime.

283. In citing examples of implementation, Ethiopia informed that a certain engineer who participated in a criminal act (illegal granting of urban land in Addis Ababa) had been encouraged to provide information vital for the prosecution of other principal offenders in the crime in return for exempting him from prosecution for limited number of charges.

284. Additionally another cooperating offender by the name Belaynesh Tesfaye was a participant in the embezzlement of 3.6 million Ethiopian Birr in the Commercial Bank of Ethiopia. She cooperated with the Commission's Prosecution and became key witness in the prosecution of other co-offenders. In return, she was exempted from prosecution.

285. Ethiopia noted that the statistical data provided under Sub-paragraph 1 of this Article is also relevant here.

(b) Observations on the implementation of the article

286. The possibility of granting immunity from prosecution is provided for in Ethiopian law.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

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

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

287. Ethiopia quoted Articles 2 and 4 of the Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences as relevant and applicable (see above paragraphs 2 (a) and 4 of Article 32).

288. As an example of implementation, Ethiopia recounted a situation whereby cooperating offenders (Mulugeta and Mehamed Awol) in the infamous gold scam case involving more than 10 million USD were given physical protection by the police upon the request of the Commission for such protection.

289. In another tax evasion case involving 10 million Ethiopian Birr, a participant in the crime cooperated with the Commission in the prosecution of other co-offenders and became victim of reprisal actions. He brought this to the attention of the Commission. The Commission, in cooperation with the local police, provided the protection in the residence of the victim.

290. There were situations whereby a cooperating offender gave his testimony behind the screen in a court of law and audio technology was used in this instance so the witness could testify in court and the public could not directly see him.

291. Ethiopia noted that the statistics given under Article 32 and 33 is also relevant here.

(b) Observations on the implementation of the article

292. The observations made above are referred to.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

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 the article

293. Ethiopia cited Article 27 (2) of the Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences, as relevant:

Article 27(2)

The government may conclude bilateral or multilateral treaties in order to provide effective protection to witnesses and whistleblowers.

294. Ethiopia noted that it has no bilateral or multilateral treaties or practices to provide whistleblower or other protections to cooperating offenders, and that it would need to enter into such in order to ensure the full implementation of the provision.

(b) Observations on the implementation of the article

295. Ethiopia is legally capable of entering into agreements with other States; however, none have been adopted to date.

(c) Challenges, where applicable

296. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation (e.g. human/financial/other; please specify);

(d) Technical assistance needs

297. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

Summary of good practices/lessons learned;

Model agreement and arrangement;

Capacity-building programmes for authorities responsible for establishing and managing protection programmes;

None of these forms of technical assistance has been provided to Ethiopia to-date.

Article 38 Cooperation between national authorities

Subparagraphs (a) and (b)

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 the article

298. Ethiopia cited Articles 26 and 27 (5), (7), and (8) of the Commission's Revised Establishment Proclamation as well as Articles 3, 4, and 7 of Regulation No. 144/2008 on the Functioning of Ethics Liaison Units as well as Article 22 of the Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011 as applicable.

Federal Ethics and Anti-Corruption Proclamation

Article 26

1/Public offices and Public Enterprises shall, without prejudice to administrative or disciplinary measures they take, report to the Commission serious ethical violations and corruption offences forthwith.

2/Any public official or public employee in a Public Office or Public Enterprise shall report to the Commission where he has reasonable suspicion that corruption offences are or are about to be committed.

3/Any person is duty bound to cooperate whenever cooperation and assistance is required by the Commission in connection with its powers and duties. In particular Public Offices and Public Enterprises having the necessary expertise shall provide the Commission with the necessary professional support when required.

4/Any investigator who has the power to investigate corruption offences may require the production or examination of relevant documents or information from any Federal or Regional Public Office and Public Enterprise. Any public official or public employee in a public office or public enterprise of a Federal or Regional Government shall show or produce relevant documents or information when required by any investigator who has the power to investigate corruption offences.

Article 27

5/ Whosoever refuses to cooperate with the Commission as provided for in sub article 3 or 4 of article 26 of this article shall be punishable with simple imprisonment not less than six months and not exceeding four years; and with fine not less than Birr one thousand and not exceeding Birr five thousand.

7) Whosoever publicize, disseminate, distribute without the authorization of the investigator that an investigation of corruption offence is to commence or underway, or about the act of corruption knowing that the case is under investigation, shall be punishable with imprisonment not less than six months and not exceeding four years; and with fine not less than one thousand Birr and not exceeding five thousand Birr.

8) Any public official or public employee who, knowing the commission of a corruption offence in his respective office, fails to inform shall be punishable with simple imprisonment not exceeding five years and with fine not exceeding ten thousand Birr.

Regulation on The Functioning of Ethics Liaison Units

Article 3

Establishment

Ethics Liaison Units shall be established in public offices and public enterprises the duty of which shall be to coordinate ethical issues and advise the heads of the public offices and public enterprises as provided under Article 24 (1) of the Proclamation.

Article 4

Objectives

Ethics liaison Units shall have the objectives to:

- 1/ endeavor to create public employees who do not condone corruption by promoting ethics and anti-corruption education, work discipline, professional ethics, consciousness of serving the public and sense of duty among employees;
- 2/ prevent corruption and impropriety in public offices and public enterprises;
- 3/ endeavor to cause acts of corruption and impropriety be exposed and investigated and appropriate actions are taken against the perpetrators.

Article 7

Functions

An Ethics Liaison Unit shall:

- 1/ raise the awareness of officers and staff of a public office or public enterprise on anticorruption policies, anti-corruption laws, regulations and directives, good conduct and harmful effects of corruption;
- 2/ follow up the observance of anti-corruption policies, anti-corruption laws and rules and procedures of the public office or public enterprise; and advise the head of the public office or the public enterprise on their implementation;

...

- 6/ record and report to the Commission and make the head of the public office or public enterprise know the same immediately, any incident of corruption it has observed or brought to its attention through whistle blowing, and follow up the status of the case;
- 7/ advise the head of the office or enterprise on ways of promoting ethics, strengthening sense of duty and the protection of employees from reprisal measures so as to encourage disclosure of corruption, and follow-up the implementation of same;
- 8/ receive and verify reports on ethical violations in accordance with the rules and directives of the office or the enterprise and submit to the head of the office or enterprise recommendations on further investigation and measures to be taken, and follow-up the implementation of same;
- 9/ where it believes that the ethical violation referred to in sub-article (8) of this Article is serious or it is found to be serious after investigation, report same to the Commission immediately and make the head of the public office or public enterprise know the same;
- 10/ where it believes that rules and procedures are violated with respect to recruitment, promotion, transfer or training of employees, procurement of goods or services or the execution of other contracts, it shall report to the head of the office or enterprise with its recommendation on the rectification of the irregularities, and follow up the implementation of same;
- 11/ oversee that no influence is made on an employee who exposed corruption and ethical infractions; report to the head of the office or enterprise with concrete evidence the act of any person who influence or punish or attempted to influence or punish such

employee, and follow up measures taken against him, where the influence is from the head of the office or enterprise, it shall report to the Commission or the relevant organ of investigation;

Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011

22.Obligation to Cooperate

Every concerned person shall have the obligation to cooperate with the Commission in discharging its duties relating to crime prevention and investigation as provided for in Article 6 of this Proclamation.

299. Ethiopia noted that between 2010 and 2012, the Commission received 3632 alleged reports of corruption from different individuals, institutions, ethics officers, media, auditing organizations, and the police. The reporting persons provided this information on their own initiative.

300. The Commission also sought feedback and information on 1002 suspected corruption offences in different public offices and public enterprises. In accordance with this request, the public offices and public enterprises gave feedback to the Commission on 727 of those cases.

(b) Observations on the implementation of the article

301. Ethiopia's legislation quoted above obliges officers of public offices and enterprises to report instances of corruption that they encounter. Such entities are also obliged to cooperate with the Commission in the investigation of offences. The Ethics Liaison units in public office and public enterprises are tasked with raising awareness of corruption issues and providing assistance with corruption related matters. The article is adequately implemented and statistics of corruption reports made and information requested were provided.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

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.

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

302. Ethiopia Articles 26 (3) and 27 (5) of Proclamation Revised Federal Ethics and Anti-Corruption Commission Proclamation and Article 22 of the Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011 as relevant:

Article 26

3/ Any person is duty bound to cooperate whenever cooperation and assistance is required by the Commission in connection with its powers and duties. In particular Public Offices and Public Enterprises having the necessary expertise shall provide the Commission with the necessary professional support when required.

Article 27

5/ Whosoever refuses to cooperate with the Commission as provided for in sub article 3 or 4 of article 26 of this article shall be punishable with simple imprisonment not less than six months and not exceeding four years; and with fine not less than Birr one thousand and not exceeding Birr five thousand.

Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011

22.Obligation to Cooperate

Every concerned person shall have the obligation to cooperate with the Commission in discharging its duties relating to crime prevention and investigation as provided for in Article 6 of this Proclamation.

303. Ethiopia has set up a National Anti-corruption Coalition, which brings together members of the private sector, Government organizations, religious institutions and the media. Specifically, the Coalition has 143 seats comprised of 48 seats represented by the Government, 73 from civil society organisations, 27 from the private sector and 3 from opposition parties. The Coalition meets twice per year in an effort to raise awareness of corruption and encourage the reporting of corruption incidents.
304. In 2010/2011, FEACC's Ethics Education and Communications Directorate offered training for 2,109 trainers. In 2011/2012 alone, the same Directorate gave and awareness raising training for 40,594 people, including people from the private sector. The trainees were drawn from the civil society, organizations, government agencies, religious organizations, media, and the private sector. 46 FEACC programmes were transmitted through the media (22 via radio and 24 on TV). In addition, 384,445 copies of its publications (including quarterly magazine, flyers, posters, brochures, calendars and booklets) were distributed publicly.
305. FEACC also conducts regular training on reporting of corruption incidents to banks, financial institutions, insurance companies, and the private sector in general.
306. The private banks have been providing the Commission with vital information on bank details of persons suspected of committing corruption offences.

(b) Observations on the implementation of the article

307. According to the information provided by Ethiopia, this requisite seems to be adequately covered. In terms of outreach by FEACC to the private sector and civil society, it was explained that consultations are held with stakeholders, including civil society, associations, the media and the private sector, in drafting new legislation. Moreover,

FEACC trains ethics officers in public institutions and the private sector. In particular, Transparency International and FEACC have collaborated in a number of joint activities, including with universities. FEACC and the FIC also conduct regular training on reporting of corruption and money laundering incidents to banks, financial institutions, insurance companies, and the private sector in general.

308. It was reported that the FIC has referred three (3) cases to the FEACC for further investigation to-date.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

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 the article

309. Ethiopia cited Articles 11 of the Criminal Procedure Code of Ethiopia and 26 (1) and (2) of the Revised Federal Ethics and Anti-Corruption Commission Proclamation as relevant.

Criminal Procedure Code

Article 11

(1) Any person has the right to report any offence, whether or not he has witnessed the commission of the offence, with a view to criminal proceedings being instituted.

(2) There shall be a duty to report in the cases provided in Art. 267, 344 and 438 Penal Code.

Revised Federal Ethics and Anti-Corruption Commission Proclamation

Article 26

1/ Public offices and Public Enterprises shall, without prejudice to administrative or disciplinary measures they take, report to the Commission serious ethical violations and corruption offences forthwith.

2/ Any public official or public employee in a Public Office or Public Enterprise shall report to the Commission where he has reasonable suspicion that corruption offences are or are about to be committed.

310. While Ethiopia provides no financial incentives are offered to encourage reporting of corruption, in the 2010/2011 fiscal year alone, the Commission received 3,162 complaints of corruption from different persons. Among the whistleblowers were audit, police, ethics liaison units, media, and other organizations. The complaints were made to the Commission in person, on the telephone, by mail and the rest are from other sources. In 2011/2011, the Commission received 3,402 complaints in total. Various agencies and

organizations, including the media and the private sector, brought the complaints to the Commission's attention.

311. Between 2010 and 2012, the Commission received 6,564 reports of alleged corruption from different persons. Some 3,210 of the allegations fall within the Commission's jurisdiction and 3,355 were out of its jurisdiction.

312. Ethiopia further explained that in general, people report alleged corruption to the Commission through various channels of communication, such as mail, telephone, and e-mail communications. They also bring such cases in person. Of those reports of corruption, the majority are brought to the attention of the Commission without anonymity. However, there are some who report such cases anonymously.

(b) Observations on the implementation of the article

313. It is recommended that Ethiopia strengthen the outreach and cooperation with civil society, including by focusing attention on raising awareness of corruption and education, in order to also encourage the reporting of corruption.

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 the article

314. Articles 15(1), 17 (1), and 24 of the Anti-Money Laundering Proclamation together with Articles 7(5) and 12 of Revised Federal Ethics and Anti-Corruption Commission Proclamation are applicable according to Ethiopia.

The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation

Article 15 (1)

Access to Information

1/ The Center shall have the power to obtain from any person subject to the reporting obligation in accordance with Article 17 of this Proclamation any additional information it deems useful for the accomplishment of its functions.

Article 17 (1)

Reporting of Suspicions

1/ Financial institutions and designated non-financial businesses and professions, that suspect or have reasonable grounds to suspect that funds or property are the proceeds of

crime, or are related or linked to, or are to be used for financing of terrorism shall be required to submit promptly reports setting forth their suspicions to the Center. This obligation shall also apply to attempted transactions.

Article 24

Exemption from Liability

1/ No criminal, civil or administrative proceedings for breach of banking or professional secrecy or contract may be instituted against financial institutions and designated non-financial businesses and professions or their directors, officers or employees who in good faith submit reports or provide information in accordance with the provisions of this Proclamation.

2/ No criminal action for money laundering or financing of terrorism may be brought against financial institutions, designated non-financial businesses and professions, or their directors, officers or employees in connection with the execution of a suspicious transaction where reports of suspicions were made in good faith in accordance with the provisions from Article 17 to Article 19 of this Proclamation.

3/ Officers, employees and seconded personnel of the Center or a regulatory authority acting, in good faith, to implement this Proclamation or regulations or directives issued hereunder shall be immune from any criminal, civil or administrative liability.

Revised Federal Ethics and Anti-Corruption Commission Proclamation

Article 7(5)

The Commission shall have the powers and duties:

5/ Where there is reasonable suspicion in connection with corruption offences, to investigate and obtain information about, with the order of the commissioner, any bank account of suspected persons; and cause the attachment, with court order of same where necessary;

Article 12

2/ Without limiting the generality stated in Sub-Article 1 of this article, the Commissioner shall have powers and duties:

g) to issue warrants to search and obtain information therefrom, of any bank account of any person or organization if there is reasonable suspicion that such is relevant to a case under investigation;

315. Ethiopia further noted that bank secrecy does not impose any obstacles in the investigation and prosecution of corruption cases in light of Article 4 Proclamation No 657/2009 Prevention and Suppression of Money Laundering and Financing of Terrorism. By way of example, in the Gold scam case, over \$10 million was at issue and bank records were successfully obtained.

316. The following provision is also referred to.

Money Laundering and Financing of Terrorism Proclamation 780/2013

15. Access to Information

11 The Center shall have the power to obtain from any person subject to the reporting obligation in accordance with Article 17 of this Proclamation any additional information it deems useful for the accomplishment of its functions.

317. Ethiopia indicated that the infamous gold scam is a highly organized and carefully planned corruption crime committed by the collusive acts of the employees and officials of the National Bank of Ethiopia, employees of the Ethiopian Geological Survey, and private individuals. What happened was that private individuals presented falsified and fake documents showing that they were licensed to supply gold to the National Bank of Ethiopia. Then, they colluded with the employees and officials of the latter and supplied iron bars and other pieces of metal packed in a box, instead of supplying gold in accordance with the contract. The Bank didn't even check whether the material supplied was gold or not. The officials and employees of the Geological Survey who were duty-bound to scientifically check the nature of the material supplied also falsely ascertained it was gold. The case was brought to the attention of the Commission and the latter investigated and pressed charges against the suspects. Here are the specifics of the case:

Summary of the gold scam case

a) Asmare Ayalew Desta is the 13th of the 14 defendants charged by the FEACC prosecutor in connection with the gold scam. The defendant was sentenced in absentia by the Criminal Bench of the Federal High Court of the Federal Democratic Republic of Ethiopia, as he is still at large. He is currently residing in UAE, Dubai.

b) Between December 2005 and April 2007, Asmare, conniving with other defendants, fraudulently amassed over 95,537,413.00 Ethiopian Birr which is equivalent to 10,808,133.24 USD of public money by supplying 29 sealed boxes of fake gold bars /iron bars to the National Bank of Ethiopia as if they were real gold bars. These offences were committed repeatedly with full knowledge and intent.

c) Asmare Ayalew Desta was using different forged documents, including licenses, and power of attorney, using different fake names such as Kefyalew Umeta, Kebede Umeta and Kurabachew Umeta.

d) He was charged with five counts and might face 25 years of rigorous imprisonment. He had already been convicted. What remains is the sentence.

e) The charges brought against him are breaches of article 32(1) (a) (b), 33 and 411 (1) (2) (3), 32(1) (a) (b) and 696 (1) (c), 32(1) (a) (b) and 379 (1) (a), 696 (1) (c) and 379 (1) (a) of the criminal code of Ethiopia.

f) In the first three counts cited above, he was charged together with other defendants while in the last two counts; he was the only one to be charged.

g) The case has already been disposed and most of the culprits have been convicted with only a few of them getting acquittal.

318. This is a typical case which shows that bank secrecy was not an obstacle to the investigation and prosecution of corruption offences. During the investigation, there was full cooperation on the part of the National Bank of Ethiopia and Commercial Bank of Ethiopia in providing all the financial details of the suspects. The Commission was given full access to such vital information, without the issue of bank secrecy being an obstacle to the investigation and prosecution of the alleged offenders.

(b) Observations on the implementation of the article

319. Bank secrecy does not seem to present any obstacles in the investigation and prosecution of money laundering or corruption cases. In particular, the police may access relevant records by court order, which is easily and quickly obtained.

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 the article

320. Ethiopia cited Article 22 of the Criminal Code of Ethiopia and Article 43 (1) of the Anti-Money Laundering Proclamation as relevant here.

Criminal Code

Article 22

Recognition of foreign Sentences

(1) Foreign criminal sentences may be taken into account as regards antecedents and aggravating circumstances, the granting or revocation of an order for conditional release, recidivism and its punishment, the enforcement of safety measures, incapacities and forfeitures, conditions as to reinstatement, as well as compensation, restoration of property and other civil effects and all other legal consequences provided by this Code.

(2) The foreign sentence shall not be recognized unless passed by an ordinary Court and not by a special tribunal for a crime punishable under this Code and its validity has been recognized by the appropriate Ethiopian authority. Such recognition may be made on the basis of a certified extract from the judgment register of the criminal or of the judgment pronounced or by means of an official attestation delivered by the judicial or executive foreign authority, or by any other reliable manner.

The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation

Article 43

Requests for Confiscation

1/ In the case of a request for mutual legal assistance seeking the execution of a confiscation order, the competent authority shall either recognize and enforce the confiscation order made by a court of the requesting state or submit the request to the public prosecutor for the purpose of obtaining a confiscation order from the Ethiopian court and, if such order is granted, enforce it.

321. Ethiopia noted that it had no examples of implementation to share with the review.

(b) Observations on the implementation of the article

322. This requisite is amply covered in the legislation quoted above. Foreign criminal records may be considered by the courts during sentencing.

Article 42 Jurisdiction

Subparagraph 1 (a)

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

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

323. Ethiopia noted that Article 2 of the Ethiopian Constitution and Article 11 of the Criminal Code of Ethiopia are relevant.

Criminal Code

Article 11

Crimes Committed on Ethiopian Territory: Normal Case.

(1) This Code shall apply to any person whether a national or a foreigner who has committed one of the crimes specified in this Code on the territory of Ethiopia. The national territory comprises the land, air and bodies of water, the extent of which is determined by the Constitution.

Constitution of Ethiopia

Article 2 - Territorial Jurisdiction

The territorial jurisdiction of Ethiopia shall comprise the territory of the members of the Federation and its boundaries shall be as determined by international agreements.

324. Ethiopia informed that most cases fall under Ethiopia's territorial jurisdiction.

(b) Observations on the implementation of the article

325. The provision is implemented.

Article 42 Jurisdiction

Subparagraph 1 (b)

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:

(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.

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

326. Ethiopia referred to the above-cited Article 11 of the Criminal Code as relevant. Furthermore, it noted that Ethiopia has exercised criminal jurisdiction in a case involving a crime committed aboard an airplane in Djibouti.

(b) Observations on the implementation of the article

327. It was explained that jurisdiction on board vessels and airplanes is covered by extension of principles of international law.

Article 42 Jurisdiction

Subparagraph 2 (a)

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

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

328. Article 18 of the Criminal Code of Ethiopia is relevant.

Criminal Code

Article 18

(1) This Code shall also apply to any person who has committed a crime outside Ethiopia against an Ethiopian national or to any Ethiopian national who has committed

outside Ethiopia a crime of another kind than those specified in the foregoing Articles, if the criminal was not tried in the foreign country for the crime, provided that:

(a) the act to be tried is prohibited by the law of the State where it was committed and by Ethiopian law; and

(b) it is of sufficient gravity under the latter law to justify extradition.

(2) In the case of all other crimes committed outside Ethiopia by a foreign national, the criminal shall, save as otherwise expressly provided, failing extradition, be prosecuted and tried only if the crime is punishable under Ethiopian law with death or with rigorous imprisonment for not less than ten years.

(b) Observations on the implementation of the article

329. The provisions of Article 18 of the Criminal Code seem to satisfy this provision.

Article 42 Jurisdiction

Subparagraph 2 (b)

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

(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

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

330. Ethiopia referred to the above-cited Article 18 of the Criminal Code as relevant under the present provision as well.

(b) Observations on the implementation of the article

331. It was explained that jurisdiction over stateless persons is covered under the territoriality principle.

Article 42 Jurisdiction

Subparagraph 2 (c)

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

(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

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

332. Ethiopia cited Article 29 (1) (d) of the Anti-Money Laundering Proclamation No. 780/2013 as relevant here.

Proclamation No.780/2013

Article 29 (1) (d)

1/ Any person who knows or should have known that a property is the proceeds of a crime and who:

a) converts or transfers the property for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to the property;

c) acquires, possesses or uses the property; or

d) participates in the commission, conspires to commit, attempts to commit or aids, abets, facilitates or counsels the commission of any of the elements of the offence mentioned in paragraphs (a) to (c) of this sub-article;

commits an offence and shall, without prejudice to the confiscation of the property pursuant to Article 35 of this Proclamation, be punishable with rigorous imprisonment from 10 to 15 years and with fine not exceeding Birr 100,000.

333. Articles 343 to 354 of the Criminal Code are about crimes against the fiscal and economic interests of Ethiopia. According to Article 13 of the Criminal Code, Ethiopia establishes jurisdiction over crimes committed outside its territory if they fall under the above-mentioned provisions. Therefore, Ethiopia considers itself in compliance as far the legal framework is concerned.

(b) Observations on the implementation of the article

334. It is recommended that Ethiopia consider ensuring coverage of participatory acts to money laundering committed outside Ethiopia in accordance with the provision under review.

Article 42 Jurisdiction

Subparagraph 2 (d)

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

(d) The offence is committed against the State Party.

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

335. Ethiopia cited Article 13 of the Criminal Code of Ethiopia as relevant.

Criminal Code

Article 13

This Code shall apply to any person who outside Ethiopia has committed one of the crimes against the State of Ethiopia, its safety or integrity, its institutions, essential interests or currency as defined in Book III, Title I, Chapter I, and under Title V of this Book (Art. 238 -260 and Art. 355-374).

(b) Observations on the implementation of the article

336. Article 13 of the Criminal Code, as quoted above, satisfies this requirement.

Article 42 Jurisdiction

Paragraph 3

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.

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

337. Ethiopia noted indicated that Articles 17 (1), and 21 (2) and (3) of the Criminal Code of Ethiopia are relevant under this provision.

Criminal Code

Article 17(1)

(1) Any person who has committed outside Ethiopia:

(a) a crime against international law or an international crime specified in Ethiopian legislation, or an international treaty or a convention to which Ethiopia has adhered; or shall be liable to trial, in Ethiopia in accordance with the provisions of this Code and subject to the general conditions mentioned hereinafter (Arts. 19 and 20(2)) unless a final judgment has been given after being prosecuted in the foreign country.

Criminal Code

Article 21(2) and (3)

(2) No Ethiopian national having that status at the time of the commission of the crime or at the time of the request for his extradition may be handed over to a foreign country. However, he shall be tried by Ethiopian courts under Ethiopian law.

(3) In all cases where a crime raises a question of extradition the request shall be dealt with in accordance with Ethiopian Law and existing treaties.

338. Ethiopia informed that it has refused the extradition of Ethiopian nationals on two instances where the requests were received by the Ministry of Justice. Ethiopia refused to extradite them, intending to prosecute them instead.

(b) Observations on the implementation of the article

339. Although Ethiopia does not extradite its own nationals, it will take over the prosecution of same if the crimes allegedly committed are also crimes as dictated in Article 17(1).

Article 42 Jurisdiction

Paragraph 4

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.

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

340. Ethiopia referenced the above-cited Articles 17 (1) and 21 (2) of the Criminal Code of Ethiopia as relevant under the present provision as well.

(b) Observations on the implementation of the article

341. Ethiopia has this capacity at law, citing Articles 17(1) and 21(2) of the Criminal Code.

Article 42 Jurisdiction

Paragraph 5

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.

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

342. In principle, this information can be transmitted by Ethiopia. As a matter of practice, the spontaneous sharing of information is most likely to happen with member countries of the Intergovernmental Authority on Development (IGAD) in Eastern Africa.

343. East Africa Police Chief Cooperation, which has 11 member states, meets annually and deliberates on joint concerns in transnational organized crimes and on how to tackle them through coordinated and joint efforts. Members cooperate in many spheres of crime

prevention and investigation. For example, an Ethiopian national committed a cruel crime and fled the country to South Sudan. Ethiopia sought cooperation from South Sudan and the latter extradited the suspect to Ethiopia.

344. UNODC and the Interpol also took initiatives for developing an action plan to coordinate joint efforts in crime prevention and law enforcement cooperation. East African countries can also cooperate in accordance with this initiative.

345. The following provision is also referred to.

Money Laundering and Financing of Terrorism Proclamation 780/2013

14. Relations with Foreign Counterpart Agency

11 The Center may, subject to reciprocity, share information or otherwise cooperate with any foreign counterpart agency that performs similar functions and is subject to similar secrecy obligations.

346. Nevertheless, Ethiopia noted that it has had no experience with spontaneous transmission of information to other authorities.

(b) Observations on the implementation of the article

347. The provision is implemented, and reference is made to the observations under article 46(4) below.

Article 42 Jurisdiction

Paragraph 6

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 the article

348. Ethiopia cited Articles 11, 17 and 18 of the Criminal Code of Ethiopia as applicable.

Criminal Code

Article 11

(1) This Code shall apply to any person whether a national or a foreigner who has committed one of the crimes specified in this Code on the territory of Ethiopia. The national territory comprises the land, air and bodies of water, the extent of which is determined by the Constitution.

(2) Nothing in the provision of sub-article (1) of this Article shall affect immunities of persons enjoying an official status as sanctioned by public international law.

(3) If the criminal has taken refuge in a foreign country, his extradition shall be requested so that he may be tried under Ethiopian Law.

Article 17

(1) Any person who has committed outside Ethiopia:

- (a) a crime against international law or an international crime specified in Ethiopian legislation, or an international treaty or a convention to which Ethiopia has adhered; or
- (b) a crime against public health or, morals specified in Articles 525, 599, 635, 636, 640 or 641 of this Code; shall be liable to trial, in Ethiopia in accordance with the provisions of this Code and subject to the general conditions mentioned hereinafter (Arts. 19 and 20(2)) unless a final judgment has been given after being prosecuted in the foreign country.

(2) Nothing in this Article shall affect the provisions of Articles 14 and 15(2).

Article 18

(1) This Code shall also apply to any person who has committed a crime outside Ethiopia against an Ethiopian national or to any Ethiopian national who has committed outside Ethiopia a crime of another kind than those specified in the foregoing Articles, if the criminal was not tried in the foreign country for the crime, provided that:

- (a) the act to be tried is prohibited by the law of the State where it was committed and by Ethiopian law; and
- (b) it is of sufficient gravity under the latter law to justify extradition.

(2) In the case of all other crimes committed outside Ethiopia by a foreign national, the criminal shall, save as otherwise expressly provided, failing extradition, be prosecuted and tried only if the crime is punishable under Ethiopian law with death or with rigorous imprisonment for not less than ten years.

349. Ethiopia noted that there are a number of options to establish criminal jurisdiction, without prejudice to customary international law, by the state of Ethiopia. Courts entertain such cases on daily basis. Therefore, Ethiopia considers itself fully in compliance as far as this provision is concerned.

(b) Observations on the implementation of the article

350. The provisions of this paragraph are covered by Ethiopian law.

D. Implementation of selected articles

351. A general observation regarding the implementation of the chapter under review is that it was difficult to assess in detail Ethiopia's implementation of the provisions in practice, due to the lack of comprehensive statistics or data on international cooperation requests (e.g., underlying offences, timeframe for responding to requests and any grounds for refusal). It is recommended that Ethiopia enhance its data collection systems to provide for the accurate and timely tracking and reporting of data on international cooperation.
352. It was noted that the Ministry of Justice, as the central authority for international cooperation, faces challenges in gathering statistics on international cooperation in criminal matters. There is no database to register the number of requests for extradition and mutual legal assistance (MLA) that have been made or received, or to track the underlying offences involved. The reviewers welcome indications by Ministry of Justice officials that there is an intention to develop a system to track requests, and it is recommended that Ethiopia takes steps in this regard.
353. At present Ethiopia does not have a comprehensive legislative framework to allow for effective international cooperation in criminal matters. The Criminal Code allows Ethiopia to make and receive extradition requests, but provides no guidance or criteria as to how these should be evaluated and processed. Some general criteria may be found in treaties on international cooperation, but this will not be sufficient for effective extradition and MLA practice. Therefore, as noted under the provisions below, it is recommended that Ethiopia take steps towards swiftly putting in place comprehensive legislation and procedures on international cooperation.

Chapter IV. International cooperation

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 the article

354. Ethiopia made the following notification upon ratification of the Convention⁴:
"...ratification by Ethiopia of the said Convention with a reservation on Article 44 of the Convention." However, Article 9(4) of the Constitution of Ethiopia 1994 provides that "All international agreements ratified by Ethiopia are an integral part of the law of the land."

355. Ethiopia has indicated that Articles 11, 12 and 21 of the Criminal Code of Ethiopia and Articles 38(1) and 44 of the "Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013" (hereinafter referred to as the AML Proclamation) are relevant to this provision.

356. Article 11 of the Criminal Code further provides that Ethiopia may seek the extradition of a person who has committed a crime in Ethiopia. In cases where that person cannot be extradited from the foreign country for trial in Ethiopia, Ethiopia may request that he/she be tried in the other country, as provided by Article 12.

Criminal Code

Article 11 (3): If the criminal has taken refuge in a foreign country, his extradition shall be requested so that he may be tried under Ethiopian Law.

Article 12 (1): Where a foreigner who has committed a crime in Ethiopia cannot be tried or punished, because he has taken refuge in a foreign country and his extradition cannot be obtained, the Ethiopian authorities may request that he be tried in the country of refuge.

357. Article 21 of the Criminal Code relates to the extradition from Ethiopia of foreigners who have committed crimes outside of Ethiopia when the crime does not "directly and principally" concern the Ethiopia.

Criminal Code

Article 21(1): Any foreigner who commits an ordinary crime outside the territory of Ethiopia and who takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom; extradition shall be granted on the application made in proper form by the State where the crime was committed for the purpose of trial under the territorial law when the crime does not directly and principally concern the Ethiopian State (Art. 13).

...

(3) In all cases where a crime raises a question of extradition the request shall be dealt with in accordance with Ethiopian Law and existing treaties.

AML Proclamation No. 780/2013

⁴ <http://treaties.un.org/doc/Publication/CN/2008/CN.1257.2007-Eng.pdf>

Article 38:

1/ Without prejudice to the provisions of Article 47(1) of this Proclamation, the competent authorities shall provide the widest possible range of cooperation to the competent authorities of other states for purposes of mutual legal assistance in connection with extradition and criminal investigations and proceedings related to money laundering and financing of terrorism.

Article 44:

1/ An extradition request related to money laundering or financing of terrorism shall be executed in accordance with the provisions of this Part unless otherwise provided in the applicable extradition treaty to which Ethiopia is a party.

2/ Extradition based upon this Proclamation shall be carried out only if the offence giving rise to the request for extradition or a similar offence is provided for under the legislation of the requesting state and of Ethiopia.

3/ The requirements of sub-article (2) of this Article shall be deemed fulfilled irrespective of whether the laws of the requesting state places the offence within the same category of offence or denominate the offence by the same terminology as in Ethiopia, provided the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both states.

358. Ethiopia has three bilateral treaties on international cooperation in place with Sudan, Djibouti and Yemen. The Sudan treaty on security cooperation covers inter alia mutual legal assistance (termed judicial cooperation) in civil and criminal matters, while the treaties with Djibouti and Yemen cover extradition. As of July 2015 negotiations were underway to enter into further treaties on international cooperation with Botswana, India and South Africa. Moreover, an agreement with China on extradition had been signed but not yet ratified, and an agreement with China on mutual legal assistance (MLA) was under negotiation. Also, agreements with the United Arab Emirates on extradition, MLA and the transfer of sentenced persons were being negotiated and expected to be completed in 2016.

359. In addition to its domestic laws and two extradition treaties, Ethiopia cooperates in extradition cases on the basis of reciprocity. Reciprocity is recognized in Ethiopia as a basis for international criminal cooperation for the exchange of information and extradition.

360. Since 2010, Ethiopia has received five extradition requests: two from Sudan, two from Djibouti, and one from the United States of America. Three of the requests (from Sudan, Djibouti and the USA) were not processed due to non-extradition of nationals, and effort is being exerted to prosecute the suspects in Ethiopian court. Based on the reciprocity principle, Ethiopia has made extradition requests to Germany, Sweden, South Africa and the United Arab Emirates for the identification and location of criminal suspects or fugitives. In the case of Germany, the request was successful and the authorities were able to identify the criminal and extradite the suspect to Ethiopia. Also, in the case of the

United Arab Emirates, the fugitive was located and extradited based on the principle of reciprocity. Of these requests, only the matter involving the United Arab Emirates related to corruption, though officials explained that a previous request received from Sudan in a corruption case was honored by Ethiopia.

361. Moreover, a draft Directive on International Cooperation has been prepared by the Ministry of Justice in 2011 in collaboration with stakeholders, including the Federal Ethics and Anti-Corruption Commission, setting out detailed procedures to be followed by Ethiopia in cases of extradition and mutual legal assistance. As of July 2015, the directive was still in draft form but was expected to become effective soon through codification in the Criminal Procedure Code. In addition to its domestic laws and treaties, Ethiopia cooperates in extradition cases on the basis of reciprocity. Reciprocity is recognized in Ethiopia as a basis for international criminal cooperation for the exchange of information and extradition. Extradition is otherwise subject to dual criminality in Ethiopia.
362. At the regional level, Ethiopia has recently ratified the Inter-Governmental Authority on Development (IGAD) Conventions on extradition and mutual legal assistance, although these have not yet come into force for Ethiopia. IGAD brings together eight countries in East Africa that include all of Ethiopia's neighbours: the member States are Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan and Uganda. The IGAD Conventions, once ratified and in force, will provide a framework for international cooperation between Ethiopia and other regional States with which Ethiopia is likely to have a close relationship.
363. The provisions are set forth below for information only, as the convention is not in force.

Article 3(1) of the IGAD Convention on Extradition:

For the purpose of this convention, an extradition offence is an offence that is punishable under the laws of both the requesting and the requested state party by imprisonment or other deprivation of liberty for a period of at least one year, or by a more severe penalty.

(b) Observations on the implementation of the article

364. The Ethiopian legislation allows a partial application of the provision, through Articles 11, 12 and 21 of the Criminal Code, and Articles 38 (1) and 44 of the AML Proclamation No. 780/2013.
365. It was explained during the country visit that while a reservation had been made to the United Nations on UNCAC Article 44, this reservation has not been repeated in the Proclamation 544 that domesticates the Convention. Furthermore, examples were provided of how the Ethiopia has recently applied the Convention as a legal basis in matters of mutual legal assistance (one outgoing MLA request and one incoming MLA request on the basis of UNCAC, as further described under article 46(1) below). Ethiopia has indicated that it is considering withdrawing the reservation to Article 44.

366. Nevertheless, in light of the dual criminality requirement, extradition would be limited to the extent that not all offences established under the Convention have been criminalized. Ethiopia explained that, in addition to the existing bilateral treaties, the principle of reciprocity would be applied.

367. In light of the above, and considering the uncertain date of entry into force of both the IGAD Convention on Extradition as well as the draft Directive on International Cooperation, neither of which is therefore a legal basis for extradition at this stage, the reviewers welcome indications that Ethiopia is considering to withdraw its reservation to Article 44 and to make use of UNCAC as a legal basis for extradition. Moreover, Ethiopia is encouraged to take steps towards ensuring the swift entry into force of its draft Directive on International Cooperation and the IGAD Convention, as well as to consider adopting additional treaties, pending the withdrawal of its reservation. In this context the reviewers acknowledge indications by Ethiopia on the need to adopt more bilateral agreements.

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 the article

368. Ethiopia indicated that it has not implemented the provision. The above-quoted Article 44 of Proclamation No. 780/2013 is relevant. Extradition is subject to dual criminality. Ethiopia does not execute requests for extradition where the offence is not punishable under its domestic law. Ethiopia has not received or made any extradition requests in which dual criminality issues have arisen.

(b) Observations and good practices observed in the implementation of the article

369. The Ethiopian domestic legislation does not allow the granting of an extradition request if the offence is not punishable in Ethiopia. However, during the country visit it was explained that Ethiopia considers the underlying conduct rather than the strict terminology of offences when evaluating whether the dual criminality element is met.

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 the article

370. Article 44 of the AML Proclamation No. 780/2013 is relevant. Under the bilateral extradition treaties with Djibouti and Yemen, extradition may be granted in the case of requests involving multiple offences also in respect of those offences that are not extraditable by reason of their imprisonment term (Djibouti extradition treaty, article 3(3); Yemen extradition treaty, article 14(3)).

371. Pursuant to the draft Directive on International Cooperation, extradition may be granted only in cases where the underlying offence is punishable by a minimum penalty of one year. Article 3(2) and (5) of the IGAD Convention on Extradition is set out below for information.

IGAD Convention on Extradition

Article 3:

(2) For the purpose of this article, in determining what constitutes an offence against the laws of the requested state party it shall not matter whether:

- a) The laws of the requesting and requested state party each place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; and*
- b) The totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, as between the laws of the requesting and requested state party, the constituting elements of the offence differ.*

(5) If the request for extradition relates to several separate offences, each of which is punishable under the laws of both the requesting and requested State Parties, but some of which do not meet the other requirements of paragraph 1, the requested State Party may grant extradition for such offences provided that the person is to be extradited for at least one extradition offence.

372. Ethiopia has not received a request involving multiple offences, some of which are not extraditable by reason of their period of imprisonment. Ethiopian authorities indicated that if such a request were received, extradition would be granted only for those offences that satisfied the minimum penalty requirement.

(b) Observations on the implementation of the article

373. The Ethiopian legislation is only partially in compliance with the provision of paragraph 3, through Article 44 of the AML Proclamation No. 780/2013. As noted above under Paragraph 1 of the present article, the element of dual criminality would still apply in the case of a request involving multiple offences, thereby limiting the application of the

provision under review. The draft Directive on International Cooperation and the relevant provisions of the IGAD Convention will, once they enter into force, allow Ethiopia to implement Article 44 paragraph 3 of the Convention, but cannot serve as a legal basis at present.

374. Ethiopia is encouraged to make use of UNCAC as a legal basis for extradition and to expedite the adoption and entry into force of the Draft Directive on International Cooperation and the IGAD Convention on Extradition. The former is important in particular in view of the uncertainty relating to the exact date of entry into force of the IGAD Convention, which also has a limited geographical scope of application.

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 the article

375. Ethiopia indicated that it has partially implemented the provision. Under its bilateral extradition treaties with Djibouti (article 3(1)) and Yemen (article 14(1)) and the draft Directive on International Cooperation, extradition may be granted in cases where the underlying offence is punishable by a minimum penalty of one year, provided that the offence is recognized under Ethiopian law. Corruption and money laundering offences are therefore extraditable offences. Further, under the bilateral extradition treaties, extradition for purposes of the execution of a penalty may be granted where the punishment imposed is at least 6 months of imprisonment (Djibouti, article 3(2)); Yemen article 14(2)). At the regional level, Ethiopia has recently ratified the Inter-Governmental Authority on Development (IGAD) Convention on extradition, although this is not yet in force. To this end, Ethiopia referred Article 3 (1) of the IGAD Convention on Extradition as relevant.

376. Regarding political offences, under the bilateral treaties Ethiopia is a party to, extradition shall also be refused where the offence for which extradition was sought is of a political character. While political offences are not defined in the extradition treaty with Djibouti, the treaty with Yemen provides in Article 15(2) that the following shall not be considered as political offences:

- a) subversive activities, hijacking, crimes against the safety of aviation and other public transport and acts of terrorism;
- b) military crimes;
- c) genocide and crimes against humanity;

d) assault crimes against the Heads of state and/or Government of either Contracting Party.

377. Ethiopia agrees that it needs to sign more bilateral agreements. The country is also making preparations to incorporate the law of extradition in the Criminal Procedure Code of the country, which is currently under amendment. Such measures are believed to strengthen Ethiopia's efforts to tackle corruption through an effective international cooperation founded on clear and broader legal framework.

378. The following information is provided for information only. *The draft Directive on International Cooperation stipulates that extradition shall not be granted in any of the following circumstances:*

- *if the offence for which extradition is requested has a political nature;*
- *if it is believed that the request for extradition has been made for the purpose of prosecuting or punishing a person based up on race, religion, nationality, ethnicity, etc.;*
- *if the prosecution or punishment is barred by amnesty, pardon or statute of limitation;*
- *if the person whose extradition is requested has been or would be subjected to torture in the requesting party.*

IGAD Convention on Extradition

Article 3 (1)

For the purpose of this Convention, an extradition offence is an offence that is punishable under the laws of both the requesting and the requested state party by imprisonment or other deprivation of liberty for a period of at least one year, or by a more severe penalty. Where the request for extradition relates to a person wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition may be refused if a period of less than six months of such offence remains to be served.

379. *Under the IGAD Extradition Treaty (Article 6), extradition shall be refused inter alia if "... the offence for which extradition is requested is of a political nature."*

380. *Article 10 of the same Treaty further provides:*

An offence of a political nature shall not include any offence in respect of which the States Parties have assumed an obligation, pursuant to any multilateral convention, or under international law, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition.

381. The issue of potential discrimination for political reasons was raised by the person whose extradition was sought in the case involving an extradition request made by Ethiopia to the United Arab Emirates. A determination was made by the relevant authorities at the International Criminal Police Organization (INTERPOL) that the offence

involved a corruption matter and not a political offence and the authorities in the United Arab Emirates rejected the person's discrimination claim.

382. Ethiopia is considering the possibility of using the Convention as a legal basis in corruption cases, to facilitate international cooperation in extradition cases, and amending its reservation accordingly.

(b) Observations on the implementation of the article

383. Ethiopia is partially in compliance with the provision under review. UNCAC offences are extraditable under Ethiopia's existing extradition treaties, which impose a one-year imprisonment threshold for an offence to be extraditable, provided that the offence is recognized under Ethiopian law. The draft Directive on International Cooperation and the relevant provisions of the IGAD Convention on Extradition will, once they enter into force, allow Ethiopia to more fully implement Article 44 paragraph 4 of the Convention, but cannot serve as a legal basis at present.

384. As indicated under previous observations of this Article, Ethiopia is encouraged to formally establish and use the Convention as a legal basis for extradition. The State Party under review is further urged to expedite the adoption and entry into force of the Draft Directive on International Cooperation and the IGAD Convention on Extradition.

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 the article

385. Ethiopia indicated that it does not make extradition conditional on the existence of a treaty. In addition to its domestic laws and treaties, Ethiopia cooperates in extradition cases on the basis of reciprocity. However, Ethiopia's practice in extradition cases has largely been on the basis of bilateral treaties. Ethiopia is considering incorporating the Convention as a legal basis in corruption cases to facilitate international cooperation in extradition cases.

(b) Observations on the implementation of the article

386. It has been explained that Ethiopia has recently used the Convention as a legal basis for incoming and outgoing mutual legal assistance requests (see art. 46(1) below). As indicated under paragraph 1 of this Article, Ethiopia is encouraged to formally establish and use the Convention as a legal basis for extradition.

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 the article

387. In the absence of a treaty, Ethiopia will cooperate with other countries based on reciprocity. Therefore, extradition is not solely based on the existence of a treaty.

388. Ethiopia informed the Secretary-General of the United Nations that it had reservations on taking the Convention as the legal basis for cooperation on extradition with other States parties to this Convention. Because of this, Ethiopia is concluding treaties on extradition with other States and is also cooperating with them on matters of extradition based on reciprocity. The IGAD Convention on Extradition is a case in point in this regard, although not yet in force.

(b) Observations on the implementation of the article

389. The provision under review has limited applicability since Ethiopia can cooperate with other countries in extradition matters on the basis of reciprocity. Nonetheless, it is noted that Ethiopia made a general reservation regarding article 44 to the Secretary-General at the time of ratification.⁵ Furthermore, the IGAD Convention on Extradition cited has not entered into force and can therefore not be used as a legal basis for extradition.

390. As Ethiopia has only recently begun to use the Convention as a legal basis for mutual legal assistance, it is encouraged to make the necessary notification to the Secretary-General in order to render this decision visible to other State parties.

391. In the interest of greater legal clarity concerning the application of UNCAC article 44, Ethiopia is encouraged to amend its notification by sending the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption,

⁵ <http://treaties.un.org/doc/Publication/CN/2008/CN.1257.2007-Eng.pdf>.

Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

392. Pending the amendment of its notification, Ethiopia is encouraged to consider adopting additional treaties on extradition with other States parties.

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 the article

393. Ethiopia indicated that it has partially implemented the provision. As mentioned above, under its treaties and the draft Directive on International Cooperation, extradition may be granted in cases where the underlying offence is punishable by a minimum penalty of one year, provided that the offence is recognized under Ethiopian law. Corruption and money laundering are therefore extraditable offences. Corruption offences are also extraditable crimes under the Criminal Code.

394. The time required for the full implementation of the provision is the time required for the enactment of the Draft Directive on International Cooperation in Criminal Matters.

395. Ethiopia referred to Article 3(1) of the IGAD Convention on Extradition, which is not yet in force.

(b) Observations on the implementation of the article

396. IGAD's Convention on Extradition and its article 3(1) as identified by Ethiopia cannot serve as a legal basis until the said Convention enters into force, and the same applies to the draft Directive. While Ethiopia quotes the application of its existing treaties and the principle of reciprocity in extradition cases, the dual criminality requirement limits the application of these measures as not all UNCAC offences have been criminalized. *The provision has therefore not been fully implemented.*

397. As indicated under previous observations of this Article, Ethiopia is encouraged to formally establish and use the Convention as a legal basis for extradition.

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 the article

398. Ethiopia indicated that Articles 13 and 21 of the Criminal Code as well as Article 45 of the AML Proclamation No. 780/2013 are relevant. Articles 5 and 6 of the IGAD Convention on Extradition, although not yet in force, are also relevant.

399. Article 21 of the Criminal Code provides for the extradition of foreigners who have committed crimes outside of Ethiopia “in accordance with the provisions of the law, treaties or international custom”:

Criminal Code

21. (1) Any foreigner who commits an ordinary crime outside the territory of Ethiopia and who takes refuge in Ethiopia may be extradited in accordance with the provisions of the law, treaties or international custom; extradition shall be granted on the application made in proper form by the State where the crime was committed for the purpose of trial under the territorial law when the crime does not directly and principally concern the Ethiopian State (Art. 13).

400. Article 13 of the Criminal Code relates to crimes committed against Ethiopia outside its territory:

Criminal Code

This Code shall apply to any person who outside Ethiopia has committed one of the crimes against the State of Ethiopia, its safety or integrity, its institutions, essential interests or currency...

401. Article 45 of the AML Proclamation No. 780/2013 states:

Proclamation No. 780/2013

1) Extradition shall not be granted if:

- (a) the person whose extradition is requested is a national of Ethiopia.
- (b) there are substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting and punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions;
- (c) a final judgment has been rendered in Ethiopia in respect of the offence for which extradition is requested;

- (d) the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including period of limitations and amnesty; or
- (e) there are substantial grounds to conclude the person whose extradition is requested has been or would be subjected to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights.

2) Extradition may be refused if:

- (a) a prosecution in respect of the offence for which extradition is requested is pending in Ethiopia;
- (b) the offence for which extradition is requested has been committed outside the territory of either country;
- (c) the person whose extradition is requested has been sentenced for the conduct which gives rise to the request or would be liable to be tried and sentenced in the requesting State by an irregular or fundamentally unfair extraordinary or ad hoc court or tribunal;
- (d) while also taking into account the nature of the offence and the interests of the requesting State, it is considered that the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person; or
- (e) the extradition is requested pursuant to a final judgment rendered in the absence of the convicted person who, for reasons beyond his control, has not had sufficient notice of the trial or the opportunity to arrange for his defense and he has not had or will not have the opportunity to have the case retried in his presence.

3) If extradition is refused on either of the grounds stated in paragraph (a) or (e) of sub-article (1) or paragraph (c) or (e) of sub-article (2) of this Article, the case shall be referred to the competent authority in order that proceedings shall be instituted against the person concerned in respect of the offence which gave rise to the request.

402. Under its bilateral extradition treaties and the draft Directive on International Cooperation, extradition may be granted in cases where the underlying offence is punishable by a minimum penalty of one year, provided that the offence is recognized under Ethiopian law. Further, under the bilateral extradition treaties, extradition for purposes of the execution of a penalty may be granted where the punishment imposed is at least 6 months of imprisonment.

403. The following information is provided for information. *Other grounds for refusal are stated in the draft Directive, which stipulates that extradition shall not be granted in any of the following circumstances:*

- *if the offence for which extradition is requested has a political nature;*
- *if it is believed that the request for extradition has been made for the purpose of prosecuting or punishing a person based up on race, religion, nationality, ethnicity, etc.;*

- if the prosecution or punishment is barred by amnesty, pardon or statute of limitation;
- if the person whose extradition is requested has been or would be subjected to torture in the requesting party.

404. Articles 5 and 6 of the IGAD Convention on Extradition provide as follows:

IGAD Convention on Extradition

Article 5: Extradition of nationals

1. a) A State Party shall have the right to refuse extradition of its nationals.
b) Each State Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.
2. If the requested State Party does not extradite its national, it shall at the request of the requesting State Party submit the case to its competent authorities in order that proceedings may be taken, if they are considered appropriate.

Article 6: Grounds for refusal to extradite

1. Extradition shall be refused in any one of the following circumstances:
 - a) if the offence for which extradition is requested is of a political nature. An offence of a political nature shall not include any offence in respect of which the States Parties have assumed an obligation, pursuant to any multilateral convention, or under international law, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition;
 - b) if the requested State Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinion, sex or status or that the person's position may be prejudiced for any of those reasons;
 - c) if the offence for which extradition is requested constitutes an offence under military law, which is not an offence under ordinary criminal law;
 - d) if there has been a final judgment rendered against the person in the requested State Party or a Third State in respect of the offence for which the person's extradition is requested;
 - e) if the person whose extradition is requested has, under the law of either the requesting or requested State Party, become immune from prosecution or punishment for any reason, including lapse of time;
 - f) if the person whose extradition is requested has been, or would be subjected in the requesting State Party to, torture, or cruel, inhuman or degrading treatment or punishment, or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 7 of the African Charter on Human and Peoples Rights and Article 14 of the International Covenant on Civil and Political Rights; or,
 - g) if the judgment of the requesting State Party has been rendered in absentia and the convicted person has not had sufficient notice of the trial or the opportunity to

arrange for his defence and he has not had, or will not have, the opportunity to have the case retried in his or her presence.

2. Extradition may be refused in any one of the following circumstances:

a) if a prosecution in respect of the offence for which extradition is requested is pending in the requested State Party against the person whose extradition is requested;

b) if the offence for which extradition is requested carries a death penalty under the law of the requesting State Party, unless that State gives such assurance as the requested State Party considers sufficient, that the death penalty will not be imposed or, if imposed, will not be carried out, or both parties agree that the sentence of the requested State Party will be substituted by another sentence in the requested State Party;

c) if the offence for which extradition is requested has been committed outside the territory of either State Party and the law of the requested State Party does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

d) if the offence for which extradition is requested is regarded under the laws of the requested State Party as having been committed in whole or in part within that State; or,

e) if the requested State Party, while also taking into account the nature of the offence and the interest of the Requesting State Party, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

405. Since 2010, Ethiopia has received five extradition requests: two from Sudan, two from Djibouti and one from the United States of America. Three of the requests (from Sudan, Djibouti and the USA) were not processed due to non-extradition of nationals, and effort is being exerted to prosecute the suspects in Ethiopian court. Ethiopia has made extradition requests to Germany, Sweden, South Africa and the United Arab Emirates for the identification and location of criminal suspects or fugitives. In the case of Germany, the request was successful and the authorities were able to identify the criminal and extradite the suspect to Ethiopia. Also in the case of the United Arab Emirates, the fugitive was located and extradition was requested based on the principle of reciprocity. Of these requests, only the matter involving the United Arab Emirates related to corruption, although a previous request received from Sudan in a corruption case was honored by Ethiopia.

(b) Observations on the implementation of the article

406. The provisions of the Criminal Code and of the AML Proclamation No. 780/2013 allow the State under review partially to meet the requirements of paragraph 8 of the Convention. Article 21 of the Criminal Code allows for the extradition of foreigners for offences criminalized in Ethiopia that do not directly and principally concern the Ethiopian State. As there is some uncertainty concerning the application of this limitation in cases involving UNCAC offences, it is recommended that Ethiopia ensure that all

UNCAC offences are extraditable, including by amending Article 21 accordingly. The AML Proclamation outlines grounds for refusal in money-laundering cases.

407. The grounds for refusal quoted from the International Cooperation Directive cannot be applied as it has not yet entered into force. The provisions of the IGAD Convention on extradition can also not be used as a legal basis until its entry into force.

408. As indicated under previous observations of this Article, Ethiopia is encouraged to formally establish and use the Convention as a legal basis for extradition. The State Party under review is also urged to expedite the adoption and entry into force of the Draft Directive on International Cooperation and the IGAD Convention.

409. Moreover, reference is made to the observations under paragraph 11 below.

Article 44 Extradition

Paragraph 9

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.

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

410. Articles 47 and 46 of the AML Proclamation No. 780/2013 and Article 19 of the Agreement on Security Cooperation with Yemen are relevant. Ethiopia also referred to Article 2 of the draft Directive on International Cooperation and Article 7 of the IGAD Convention on Extradition, which are not yet in force.

411. Article 47 of the AML Proclamation No. 780/2013

- 1) The Center shall have the responsibility and power to receive mutual legal assistance and extradition requests sent by competent foreign authorities with respect to money laundering and financing of terrorism, and it shall transmit them to the competent authorities for execution.
- 2) Requests and answers shall be transmitted either by post or by other more rapid means of transmission that provides a written or materially equivalent record under conditions allowing the Center to establish authenticity.
- 3) Requests and their annexes shall be made in Amharic or English or accompanied by a translation in Amharic or English.

Article 46 of Proclamation No. 780/2013

Extradition may be granted upon receipt of a request, without further formalities, provided that the person whose extradition is requested explicitly consents before the competent authority.

412. Article 19 of the bilateral extradition treaty with Yemen establishes a simplified extradition procedure if a person arrested admits that he has committed an extraditable offence and is the person sought for extradition, in which case the state party where such person is found shall extradite him without there being a request from the state to which extradition is granted. Under Ethiopia's bilateral extradition treaties, requests for extradition shall be submitted through diplomatic channels (Djibouti extradition treaty, article 6(1); Yemen extradition treaty, article 17(1)).
413. The following information is provided for information.
414. Pursuant to the draft Directive on International Cooperation that has been prepared by the Ministry of Justice, and the agreements to which Ethiopia is a party, a request must be accompanied by:
- full particulars of the person whose extradition is requested, including fingerprints and DNA;
 - a full summary of the offence of which the person is being accused or was convicted;
 - relevant provisions of the law of the requesting country which was breached, and a statement of the penalties which may be imposed for such offence;
 - the original or an authenticated copy of the external warrant issued in relation to the person whose extradition is requested; and
 - in the case of a person who is a fugitive after conviction of an extraditable offence, an original or authenticated copy of the record of conviction and sentence; and the Ministry of Justice may, at its discretion, request further details.
415. While *prima facie* evidence is not required to be included in a request, according to Section 6(2) of the draft Directive, there must be a reasonable suspicion that the person whose extradition is sought committed the offence, and this must be evidenced in the request.

Article 7 of the IGAD Convention on Extradition

The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between the two or more state parties. The request shall be supported by:

- a) The original or authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting state party;*
- b) A statement of the offence(s) for which extradition is requested. The time line and place of the commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible;*
- c) A copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.*

The request shall indicate the offence designation of the official in the requested state party indicating the contact person and file reference.

416. Ethiopia indicated that Ethiopian prosecutors will endeavour to fulfil an extradition request within 60 days from the time of receipt, and that they have generally executed requests within 70-80 days.

(b) Observations on the implementation of the article

417. The Ethiopian legislation has partially implemented the provision of the Convention, through Articles 47 and 46 of the AML Proclamation No. 780/2013 as well as Article 19 of the Agreement on Security Cooperation with Yemen. Ethiopia has indicated the general processing of extradition requests within 70-80 days, but would benefit from formalising its procedures in order to allow procedural clarity vis-à-vis other States. It is recommended that Ethiopia adopt measures to expedite extradition procedures and to simplify evidentiary requirements for offences under the Convention.

418. Neither the IGAD Convention on Extradition nor the draft Directive on International Cooperation can be taken into consideration until they have entered into force.

419. As indicated under previous observations of this Article, Ethiopia is urged to expedite the adoption and entry into force of the Draft Directive on International Cooperation in Criminal Matters and the IGAD Convention.

Article 44 Extradition

Paragraph 10

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 the article

420. Article 42 of the AML Proclamation No. 780/2013, Article 21 of the Agreement on Security Cooperation with Yemen are relevant. Under Ethiopia's bilateral extradition treaties, if the request for extradition was made in accordance with such treaties, the requested State shall without delay if necessary proceed to arrest the person claimed (Djibouti extradition treaty, article 7; Yemen extradition treaty, article 20). Ethiopia also referred to Article 10 of the IGAD Convention on Extradition, which is not yet in force.

421. **Article 42 of the AML Proclamation No. 780/2013** provides as follows:

1) Provisional measures requested by a State shall be undertaken in accordance with the applicable law of Ethiopia. If the request is worded in general terms, the most appropriate measures provided by law shall be used.

2) Where the applicable law of Ethiopia does not provide for the measures requested, the competent authority may substitute those measures provided for in the law whose effects correspond most closely to the requested measures.

3) The provisions relating to the lifting of provisional measures as laid down in Article 36(3) of this Proclamation shall be applicable; provided, however, that before lifting the provisional measures applied, the competent authority of the requesting State shall be informed thereof.

422. Article 21 of the extradition treaty with Yemen establishes procedures for provisional arrest "in case of urgency". Authorities in the Ministry of Justice explained that there has been a case under this treaty in which a fugitive located in Ethiopia was provisionally arrested.

423. The following information is provided for information.

IGAD Convention on Extradition

Article 10: Provisional arrest

1. In case of urgency the competent authorities of the requesting State Party may request the provisional arrest of the person sought. The competent authorities of the requested State Party shall decide the matter in accordance with its domestic law and communicate its decision to the requesting State Party without delay.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 7, paragraph 2(a) exists, and that it is intended to send a request for extradition.

3. A request for provisional arrest shall be sent to the competent authorities of the requested State Party directly by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested State Party.

4. An application for provisional arrest shall include the following:

a) such information, as may be available, about the description, identity, location and nationality of the person sought;

b) a statement that a request for extradition will follow;

c) a description of the nature of the offence and applicable penalty, with a brief summary of the facts of the case, including the date and place the offence was committed;

d) a statement attesting to the existence of a warrant of arrest or a statement of the punishment that can be or has been imposed for the offence to which this Convention applies; and

e) any other information which would justify provisional arrest in the requested State Party.

5. Provisional arrest shall be terminated if the requested State Party has not received the request for extradition and supporting documents through the channel provided for in Article 7, paragraph 1 within thirty (30) days after the arrest. The competent judicial authorities of the requested State Party, insofar as it is permitted by the law of that State, may extend that delay with regard to the receipt of the documents. However, the person sought may be granted bail at any time subject to the conditions considered necessary to ensure that the person does not leave the territory of the requested State Party.

6. The release of a person pursuant to paragraph 5 of this Article shall not prevent re-arrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

(b) Observations on the implementation of the article

424. Ethiopia is partially in compliance with the provision under review through Article 21 of the Agreement on Security Cooperation with Yemen and Article 42 of the AML Proclamation No. 780/2013. Neither the IGAD Convention on Extradition nor the draft Directive on International Cooperation can be taken into consideration until they have entered into force. It is recommended that Ethiopia adopt measures to implement the provision under review.

425. As indicated under previous observations of this Article, Ethiopia is encouraged to formally establish and use the Convention as a legal basis for extradition. The State Party under review is also urged to expedite the adoption and entry into force of the Draft Directive on International Cooperation and the IGAD Convention.

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 the article

426. Articles 21 (2) and 11 (3) of the Criminal Code and Article 45 (3) of the AML Proclamation No. 780/2013 are relevant. Moreover, the non-extradition of nationals is specifically provided for in the bilateral extradition treaties Ethiopia is party to (Djibouti extradition treaty, article 5; Yemen extradition treaty, article 16). Ethiopia also referred to Articles 2 and 5 of the IGAD Convention on Extradition, which is not yet in force.

Criminal Code

Article 21(2)

(2) No Ethiopian national having that status at the time of the commission of the crime or at the time of the request for his extradition may be handed over to a foreign country. However, he shall be tried by Ethiopian courts under Ethiopian law.

Article 11(3)

(1) This Code shall apply to any person whether a national or a foreigner who has committed one of the crimes specified in this Code on the territory of Ethiopia. The national territory comprises the land, air and bodies of water, the extent of which is determined by the Constitution.

(2) Nothing in the provision of sub-article (1) of this Article shall affect immunities of persons enjoying an official status as sanctioned by public international law.

(3) If the criminal has taken refuge in a foreign country, his extradition shall be requested so that he may be tried under Ethiopian Law.

Article 45(3) of the AML Proclamation No. 780/2013

If extradition is refused on either of the grounds stated in paragraph (a) or (e) of sub-article (1) or paragraph (c) or (e) of sub-article (2) of this Article, the case shall be referred to the competent authority in order that proceedings shall be instituted against the person concerned in respect of the offence which gave rise to the request.

427. The obligation to extradite or prosecute (*aut dedere aut judicare*) is also contained in the existing treaties with Djibouti (article 5(2)) and Yemen (article 16(2)).

428. The following information is provided for information.

IGAD Convention on Extradition

Article 2: Extradite or prosecute principle

A State Party in whose territory an alleged offender is found, if it does not extradite a person on the grounds of refusal contained in Article 5, Article 6.1(a), (b), (f) and (g) and Article 6.2(b) and (d), shall, at the request of the requesting State Party 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 similar nature under the domestic law of that State Party.

Article 5: Extradition of nationals (quoted above under paragraph 8 of article 44)

429. In cases where a request for extradition is denied because the person sought is an Ethiopian national, the letter of denial to the requesting State will request evidence for domestic prosecution to be considered. An independent investigation is not generally conducted. If sufficient evidence is received from the requesting authorities, the person will be prosecuted domestically.

430. Ethiopia referred to the case examples under paragraph 8 of this article where extradition of nationals was refused. There have been no cases to date where a national whose extradition was denied was prosecuted domestically.

(b) Observations on the implementation of the article

431. It is recommended that Ethiopia continue to ensure that it applies the principle of *aut dedere aut judicare* in cases where extradition of nationals is refused in accordance with its existing laws and treaties.
432. The IGAD Convention on Extradition cannot be taken into consideration and used as a legal basis until it has entered into force.

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 the article

433. Ethiopia indicated that the conditional surrender of nationals is not recognized in Ethiopia. Ethiopia does not make extradition of its nationals conditional on their returning to Ethiopia to serve the sentence imposed.

(b) Observations on the implementation of the article

434. The provision under review has limited applicability as Ethiopia does not recognize or require the conditional surrender 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 the article

435. Ethiopia stated that the provision is partly implemented through Articles 12 (3) and 20 (2) of the Criminal Code. Any portion of a foreign sentence that has not been served in the foreign country for either crimes with principal or subsidiary Ethiopian jurisdiction may be enforced in Ethiopia under Articles 12(3) and 20(2) of the Criminal Code.

Criminal Code

12.(3) Where the criminal has not undergone his punishment or only undergone part of it in the foreign country, the whole or the unexpired part thereof shall be enforced in Ethiopia, if he is apprehended and the enforcement of the penalty is not barred by limitation under the provisions of this Code. Should the punishments differ as to their nature or form, such punishment as is the closest to that imposed in the foreign country shall be enforced.

20.(2) If the criminal was tried and sentenced in a foreign country but did not undergo his punishment, or served only part of it in the said country, the punishment, or the remaining part thereof, may be enforced according to the forms prescribed by this Code, if it is not barred by limitation under this Code or the law of the country of commission. The provisions of Article 12 (3) shall apply *mutatis mutandis* to this Article.

436. Ethiopia informed that there have been no experience in the application of this provision in extradition cases.

(b) Observations on the implementation of the article

437. The above-quoted provisions of Ethiopian Criminal Code allow for a partial application of subparagraph 13 of the Convention.

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 the article

438. Ethiopia cited Article 20 of the Constitution, Articles 12 (2) and 20 of the Criminal Code and Article 45 of the AML Proclamation No. 780/2013. Ethiopia also referred to Article 6 of the IGAD Convention on Extradition, which is not yet in force.

439. Article 20 of the Constitution is automatically applicable in extradition cases. Furthermore, Article 12(2) of the Criminal Code establishes some procedural and other safeguards in extradition cases.

Article 20 of the Constitution

1. Accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. The court may hear cases in a closed session

only with a view to protecting the right to privacy of the parties concerned, public morals and national security.

2. Accused persons have the right to be informed with sufficient particulars of the charge brought against them and to be given the charge in writing.
3. During proceedings accused persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves.
4. Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defence, and to obtain the attendance of and examination of witnesses on their behalf before the court.
5. Accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.
6. All persons have the right of appeal to the competent court against an order or a judgment of the court which first heard the case.
7. They have the right to request for the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand. Furthermore,

Criminal Code

12.(2). The accused foreigner cannot be retried in Ethiopia for the same crime if he has been tried and acquitted in the foreign country by a judgment which has become final or if he has been granted pardon or amnesty or if the prosecution or sentence has been barred by limitation.

440. While recognizing potential difficulties in the application of the provision under review in light of prohibitions against double jeopardy in Article 12(2) of the Criminal Code and international human rights law, Ethiopia indicated that the present provision has not been applied in practice.

441. Article 20 of the Criminal Code provides for the effect of foreign sentences in cases of subsidiary jurisdiction.

Criminal Code

20.(1) In all cases where Ethiopian courts have a subsidiary jurisdiction only (Arts. 15(1), 17 and 18), the criminal cannot be tried and sentenced in Ethiopia if he was regularly acquitted or discharged for the same act in a foreign country. Pursuant to the draft Directive on international cooperation that has been prepared by the Ministry of Justice, extradition shall not be granted in any of the following circumstances:

- if the offence for which extradition is requested has a political nature;
- if it is believed that the request for extradition has been made for the purpose of prosecuting or punishing a person based up on race, religion, nationality, ethnicity, etc.;
- if the prosecution or punishment is barred by amnesty, pardon or statute of limitation;
- if the person whose extradition is requested has been or would be subjected to torture in the requesting party.

Article 45 of the AML Proclamation No. 780/2013 provides that extradition may not be granted or may be refused if:

(a) there are substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting and punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions;

(b) there are substantial grounds to conclude the person whose extradition is requested has been or would be subjected to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights.

(c) while also taking into account the nature of the offence and the interests of the requesting State, it is considered that the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person; or

(d) the extradition is requested pursuant to a final judgment rendered in the absence of the convicted person who, for reasons beyond his control, has not had sufficient notice of the trial or the opportunity to arrange for his defense and he has not had or will not have the opportunity to have the case retried in his presence.

442. Fair treatment protections are included in the bilateral extradition treaties Ethiopia is party to with Djibouti (article 4) and Yemen (article 15). Ethiopia also referred to Article 6 of the IGAD Convention on Extradition (see above paragraph 8 of article 44), which is not yet in force.

443. Ethiopia has received one request from Sudan involving a theft case where extradition was rejected because of suspicions that the person sought would be subjected to physical punishment in Sudan.

(b) Observations on the implementation of the article

444. The abovementioned provisions, in particular those from the Constitution, the Criminal Code and the AML Proclamation No. 780/2013, address the elements of Article 44 subparagraph 14 of the Convention. However, Ethiopia indicates that double jeopardy provisions in its legislation present difficulties in practice. It is recommended that Ethiopia continue to ensure that fair treatment protections are applied in practice in accordance with its domestic laws and treaties. The IGAD Convention on Extradition cannot be taken into consideration and used as a legal basis until it has entered into force.

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 the article

445. Ethiopia indicated that Article 25 of the Constitution and Article 45 of the AML Proclamation No. 780/2013 are relevant. Ethiopia also referred to the draft Directive on International Cooperation and Article 6 (1) (b) of the IGAD Convention on Extradition, which is not yet in force.

Article 25 of the Constitution:

The right to equality.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

446. **Article 45 of the AML Proclamation No. 780/2013** provides that extradition may not be granted or may be refused if:

(a) there are substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting and punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions;

447. Prohibitions against discrimination are also included in the bilateral extradition treaties Ethiopia is party to (Djibouti, article 4(1)(3)) and Yemen (article 15 (1)(c)).

448. The following information is provided for information.

449. *Pursuant to the draft Directive on international cooperation that has been prepared by the Ministry of Justice, extradition shall not be granted in any of the following circumstances:*

- *if the offence for which extradition is requested has a political nature;*
- *if it is believed that the request for extradition has been made for the purpose of prosecuting or punishing a person based up on race, religion, nationality, ethnicity, etc.;*
- *if the prosecution or punishment is barred by amnesty, pardon or statute of limitation;*
- *if the person whose extradition is requested has been or would be subjected to torture in the requesting party.*

Article 6(1) (b) of the IGAD Convention on Extradition

Extradition shall be refused if the requested State Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin,

political opinion, sex or status or that the person's position may be prejudiced for any of those reasons.

450. The issue of potential discrimination for political reasons was raised by the person whose extradition was sought in the case involving the extradition request made by Ethiopia to the United Arab Emirates. A determination was made by the relevant authorities at INTERPOL that the offence involved a corruption matter and not a political offence and the authorities in the United Arab Emirates rejected the claim.

(b) Observations on the implementation of the article

451. The legal provisions quoted by Ethiopia fulfil the requirements set out in Article 44 subparagraph 15 of the Convention. However, the IGAD Convention on Extradition cannot be taken into consideration and used as a legal basis until it has entered into force.

452. An example of implementation was provided. Ethiopia has implemented the provision.

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 the article

453. Ethiopia referred to the draft Directive on International Cooperation in Criminal Matters and Article 3 (1) of the IGAD Convention on Extradition, which is not yet in force.

454. Under its existing treaties and the draft Directive on International Cooperation, extradition may be granted in cases where the underlying offence is punishable by a minimum penalty of one year, provided that the offence is recognized under Ethiopian law. Corruption and money laundering are therefore extraditable, together with other offences that satisfy these criteria, regardless of the fiscal nature of the offence. Moreover, grounds for refusal under the existing treaties (Djibouti extradition treaty, article 4; Yemen extradition treaty, article 15) do not include the fact that the offence also involves fiscal matters.

455. The following information is provided for information.

Article 3(1) of the IGAD Convention on Extradition

For the purpose of this Convention, an extradition offence is an offence that is punishable under the laws of both the requesting and requested State Party by imprisonment or other

deprivation of liberty for a period of at least one year, or by a more severe penalty. Where the request for extradition relates to a person wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition may be refused if a period of less than six months of such sentence remains to be served.

(b) Observations on the implementation of the article

456. The Ethiopian legislation and Ethiopia's bilateral extradition treaties do not provide any legal basis for refusing extradition on the grounds set out in the provision under review. The IGAD Convention and the draft Directive do not prohibit extradition for fiscal offences, but cannot be applied as they have not yet entered into force. Ethiopia has legislatively implemented the provision under review.

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 the article

457. Article 49 of the AML Proclamation No. 780/2013 and Article 18 (2) of the Agreement on Security Cooperation with Yemen are relevant. Ethiopia also referred to Article 2 (16) of the draft Directive for International Cooperation on Criminal Matters and Article 14 (2) of the IGAD Convention on Extradition, which are not yet in force.

458. Article 49 of the AML Proclamation No. 780/2013 provides that the Financial Intelligence Centre or the competent authority handling the matter may request additional information from the competent authority of the requesting State if it appears necessary to execute or facilitate the execution of the request.

459. The extradition treaty with Yemen provides in Article 18(2) that explanations shall be given for any complete or partial refusal of the request but does not address the issue of prior consultations. The matter is not addressed in the extradition treaty with Djibouti.

460. Furthermore, under Ethiopia's bilateral extradition treaties, if the request for extradition does not include the necessary information, the requested State may demand supplementary information and may fix a time-limit for the receipt thereof. Further, the requested State shall terminate the extradition procedure and release the person, if arrested, if the requested supplementary information is not communicated within the time-limit provided.

461. As a matter of practice, Ethiopia will consult through INTERPOL with a requesting State before refusing extradition. The obligation to consult is also contained in Article 2 (16) of the draft Directive on International Cooperation.

462. *A related provision is found in the **IGAD Convention on Extradition** in article 14(2), which is not yet in force: Before refusing a request, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with an opportunity to present its reasons or provide information in proceeding with the request.*

(b) Observations on the implementation of the article

463. The relevant provisions of Article 49 of the AML Proclamation No. 780/2013 are applicable in money-laundering cases but do not establish an obligation to consult before extradition is refused. Ethiopia has highlighted that it would consult the requesting State before refusing an extradition request as a matter of practice through INTERPOL. It would benefit Ethiopia to codify this practice in the new Directive for International Cooperation.

464. However, the application of Article 14 (2) of the IGAD Convention on Extradition remains subject to its entry into force and cannot be considered as a legal basis at this stage.

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 the article

465. The Agreement on Security Cooperation between Ethiopia and Yemen and the Treaty between Ethiopia and Djibouti on Extradition of Offenders are relevant..

466. The IGAD Convention, once ratified and in force, will provide a framework for international cooperation between Ethiopia and other regional States with which Ethiopia is likely to have a close relationship.

(b) Observations on the implementation of the article

467. Ethiopia is bound to bilateral extradition agreements with two States, although further agreements are currently being negotiated in the area of extradition. The entry into force of the IGAD Convention will allow Ethiopia to further enhance this dimension. In the meantime, as outlined under Article 44 paragraph 1 above, Ethiopia may apply the Convention directly in cases of mutual legal assistance and should by analogy be able to

use UNCAC as a basis for extradition. In this context, the reviewers welcome indications that Ethiopia is considering removing its reservation to Article 44. Pending the withdrawal of its reservation, Ethiopia is urged to consider adopting additional treaties, and the reviewers acknowledge indications by Ethiopia on the need to adopt more bilateral agreements. They further urge the swift adoption of the draft Directive on International Cooperation.

(c) Challenges, where applicable

468. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other);

In general, the Ministry of Justice as the central authority for international cooperation faces challenges in gathering statistics on cooperation in criminal matters. There is no database to register the number of requests for extradition and mutual legal assistance that have been made or received, or to track the underlying offences involved. Ministry of Justice officials explained that there was an intention to develop a system to track requests in the future.

2. Inter-agency coordination;

A national task force has been established to facilitate international cooperation activities and to create strong relationships among domestic stakeholders. The draft Directive on international cooperation would govern the relationship and mandates of stakeholders in international cooperation matters and clearly show how and by whom the work should be done. Measures will be taken to strengthen internal coordination among the criminal justice institutions in Ethiopia.

3. Inadequacy of existing implementing norm measures (laws, regulations etc.);

As of July 2015, the Directive on International Cooperation was still in draft form. Ethiopia is to take all steps to give the Directive a binding effect under Ethiopian law, including through codification in the Criminal Procedure Code. Ethiopia may consider the possibility of using the Convention as a legal basis in corruption cases, to facilitate international cooperation in extradition cases, and to amend or revoke the reservation in this regard.

(d) Technical assistance needs

469. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. Capacity-building programmes for authorities responsible for international cooperation in criminal matters;

There is lack of skills on the part of those who are involved in international cooperation in criminal matters. There is a need to develop a system or database to register the

number of requests for extradition and mutual legal assistance that have been made or received, and to track the underlying offences involved.

2. Legal advice

At the present time Ethiopia does not have a comprehensive legislative framework to allow for effective international cooperation. The Criminal Code allows Ethiopia to make and receive extradition requests, but provides no guidance or criteria as to how these should be evaluated and processed. Some general criteria may be found in treaties on international cooperation, but this will not be sufficient for effective extradition practice. Therefore, preparations are in the pipeline to put in place a comprehensive legislation on international cooperation. Measures will be taken to make sure that the legislation follows international best practices and is as flexible as possible. The legislation will also set out the criteria and process for making, evaluating and executing extradition requests. The draft Directive for International Cooperation on Criminal Matters will be codified in the Criminal Procedure Code. Ethiopia may consider the possibility of using the Convention as a legal basis in corruption cases, to facilitate international cooperation in extradition cases, and to amend or revoke the reservation in this regard.

470. Ethiopia indicated that the forms of technical assistance previously mentioned have been partially provided. UNODC has provided copies of the Model Law on Extradition and the Model Law on Mutual Legal Assistance that have been developed by UNODC as tools for Member States seeking to adopt or amend their domestic legislation.

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 the article

471. Ethiopia indicated that it has partially implemented the article. The transfer of prisoners to and from Ethiopia can proceed in cases of subsidiary jurisdiction of Ethiopian courts on the basis of Article 20 (1) and (2) of the Criminal Code, which addresses the enforcement of foreign sentences. Further applicable provisions include Article 12 of the Criminal Code. Ethiopia also referred to the draft Directive on International Cooperation in Criminal Matters.

Criminal Code

Article 20: Effect of Foreign Sentences

(1) In all cases where Ethiopian courts have a subsidiary jurisdiction only (Arts. 15(1), 17 and 18), the criminal cannot be tried and sentenced in Ethiopia if he was regularly acquitted or discharged for the same act in a foreign country.

(2) If the criminal was tried and sentenced in a foreign country but did not undergo his punishment, or served only part of it in the said country, the punishment, or the remaining part thereof, only part of it in the said country, the punishment, or the remaining part thereof, may be enforced according to the forms prescribed by this Code, if it is not barred by limitation under this Code or the law of the country of commission. The provisions of Article 12 (3) shall apply mutatis mutandis to this Article.

Article 12: Special Case: Delegation.

(1) Where a foreigner who has committed a crime in Ethiopia cannot be tried or punished, because he has taken refuge in a foreign country and his extradition cannot be obtained, the Ethiopian authorities may request that he be tried in the country of refuge.

(2) The accused foreigner cannot be retried in Ethiopia for the same crime if he has been tried and acquitted in the foreign country by a judgment which has become final or if he has been granted pardon or amnesty or if the prosecution or sentence has been barred by limitation.

(3) Where the criminal has not undergone his punishment or only undergone part of it in the foreign country, the whole or the unexpired part thereof shall be enforced in Ethiopia, if he is apprehended and the enforcement of the penalty is not barred by limitation under the provisions of this Code. Should the punishments differ as to their nature or form, such punishment as is the closest to that imposed in the foreign country shall be enforced.

472. Under the draft Directive on International Cooperation, the transfer of prisoners would be possible where six months or more of the sentence remains to be served.

473. Ethiopia has made two requests to China and Turkey (not related to corruption) for the transfer of prisoners. In accordance with Ethiopia's request, an Ethiopian national who was sentenced to imprisonment in China was transferred to Ethiopia to serve the remaining prison term in Ethiopia. One request received from Yemen (not related to corruption) was pending at the time of the country visit.

(b) Observations on the implementation of the article

474. The Ethiopian legislation (articles 12, 20 (1) and (2) of the Criminal Code) allows for an application of the provision of Article 45. During the country visit, Ethiopia informed that two further requests for the transfer of prisoners had been received from Yemen, which were pending at the time of review.

475. In addition, while the draft Directive on International Cooperation would allow for the transfer of prisoners whose remaining sentence is equal to or above six months, it cannot serve as a legal basis until it has entered into force. Ethiopia also reported that it is in negotiations with the United Arab Emirates for an agreement on the transfer of sentenced persons, which was expected to be completed in 2016.

Article 46 Mutual legal assistance

Paragraph 1

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.

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

476. Ethiopia indicated that it has partially implemented the provision. Ethiopia cited Article 38 of the AML Proclamation No. 780/2013, the Ethiopian Criminal Justice Policy of 9 August 2009, and its bilateral agreement on MLA with Sudan. It also referred to the principle of reciprocity and Article 1 of the IGAD Convention on Mutual Legal Assistance, which is not yet in force.

477. Mutual legal assistance can be rendered on the basis of Ethiopia's bilateral agreements or arrangements and, in limited cases, based on national or international laws, including treaties such as the Convention, as well as on the principle of reciprocity. Ethiopia indicated that it shall honour a request if it was based on the Convention.

478. Mutual legal assistance is subject to dual criminality.

479. Cross-border cooperation in investigations and prosecutions remains a fairly new, although growing, enterprise in Ethiopia, with attention focused to date on police to police arrangements, notably with INTERPOL and the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO). Article 38 of the AML Proclamation No. 780/2013 stipulates that “the competent authorities shall provide the widest possible range of cooperation to the competent authorities of other States for purposes of mutual legal assistance in connection with extradition and criminal investigations and proceedings related to money laundering and financing of terrorism.”

480. According to Ethiopia's **Criminal Justice Policy of 9 August 2009**, cooperation is “based on bilateral or multilateral agreements or arrangements or, in some instances, on national law” (article 3.22.2, Types of International Cooperation and their Implementation). Furthermore, “The main areas of international cooperation among investigators or prosecutors include mutual legal assistance in proceedings pending in international tribunals, investigations in crimes with global implications, protection of witnesses and victims, acknowledging and executing foreign judgments, transfer of proceedings in criminal matters, extraditions, and freezing and confiscation of proceeds of a crime” (article 3.22.2). The Policy further states that:

“The request for international cooperation and its implementation must be processed mainly through the Ethiopian diplomatic channels, but the law should be reviewed and a system must be established to allow direct communications with the concerned organs depending on the nature of the issue and the laws and agreements on which it is based. The role of coordinating related activities in this regard will be that of the Ministry of Justice.”

481. Ethiopia has one bilateral treaty on mutual legal assistance in place with Sudan. The Sudan treaty covers inter alia mutual legal assistance (termed judicial cooperation) in civil and criminal matters. However, the mutual legal assistance treaty with Sudan covers only assistance in criminal matters regarding the service of summons or other judicial documents and the obtaining of evidence (Article 23).
482. Negotiations are underway to enter into further treaties on international cooperation with Botswana, India and South Africa, as well as China and the United Arab Emirates. At the regional level, as mentioned above, Ethiopia has recently ratified the Inter-Governmental Authority on Development (IGAD) Convention on mutual legal assistance, although it is not yet in force.
483. It is noted for information that Article 1 of IGAD Convention on Mutual Legal Assistance in Criminal Matters obliges State parties to cooperate with each other, to the widest extent possible for the purposes of criminal matters in accordance with that Convention.
484. Between 2010 and the date of the country visit (February 2015), Ethiopia received 8 requests for mutual legal assistance in criminal matters: from Yemen, Turkey and 2 from Egypt (all four of which have been honored) as well as from Kenya, Switzerland, Pakistan and the United Arab Emirates, which were pending at the time of review; only one of these requests related to corruption (from the UAE in the Gold scam case described under chapter III above). Ethiopia made 2 requests for mutual legal assistance to Saudi Arabia (both pending at the time of review).
485. Regarding the application of the Convention in mutual legal assistance matters, it was explained that Ethiopia has responded to a request from Pakistan, which cited UNCAC as a legal basis for cooperation. In another case, more specifically the gold scam case (described under chapter III above), FEACC made a request to the Ethiopian Federal High Court for a value-based court order against the assets of accused which were found in Dubai, United Arab Emirates (UAE). At the time of review, FEACC has received concrete information about the assets in Dubai and was preparing a formal MLA request to be sent to the UAE for the enforcement of the freezing order against the assets of the accused. The request will be based on UNCAC.
486. Ethiopia indicated that the incorporation of legislation on mutual legal assistance in the future laws of the country will be given due emphasis. Such laws will be codified in the draft Criminal Procedure Law. The establishment of a database for the tracking and registering of requests received and made will also be given priority in the years to come.

(b) Observations on the implementation of the article

487. During the country visit, Ethiopia explained that negotiations relating to any bilateral treaty on extradition would also entail a parallel discussion on a treaty on mutual legal assistance with the same country. Nevertheless, the bilateral agreement Ethiopia has quoted with Sudan is too restrictive for it to be considered to be fully in compliance with

Article 46 subparagraph 1 of the Convention. However, Ethiopia's ability and practice of applying the Convention as a basis for making and receiving MLA requests is encouraging. As noted above, it is recommended that Ethiopia take steps towards swiftly putting in place comprehensive legislation and procedures on international cooperation to allow it to render assistance in respect of offences under the Convention.

488. While the entry into force of the IGAD Convention on Mutual Assistance in Criminal Matters may allow for enhanced implementation of the provision under review, this cannot be taken into consideration at present.

Article 46 Mutual legal assistance

Paragraph 2

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 the article

489. Ethiopia indicated that it has partially implemented the provision. Ethiopia referred to Article 34 of the Criminal Code.

Criminal Code

Article 34

(1) A juridical person other than the administrative bodies of the State is punishable as a principal criminal, an instigator or an accomplice where it is expressly provided by law. A juridical person shall be deemed to have committed a crime and punished as such where one of its officials or employees commits a crime as a principal criminal, an instigator or an accomplice in connection with the activity of the juridical person with the intent of promoting its interest by an unlawful means or by violating its legal duty or by unduly using the juridical person as a means.

(2) The juridical person is punishable with fine under sub-article (3) or sub-article (4) of Article 90 of this Code; and, where necessary, an additional penalty may be imposed to suspend, close or wind up the juridical person.

(3) The punishment of the juridical person shall not exclude the penalty to be imposed on its officials or employees for their personal criminal guilt.

(4) For the purpose of this Article "juridical person" means a body which has governmental or non-governmental, public or private structure and includes any legally recognized institution or association set up for commercial, industrial, political, religious or any other purpose.

490. Regarding requests for mutual legal assistance where the subject was a legal person, Ethiopia indicated that there would be no issues in the execution of such requests under Ethiopian law. Ethiopia indicated that the Kenyan Anti-Corruption Commission requested information from Ethiopia on the status of a company based in Ethiopia in connection with an alleged corruption offence in Kenya. The request is under consideration by Ethiopia.

(b) Observations on the implementation of the article

491. The Ethiopian legislation recognizes the criminal liability of legal persons in Article 34 of the Criminal Code. There are no apparent obstacles to the provision of mutual legal assistance for offences involving legal persons.

Article 46 Mutual legal assistance

Paragraph 3

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;*
- (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 the article

492. Article 39 of the AML Proclamation No. 780/2013 and Article 23 of the Judicial Cooperation Agreement with Sudan are relevant. Ethiopia also referred to the draft Directive for International Cooperation on Criminal Matters and Article 1 (5) of the IGAD Convention on Mutual Legal Assistance, which is not yet in force.

493. **Article 39 of the AML Proclamation No. 780/2013** provides that:

- (2) Mutual legal assistance may include in particular:
- (a) taking evidence or statements from persons;

- (b) assisting in making detained persons or voluntary witnesses available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- (c) effecting service of judicial documents;
- (d) executing searches and seizures;
- (e) examining objects and sites;
- (f) providing information, evidentiary items and expert evaluations;
- (g) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (h) identifying or tracing the proceeds of crime or instrumentalities or other things for evidentiary or confiscation purposes;
- (i) confiscation of funds or property;
- (j) executing freezing or seizer and other provisional measures;
- (k) any other form of mutual legal assistance not contrary to the laws of Ethiopia.

494. The Treaty on Mutual Legal Assistance with Sudan covers only assistance in criminal matters regarding the service of summons or other judicial documents and the obtaining of evidence (Article 23).

Article 23. Extent of Judicial Assistance

The Contracting Parties shall grant each other judicial assistance in criminal matters regarding the service of summons or other judicial documents and the obtaining of evidence.

495. Most of the requests for mutual legal assistance that Ethiopia has received relate to the service of judicial documents.

496. Regarding subparagraphs 3 (j) and (k) of the article under review, Ethiopia indicated that it has received one request from Egypt in the wake of the Arab Spring for verification of a bank account in Ethiopia and, upon verification, of freezing of the related assets. Ethiopia investigated the matter in accordance with the request and no suspicious bank account was found.

497. The following information is provided for information.

498. *The draft Directive on International Cooperation prepared by the Ministry of Justice allows for the following types of assistance to be rendered:*

- *Execution of a foreign criminal sentence, as stipulated in article 22 of the Criminal Code of Ethiopia;*
- *Service of judicial documents;*
- *Identification and location of persons;*
- *Location and/or seizure of property suspected to be tainted under the asset recovery initiative, the framework established by INTERPOL General Secretary;*
- *Enforcement of foreign forfeitures and restoration of property; and*
- *In any other matter that is not contrary to the laws of the country and for all other legal consequences provided by the Criminal Code of Ethiopia.*

499. *The IGAD Convention applies to Mutual Legal Assistance in Criminal Matters, defined to comprise every investigation, prosecution or judicial proceeding relating to a criminal offence, including "an investigation, prosecution or proceedings relating to:*

- (a) the forfeiture or confiscation of proceeds of crime;*
- (b) the imposition or recovery of a pecuniary penalty in respect of a prescribed offence;*
- (c) the tracing, freezing and restraint of property that may be forfeited or confiscated."*

500. *Article 1(5) of IGAD Convention on Mutual Legal Assistance in Criminal Matters provides examples or areas of assistance in which mutual legal assistance may be offered. These are:*

- a) Identifying and locating of persons for evidential purposes;*
- b) Examining witnesses;*
- c) Effecting service of judicial documents;*
- d) Executing searches and seizures;*
- e) Examining objects and sites;*
- f) Providing (including formal production where necessary) originals or certified copies of relevant documents and records, including but not limited to government, bank, financial, corporate or business records;*
- g) Providing information, evidentiary items and expert evaluations;*
- h) Facilitating the voluntary attendance of witnesses or potential witnesses in the requesting State Party;*
- i) Facilitating the taking of evidence through video conference;*
- j) Effecting a temporary transfer of persons in custody to appear as a witness;*
- k) Intercepting of items during the course of carriage by a public postal service;*
- l) Identifying, freezing and tracing proceeds of crime;*
- m) Recovering of assets;*
- n) Preserving communications data;*
- o) Intercepting of telecommunications;*
- p) Conducting covert surveillance by the use of a surveillance device;*
- q) Any other type of assistance or evidence gathering that is not contrary to the domestic law of the requested State Party.*

(b) Observations on the implementation of the article

501. The relevant provisions of article 39 of the AML Proclamation No. 780/2013 allow a partial application of article 46 subparagraph 3 of the Convention. The execution of mutual legal assistance requests received by the State party under review show evidence of the implementation of this provision. As noted above, it is recommended that Ethiopia take steps towards swiftly putting in place comprehensive legislation and procedures on international cooperation to allow it to render assistance in respect of the matters outlined in the provision under review.

502. In addition, while the entry into force of the IGAD Convention on Mutual Assistance in Criminal Matters may allow for enhanced implementation of the provision under review, this cannot be taken into consideration at present.

Article 46 Mutual legal assistance

Paragraphs 4 and 5

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.

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 the article

503. Ethiopia indicated that it has partially implemented the provision. Authorities indicated that in principle this information can be transmitted by Ethiopia. As a matter of practice, the spontaneous sharing of information is most likely to happen with other IGAD countries. However, to date, Ethiopia has had no experience of spontaneous transmission of information to other authorities.

(b) Observations on the implementation of the article

504. The relevant provisions of the IGAD Convention on Mutual Legal Assistance may allow for the exchange of information between Ethiopia and another State party once entered into force. However, Ethiopia stated that it does not have any practical experience in this field.

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 the article

505. Ethiopia cited Article 13 of the AML Proclamation No. 780/2013, Articles 7 (5) and 12 (g) of the Establishment of the FEACC Proclamation No. 433/2005 and Article 10 of the Revised FEACC Establishment (Amendment) Proclamation No. 883/2015. Ethiopia also referred to Article 37 of the IGAD Convention on Mutual Legal Assistance, which is not yet in force.

Article 13 of the AML Proclamation No. 780/2013

The Center shall, without prejudice to its powers and duties specified under other provisions of this Proclamation:

- 1/ collect, receive, store, survey, analyze and disseminate information concerning suspected money laundering and financing of terrorism in accordance with this Proclamation;
- 2/ enhance public awareness and understanding of matters related to money laundering and financing of terrorism;
- 3/ conduct research relating to the source, mechanisms of commission, type, nature and dangers of money laundering and financing of terrorism and indicate solutions to the relevant bodies;
- 4/ without prejudice to the power of the National Bank to regulate financial institutions, issue guidelines to assist financial institutions and designated non-financial businesses and professions to comply with the obligations provided under this Proclamation;
- 5/ establish appropriate information management systems to ensure the protection of sensitive and confidential information disclosed to it under this Proclamation;
- 6/ maintain comprehensive statistics on its operations, including the number of reports received pursuant to this Proclamation, the number of referrals made to law enforcement bodies, the number of criminal investigations and prosecutions based on those referrals, and the number of international requests for assistance;
- 7/ refer promptly to the appropriate law enforcement organ where, based on its analysis and assessment, there exists reasonable grounds to suspect that the report or information it has received is relevant to an investigation or prosecution of offence not covered under this Proclamation;
- 8/ either independently or in collaboration with the regulatory authorities, conduct inspections of financial institutions and designated non-financial businesses and professions to ensure compliance with this Proclamation;
- 9/ follow up the implementation and coordinate the actions of other governmental institutions combating money laundering and financing of terrorism;
- 10/ carry out other related activities.

Articles 7 (5) and 12 (g), Establishment of the FEACC Proclamation No. 433/2005

The Commission shall have the powers and duties of:

- 7 (5) Where there is reasonable suspicion in connection with corruption offences, to investigate and obtain information about, with the order of the commissioner, any bank account of suspected persons; and cause the attachment, with court order of same where necessary;

...

12 (g) to issue warrants to search and obtain information there from, of any bank account of any person or organization if there is reasonable suspicion that such irrelevant to a case under investigation.

Article 10, Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proclamation No. 883/2015

10/ The phrase “and enforce international cooperation in accordance with laws and policies of the country” is added at the end of sub-article (19) of article 7 (as renumbered to sub-article 9 of this proclamation).

506. The Financial Intelligence Centre of Ethiopia can access bank and other financial records and such records can be shared internationally. Ethiopia would not invoke bank secrecy in responding to mutual legal assistance requests.

507. Ethiopia has received one request from Egypt in the wake of the Arab Spring for verification of a bank account in Ethiopia and, upon verification, of freezing of the related assets. The matter was investigated by Ethiopia and no suspicious bank account was found. No issues of bank secrecy were raised. In addition, Ethiopia received one request from Pakistan to trace the assets of individuals and their company believed to operate in Ethiopia. Ethiopia cooperated with Pakistan based on the principles of the Convention.

508. The following information is provided for information.

Article 37 of IGAD Convention on Mutual Legal Assistance in Criminal Matters

Assistance shall not be refused solely on the grounds that the offence amounts to an offence of a fiscal nature or on the grounds of bank or other financial institution secrecy rules.

(b) Observations on the implementation of the article

509. The Ethiopian legislation allows for the application of Article 46 subparagraph 8 of the Convention, through Article 13 of the AML Proclamation No. 780/2013. Moreover, pursuant to the FEACC Establishment Proclamation No. 433/2005, the Commissioner of FEACC can issue an order for the bank details of a suspected person without going to court. The Revised FEACC Establishment (Amendment) Proclamation No. 883/2015 in Article 10 provides for FEACC’s role in enforcing international cooperation.

510. In cross-referencing the information provided under Article 31 (7) of the present Convention, Ethiopia indicated that any information in connection with the ongoing investigation of corruption offences can be sought from banks by the Commissioner of the FEACC by letter or by court order, where necessary. In line with this, information was

sought by the Commissioner of FEACC in a number of cases and the required information was obtained without bank secrecy being an obstacle.

511. Article 37 of the IGAD Convention on Mutual Legal Assistance, however, remains subject to its entry into force and cannot be considered as a legal basis at this stage.

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 the article

512. Ethiopia indicated that it has partially implemented the provision through Article 40 of the AML Proclamation No. 780/2013 and Article 1 of the Judicial Cooperation Agreement with Sudan, which establish dual criminality requirements. Ethiopia also referred to Article 33 of the IGAD Convention on Mutual Legal Assistance, which is not yet in force.

513. As noted above, mutual legal assistance is subject to dual criminality. The offence must be recognized under Ethiopian law, even if it is phrased using different terminology.

AML Proclamation No. 780/2013 Article 40

1) A request for mutual legal assistance may be refused only if:

(a) it was not made by a competent authority according to the legislation of the requesting country, or its contents are in substantial non-conformity with Article 48 of this Proclamation;

(b) its execution is likely to prejudice the law and order, sovereignty, security, public interest or other essential interests of Ethiopia;

(c) the offence to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in the territory of Ethiopia;

- (d) there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, gender or status;
 - (e) the offence referred to in the request is not provided for under the legislation of Ethiopia or does not have features in common with an offence provided for under the legislation of Ethiopia;
 - (f) under the legislation of Ethiopia, the measures requested, or any other measures having similar effects, are not permitted with respect to the offence referred to in the request;
 - (g) the measures requested cannot be ordered or executed by reason of period of limitations under the legislation of Ethiopia or the law of the requesting State;
 - (h) the decision whose execution is being requested is not enforceable under the legislation of Ethiopia; or
 - (i) the decision rendered abroad was issued under conditions that did not afford sufficient protections with respect to the rights of the defendant.
- 2) The competent authority shall promptly inform the competent authority of the requesting State of the grounds for refusal to execute the request.

514. A related provision is found in the draft Directive on International Cooperation.
515. Dual criminality is required under the Mutual Legal Assistance Treaty with Sudan, which defines "Criminal Matters" in Article 1 to mean "investigations, inquiries, trials or other proceedings relating to offences under the laws of the Contracting Parties."
516. There has been no experience in the application of this provision. Ethiopia has not received any requests where the offence was not recognized or dual criminality issues arose. Ethiopia would render non-coercive assistance if the offence was not recognized under Ethiopian law.
517. While dual criminality issues have not arisen in practice in mutual legal assistance cases, Ethiopia indicated that it would cooperate with a requesting State to see if the offence can be recognized under Ethiopian law.
518. Ethiopia indicated that it has not implemented subparagraph (c) of the provision under review.
519. The following information is provided for information.

IGAD Convention on Mutual Legal Assistance in Criminal Matters, Article 33 (Dual criminality)

- 1. Each State Party is encouraged, where consistent with the basic concepts of its legal system, to render assistance in the absence of dual criminality.*
- 2. Each State Party shall consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance in the absence of dual criminality.*

(b) Observations on the implementation of the article

520. Ethiopia has not yet experienced a case where issues of double criminality were raised. However, dual criminality is a requirement under its existing law and treaty. During the country visit, Ethiopia indicated that as a matter of practice, any requests that were deemed non-coercive and not explicitly against Ethiopian law would be considered favourably. While Ethiopia appears to have implemented the provision under review as a matter of practice, it is recommended that Ethiopia adopt measures to ensure that in assessing dual criminality restrictions, the purposes of the Convention are taken into account, and to ensure that non-coercive assistance is provided in the absence of dual criminality.

521. The application of Article 33 of the IGAD Convention remains subject to its entry into force and cannot be considered as a legal basis at this stage.

Article 46 Mutual legal assistance

Paragraphs 10 to 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 the article

522. Ethiopia indicated that it has partially implemented the provision under review through Article 25 of the Judicial Cooperation Agreement with Sudan. Ethiopia also referred to the draft Directive for International Cooperation on Criminal Matters and Article 17 of the IGAD Convention on Mutual Legal Assistance, which are not yet in force.

523. Article 25 of the Treaty on Mutual Legal Assistance with Sudan applies to all witnesses and experts whose presence is requested, not just those being detained or serving a sentence. The article provides for the immunity of such persons as follows:

“Any witness or expert called for a testimony in accordance with the provisions of the requested State by one of the contracting parties shall be immune from any legal action including arrest, investigation and other restrictions of freedom for any other offence alleged to be committed by such expert or witness.”

A consent requirement and other conditions of transfer are not addressed in the treaty.

524. Ethiopia has had no experience with the voluntary transfer of prisoners from or to Ethiopia for giving testimony or for other evidentiary purposes.

525. The following information is provided for information.

526. *Pursuant to Article 3 of the draft Directive on International Cooperation, a witness who is in prison in Ethiopia whose presence is requested by another State for giving testimony or other evidentiary purposes may be transferred if he agrees. A similar measure is also found in Article 17 of the IGAD Convention ("Voluntary attendance of persons in custody").*

527. Article 17 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 17: Voluntary attendance of persons in custody

1. A request under this Convention may seek the temporary transfer of a person in custody in the requested State Party for purposes of identification, providing assistance in obtaining evidence for investigations or prosecutions or to appear as a witness before a court exercising jurisdiction in the requesting State Party.

2. The request shall specify:

a) the subject matter upon which it is desired to examine the witness;

b) the reasons for which the personal appearance of the witness is required.

3. The consent of the person in custody is a pre - requisite for the transfer. A statement of consent or a copy shall be provided. The requested State Party shall refuse to comply with a request for the transfer of a person in custody if the person concerned does not consent to the transfer.

4. A person in custody whose transfer is the subject of a request and who does not consent to the transfer shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested State Party.

5. Where a person in custody is transferred, the requested State Party shall notify the requesting State Party of:

a) the dates upon which the person is due under the law of the requested State Party to be released from custody; and

b) the dates by which the requested State Party requires the return of the person; and shall notify the requesting State Party of any variations in such dates.

6. Nothing in this Article shall preclude the release in the requesting State Party without return to the requested State Party of any person transferred where the two States and the person concerned have agreed to such release.

528. Relevant provisions are also found in Article 18 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters:

Article 18: Undertaking to witness

1. A witness appearing in the requesting State Party in response to a request shall be given an undertaking by the requesting State Party that he shall not be subject to prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions occurring before the time of the departure of the person from the requested State Party.

(b) Observations on the implementation of the article

529. Ethiopia has not implemented the provisions under review. While Article 25 of the Judicial Cooperation Agreement with Sudan provides for the immunity of witnesses and experts, it does not address the consent requirement and other conditions of transfer. Ethiopia is encouraged to adopt relevant measures in this regard.

530. Moreover, the IGAD Convention and the draft Directive on International Cooperation cannot be taken into consideration at this stage and used as a legal basis until they have entered into force.

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 the article

531. In 2010, pursuant to Article 16 (14) of Proclamation No.691/2010 “Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia”, a central authority was established in the Ministry of Justice called the International Cooperation on Legal Affairs Directorate , with responsibility to coordinate activities involving international cooperation in criminal matters, including receiving and transmitting such requests with the powers and duties to "coordinate activities involving international judicial assistance with respect to criminal cases".
532. The International Cooperation on Legal Affairs Directorate is part of the Investigation and Prosecution Directorate in the Ministry of Justice. The team is responsible for all international cooperation matters, including extradition, mutual legal assistance and the transfer of sentenced persons. The team has additional responsibilities as it is responsible for the enforcement of international treaties on human rights and a number of other international and regional treaties. The team also assists the Ministry of Foreign Affairs in reporting to treaty bodies on the implementation of these international treaties. The Business Process Reengineering (BPR) initiative mentioned in the introduction recommended that this team be staffed by five prosecutors, but in practice there are only 2-3 prosecutors assigned at the current time.
533. Ethiopia’s Criminal Justice Policy further confirms that the Ministry of Justice should be responsible for the role of coordinating activities in relation to international cooperation in criminal matters, although requests are to be transmitted mainly through diplomatic channels unless a bilateral or multilateral arrangement is in place.
534. Ethiopia indicated that informal assistance can be rendered through INTERPOL in the absence of a written request, if followed by a formal request. Under the Mutual Legal Assistance treaty with Sudan (Article 3), requests for assistance under the treaty shall be made through the Central Authorities of the Contracting Parties.
535. Ethiopia has not made the requisite notification of its central authority to the United Nations.

(b) Observations on the implementation of the article

536. Ethiopia has not made the requisite notification of its central authority to the United Nations. It is encouraged to send the requested information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

537. It is further recommended that Ethiopia take steps to strengthen the operation of its central authority, to ensure the speedy and proper execution of requests in line with the provision under review, bearing in mind the technical assistance requested by Ethiopia for capacity building for the authorities responsible for international cooperation.

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 the article

538. According to Ethiopia's Criminal Justice Policy, requests should be transmitted through diplomatic channels unless a bilateral or multilateral arrangement is in place. Ethiopia further indicated that informal assistance can be rendered through INTERPOL in the absence of a written request, if followed by a formal request.

539. Ethiopia noted that it has not notified the Secretary-General of the language requirements.

540. The following information is provided for information.

541. *The draft Directive on International Cooperation indicates that requests and their annexes shall be made in Amharic or English or accompanied by a translation in Amharic or English.*

Articles 4 and 38 of IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 4: Form of the request

1. Requests shall be in writing, except that in an urgent matter a request may be made orally provided that it is confirmed in writing forthwith.

2. For the purpose of paragraph (1) ‘in writing’ includes e-mail, facsimile or other agreed forms of electronic transmission provided appropriate levels of security and authentication are in place.

Article 38: Language

1. The documents in support of a request for mutual legal assistance shall be in the language of the requesting or requested State Party. The requested State Party may require a translation into one of the official languages of IGAD to be chosen by it.
2. The official languages of IGAD are English and French.

(b) Observations on the implementation of the article

542. Ethiopia has not made the requisite notification to the United Nations. It is encouraged to send the requested information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).
543. While the entry into force of the draft Directive on International Cooperation and the IGAD Convention on Mutual Assistance in Criminal Matters may allow for enhanced implementation of the provision under review, this cannot be taken into consideration at present. Ethiopia is encouraged to specify the matters addressed in the provision under review in its legislation.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

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.

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 the article

544. The content of requests for assistance regarding the service of judicial documents and the obtaining of evidence are set out in Articles 48 and 49 of the AML Proclamation No. 780/2013 and Articles 11 and 14 of the mutual legal assistance treaty with Sudan. Ethiopia also referred to Article 5 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters, which is not yet in force.

Article 48 of the AML Proclamation No. 780/2013

1) Requests shall specify:

- (a) the identity of the authority requesting the measure;
- (b) the name and function of the authority conducting the investigation, prosecution or proceedings;
- (c) the requested authority;
- (d) the purpose of the request and any relevant contextual remarks;
- (e) the facts in support of the request;
- (f) any known details that may facilitate identification of the person concerned, in particular name, marital status, nationality, address and location and occupation;
- (g) any information necessary for identifying and tracing the person, instrumentalities, funds or property in question;
- (h) the text of the statutory provision establishing the offence or, where applicable, a statement of the law applicable to the offence and an indication of the penalty that can be imposed for the offence; and
- (i) a description of the assistance required.

2) In addition, requests shall include the following particulars in certain specific cases:

- (a) in the case of requests for provisional measures, a description of the measures sought;
- (b) in the case of requests for the issuance of a confiscation order, a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;
- (c) in the case of a request for the enforcement of an order relating to provisional measures or confiscation:
 - 1) a certified copy of the order, and a statement of the grounds for issuing the order if they are not indicated in the order itself;
 - 2) a document certifying that the order is enforceable and not subject to ordinary means of appeal; and
 - 3) where necessary and if possible, any information concerning third - party rights of claim on the funds or property;
- (d) in the case of requests for extradition, if the person has been convicted of an offence, the original or a certified copy of the judgment or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served.

Article 49 of the AML Proclamation No. 780/2013

The Center or the competent authority handling the matter may request additional information from the competent authority of the requesting State if it appears necessary to execute or facilitate the execution of the request.

545. Ethiopia indicated that one request was sent back to the requesting country because it was not made in English. In another case, there were insufficient details of the address or whereabouts of the suspect to whom documents should be served for Ethiopia to execute the request. Consultations were held with the requesting State through the Ministry of Foreign Affairs.

546. The following information is provided for information.

547. *According to the draft Directive on International Cooperation, a request for mutual legal assistance includes the following:*

- a) The full address of the requesting body;*
- b) The nature, provisions and short description of the crime on which cooperation is required;*
- c) The type and details of the cooperation required;*
- d) The intended purpose of the evidence or information to be obtained by the request;*
- e) The duration of the cooperation;*
- f) The location where the thing is deemed located;*
- g) The short description of the charges (If any);*
- h) Request of confidentiality (when needed);*
- i) If it is urgent matter, the urgency shall be stated;*
- j) The necessary detail addresses of the requesting country;*
- k) In case no charges are filed, the adequate reason for suspicion;*
- l) All other necessary things.*

IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 5: Contents of the request

1. Except in the case of a request for the preservation of communications data under Article 25, a request under this part of the Convention shall:

- (a) specify the nature of the assistance requested and details of any particular procedure that the Requesting State Party wishes to be followed;*
- (b) the purpose for which evidence, information or material is sought;*
- (c) contain the information relevant to the assistance sought;*
- (d) indicate any time limit within which compliance with the request is desired, stating reasons;*
- (e) contain the following information:*
 - (i) the identity of the agency or authority initiating the request;*
 - (ii) the nature of the criminal matter,*
 - (iii) whether or not criminal proceedings have been instituted.*
- (f) where criminal proceedings have been instituted, contain the following information:*
 - (i) the court exercising jurisdiction in the proceedings;*
 - (ii) the identity of the accused person;*
 - (iii) the offence(s) of which he stands accused, and a summary of the facts;*
 - (iv) the stage reached in the proceedings; and*
 - (v) any date fixed for further stages in the proceedings.*

(g) where criminal proceedings have not been instituted, state the offence which the Competent Authority of the Requesting State Party has reasonable grounds to suspect has been, is being or will be committed with a summary of known facts.

2. Notwithstanding the absence of any of formalities set out above the requested State Party may in its discretion execute the request.

3. A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

(b) Observations on the implementation of the article

548. The State under review has partially implemented the provisions of article 46 subparagraph 15 and 16 of the Convention through articles 11 and 14 of the mutual legal assistance treaty with Sudan, and articles 48 and 49 of the AML Proclamation No. 780/2013. While article 5 of the IGAD Convention can further enhance the implementation of the provision under review, it cannot be taken into consideration and serve as a legal basis until it has entered into force.

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 the article

549. Under the mutual legal assistance treaty with Sudan, requests for the service of judicial documents and the obtaining of evidence shall be executed in accordance with the law of the requested State and, in the case of service of documents, the document of execution (Article 12).

550. The following information is provided for information.

551. *According to the draft Directive on International Cooperation, the work of international cooperation shall be made on the basis of reciprocity or based on bilateral or multilateral agreements. This shall in no way contradict with laws of Ethiopia. In addition, the draft Directive states that international cooperation requests can be made and handled based on Ethiopian laws.*

552. *Also under the IGAD Convention on Mutual Legal Assistance in Criminal Matters, the law of the requested State Party governs the procedure for complying with a request (Article 3).*

Article 3 of IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 3: Applicable law

1. *The law of the requested State Party will govern the procedure for complying with a request under this Convention.*
2. *Where admissibility of evidence to be gathered requires certain formalities and procedures to be adhered to under the laws of the requesting State Party, it may ask the requested State Party, where possible, to comply with those formalities and procedures.*

(b) Observations on the implementation of the article

553. The mutual legal assistance treaty with Sudan allows the State under review to implement the provisions of Article 46 subparagraph 17 of the Convention. However, Article 3 of the IGAD Convention and the draft Directive on International Cooperation cannot be considered at present and serve as a legal basis until they have entered into force.
554. During the country visit, Ethiopia explained that the principle of reciprocity *de facto* already serves as the basis for mutual legal assistance and that the Directive on International Cooperation would codify this practice. Moreover, Ethiopia's Criminal Justice Policy of 9 August 2009 (article 3.22.2) provides that cooperation is "based on bilateral or multilateral agreements or arrangements or, in some instances, on national law".

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 the article

555. While there is no law or previous experience in the use of video conference, technology and other instruments and equipment can be used to take evidence and transmit such evidence to a requesting State. Ethiopia will also accept evidence obtained by video and other communication technology. There is video conferencing equipment in the Supreme Court of Ethiopia.

(b) Observations on the implementation of the article

556. The Ethiopian legislation and existing treaty do not provide any explicit legal provision allowing for the hearing of a witness by videoconference. However, it is indicated that such a technique exists in practice.

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 the article

557. Ethiopia has not implemented the provision. It referred to the draft Directive on International Cooperation, which contains a provision on the limitation on use of such information or evidence, but does not address the disclosure of exculpatory evidence upon prior consultation with the requesting State. Relevant provisions are also found in Article 35 (Rule of specialty) of the IGAD Convention on Mutual Legal Assistance in Criminal Matters, which is not yet in force.

558. There have been no issues regarding the limitation on use of information or evidence in practice. Ethiopia indicated it will consider whether there is a need to include in the draft Directive on International Cooperation a provision on the disclosure of exculpatory evidence upon prior consultation with a requesting State.

559. The following information is provided for information.

Article 35 of the IGAD Convention on Mutual Legal Assistance.

Article 35: Rule of specialty

The requesting State Party shall not transmit to another State or use any information or evidence obtained in response to a request for assistance under this Convention in connection with any matter other than the criminal matter specified in the request without the prior consent of the requested State Party.

(b) Observations on the implementation of the article

560. Ethiopia has not implemented the provision under review. A limitation on the use of information provided through MLA is not addressed in Ethiopia's law or treaty. The IGAD Convention and the draft Directive on International Cooperation cannot be

considered or used as a legal basis until they have entered into force. Moreover, these do not take into account that transmission of exculpatory evidence should occur after consultation with the requesting State.

561. Ethiopia is encouraged to expedite the adoption of the draft Directive on International Cooperation and to ensure that it addresses the requirements of the provision under review.

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 the article

562. Ethiopia has partially implemented the provision. Article 50 of the AML Proclamation No. 780/2013 is relevant.

Article 50 of the AML Proclamation No.780/2013

Where a request requires that its existence and substance be kept confidential, such requirement shall be observed. If that is not possible, the requesting authorities shall be promptly informed thereof.

563. The draft Directive on International Cooperation contains a provision on confidentiality, but does not address the obligation to notify the requesting State if confidentiality cannot be ensured. Relevant provisions are also found in Article 36 (Confidentiality) of the IGAD Convention on Mutual Legal Assistance in Criminal Matters, which is not yet in force.

564. There have been no issues regarding compliance with confidentiality requirements in practice.

565. The following information is provided for information.

Article 36 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 36: Confidentiality

The Central Authorities and the competent authorities of the requesting and requested States Parties shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in the criminal matter specified in the request and where otherwise authorised by the requested State Party.

(b) Observations on the implementation of the article

566. Under the Ethiopian legislation and treaty, there is no legal obligation to inform the requesting State should the protection of confidentiality not be guaranteed, except in the case of money laundering offences. However, Ethiopia indicated that this is done as a matter of practice. While the IGAD Convention and the Directive on International Cooperation can enhance the implementation of the provision under review, they cannot be considered or used as a legal basis until they have entered into force.
567. Ethiopia is encouraged to expedite the adoption of the draft Directive on International Cooperation and to ensure that it contains the obligation to inform the requesting State if it cannot comply with the requirement of confidentiality.

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; 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 the article

568. Under the mutual legal assistance treaty with Sudan, legal assistance may be refused (Article 9) if a Party considers that such execution is contrary to its basic legal principles or is prejudicial to its national sovereignty, security, public order, moral or Constitution. The matter is also addressed in Article 40 of the AML Proclamation No. 780/2013 (quoted above under subparagraph 9 (a) of article 46). Ethiopia also referred to Articles 10 and 11 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters, which is not yet in force.
569. Pursuant to the draft Directive on International Cooperation, mutual legal assistance may be refused where the offence is not recognized under Ethiopian law. Additional grounds for refusal are where the matter would contravene national interests or security, and violations of the principle of equality.
570. Ethiopia informed that to date no requests for mutual legal assistance have been refused by the Ethiopian authorities, nor have any requests Ethiopia made been refused by the requested State.

571. The following information is provided for information.

572. According to the draft Directive on International Cooperation, Ethiopia may refuse to comply with request for assistance, if:
- a) a request threatening the national interest of the country;
 - b) a request concerning crime of political nature;
 - c) a request for cooperation which contradicts equity and impartiality by favouring a one-sided investigation process;

Articles 10 and 11 of IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 10: Grounds for refusal

1. The requested State Party may refuse to comply in whole or in part with a request for assistance under this Convention:

- a) if the requested State Party considers that the criminal matter concerns:
 - (i) an offence or proceedings of a political character; or
 - (ii) conduct which in the requesting State Party is an offence only under military law or a law relating to military obligations; or
 - (iii) an offence the prosecution of which in the requesting State Party would be incompatible with the Requested State Party's law on double jeopardy (*ne bis in idem*).
 - b) to the extent that it appears to the requested State Party that compliance would be contrary to the constitution of the requested State Party, or would prejudice the security, international relations or other essential public interests of the requested State Party; or
 - c) where there are substantial grounds leading the requested State Party to believe that compliance would facilitate the prosecution or punishment of any person on account of race, ethnic origin, gender, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.
2. The requested State Party may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the law of that State be taken.
3. An offence of a political nature shall not include any offence in respect of which the States Parties have assumed an obligation, pursuant to any multilateral convention, or under international law, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition.

Article 11: Consultation between States Parties

1. Before refusing a request, or postponing its execution, in whole or in part, under any part of this Convention the requested State Party shall consider forthwith whether assistance may be granted subject to certain conditions. If the requesting State Party accepts assistance subject to these conditions, it shall comply with them.
2. If the requesting State Party refuses to give the undertaking or to comply with the conditions, the requested State Party may refuse to grant the assistance sought in whole or in part.

3. *The requested State Party shall give the requesting State Party an opportunity to present its reasons in favour of providing the assistance sought.*

(b) Observations on the implementation of the article

573. Grounds for refusal are established in the mutual legal assistance treaty with Sudan (Article 9), and Article 40 of the AML Proclamation No. 780/2013. Ethiopia is encouraged to align the provisions of the draft Directive on International Cooperation to the paragraph under review. However, the IGAD Convention on Mutual Legal Assistance In Criminal Matters and the draft Directive on International Cooperation cannot serve as a legal basis until they have entered into force.

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 of the article

574. The mutual legal assistance treaty with Sudan does not recognize the fact that an offence is also considered to involve fiscal matters as a ground for refusal. Ethiopia would render assistance even on tax or fiscal matters, though there has been no experience in this regard. No requests Ethiopia has made have been refused on these grounds.

575. The following information is provided for information.

576. *The draft Directive on International Cooperation does not provide for the refusal of assistance on the grounds that the offence involves fiscal matters. Article 37 of IGAD Convention on Mutual Legal Assistance in Criminal Matters was further cited.*

Article 37: Fiscal offences

Assistance shall not be refused solely on the grounds that the offence amounts to an offence of a fiscal nature or on the grounds of bank or other financial institution secrecy rules.

(b) Observations on the implementation of the article

577. The provision of Article 46 subparagraph 22 of the Convention is implemented in Ethiopia's MLA treaty with Sudan; however there is no existing practice in this regard. Article 37 of the IGAD Convention and the draft Directive on International Cooperation would further enhance implementation once they enter into force and serve as a legal basis.

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 the article

578. According to article 40(2) of the AML Proclamation No 780/2013, the competent authority shall promptly inform the competent authority of the requesting State of the grounds for refusal to execute the request. No relevant provision is contained in the MLA treaty with Sudan.

579. The following information is provided for information.

580. *According to the draft Directive on International Cooperation, common justice cooperation requests can be made in partial or in full. If a negative response shall be given to the request, the reason for the same shall be stated to the requesting country. Furthermore, Article 11 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters is also referred to (quoted above under paragraph 21 of Article 46), although it is not yet in force.*

(b) Observations on the implementation of the article

581. The AML Proclamation 780/2013 partially addresses the obligation to give reasons for refusing mutual legal assistance, as required by the provision under review. Ethiopia is encouraged to expedite the adoption of the draft Directive on International Cooperation and IGAD Convention on Mutual Assistance in Criminal Matters, which would implement the provision.

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 the article

582. The mutual legal assistance treaty with Sudan (Article 24(2)) provides that the requested State should communicate follow-up to a request and provide a copy of a decision reached, if any, on the pursuit of a suspected criminal. It should also, upon request, notify the requesting State in a reasonable period of time of the status of requests for the obtaining of evidence (Article 15).

583. As a matter of practice, Ethiopia endeavours to render assistance within the timeframe requested. Delays are usually occasioned by the lack of particulars in a request. In one case involving the service of judicial documents upon a request from Yemen, the requested assistance was provided by Ethiopia within two weeks. Ethiopia indicated that it can usually respond to requests within a timeframe of between two weeks and three months. Also, as a matter of practice, Ethiopia will notify a requested State where assistance is no longer required.

584. The following information is provided for information.

585. *The draft Directive on International Cooperation provides that requests for mutual legal assistance should be handed expeditiously. According to the draft Directive, an expert handling international cooperation matters shall do all that is necessary to accomplish the matter in due time.*

586. *Articles 6 and 7 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters was also cited as relevant:*

IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 6: Action in the Requesting State Party

1. *In the event of urgency, or as permitted by domestic law, requests may be sent by direct transmission from a competent authority of the requesting State Party to a competent authority of the requested State Party, for execution in accordance with its domestic law. A copy of the request shall be submitted by the competent authority of the requesting State Party to the Central Authority of the requesting State Party forthwith.*

2. *Where further information is required before a request under this Convention can be executed, in so far as practicable, such information shall be provided by the appropriate competent authority of the requesting State Party and within any deadlines, where necessary, set by the requested State Party.*

Article 7: Action in the Requested State Party

1. *The Central Authority of the requested State Party shall, as soon as is reasonably practicable, acknowledge receipt of the request.*

2. *Subject to the provisions of this Convention, the requested State Party shall grant the assistance requested as expeditiously as practicable.*

3. *The Central Authority of the requested State Party shall take the necessary steps to ensure that the request is complied with.*

4. Requests may be received directly by a competent authority of the requested State Party from a competent authority of the requesting State Party for execution in accordance with the domestic law of the requested State Party.

5. The competent authority of the requested State Party may seek additional information from the competent authority of the requesting State Party.

6. If the Central Authority of the requested State Party considers that:

a) the request does not comply with the provisions of this Convention; or

b) in accordance with the provisions of this Convention the request for assistance is to be refused in whole or in part; or

c) the request cannot be complied with, in whole or in part; or

d) there are circumstances which are likely to cause a significant delay in complying with the request;

it shall inform the Central Authority of the requesting State Party promptly, giving reasons.

(b) Observations on the implementation of the article

587. Articles 24 (2) and 15 of the mutual legal assistance treaty with Sudan take into account the obligation to execute as soon as possible a request for mutual legal assistance and to inform the requested State Party when the assistance sought is no longer required. It is recommended that Ethiopia adopt a relevant provision, as the matter is not fully addressed in the draft Directive on International Cooperation.

588. Nevertheless, while articles 6 and 7 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters, as well as the draft Directive on International Cooperation are cited as relevant, they cannot be considered as such before they have entered into force.

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 of the article

589. Although not addressed in the draft Directive on International Cooperation, as a matter of practice Ethiopia would postpone and would notify a requesting State where a request interferes with an ongoing investigation or proceeding. The matter does not appear to be addressed in the Mutual Legal Assistance treaty with Sudan but is covered in Article 8 of the IGAD Convention on Mutual Legal Assistance, which is not yet in force and quoted below for information.

IGAD Convention on Mutual Legal Assistance

Article 8: Postponement of the execution of request

The requested State Party may, after consultation with the requesting State Party postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State Party.

590. There has been no experience in the application of this provision in incoming or outgoing requests.

(b) Observations on the implementation of the article

591. Ethiopia has not implemented the provision and may wish to consider including the elements of the provision under review in the draft Directive on International Cooperation. Article 8 of the IGAD Convention will, once it enters into force, allow Ethiopia to implement Article 46 paragraph 25 of the Convention, but cannot serve as a legal basis at present.

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 the article

592. Although not addressed in the draft Directive on International Cooperation, as a matter of practice Ethiopia would consult with a requesting State before refusing or postponing assistance. Ethiopia further referred to Article 11 of IGAD Convention on Mutual Legal Assistance in Criminal Matters, which is not yet in force and quoted below for information.

Article 11: Consultation between States Parties

1. Before refusing a request or postponing its execution, in whole or in part, under any part of this Convention the requested State Party shall consider forthwith whether assistance may be granted subject to certain conditions. If the requesting State Party accepts assistance subject to these conditions, it shall comply with them.

2. If the requesting State Party refuses to give the undertaking or to comply with the conditions, the requested State Party may refuse to grant the assistance sought in whole or in part.

3. The requested State Party shall give the requesting State Party an opportunity to present its reasons in favour of providing the assistance sought.

(b) Observations on the implementation of the article

593. Ethiopia has not implemented the provision and is encouraged to include the elements of the provision under review in the draft Directive on International Cooperation. Again, article 11 of the IGAD Convention will, once it enters into force, allow Ethiopia to implement Article 46 paragraph 26 of the Convention, but cannot serve as a legal basis at present.

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 the article

594. Although not addressed in the draft Directive on International Cooperation, as a matter of practice Ethiopia would afford the stated protections to a witness, expert or other persons under these circumstances. The matter is not addressed in the Mutual Legal Assistance treaty with Sudan. Relevant provisions are found in Article 18 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters, which is not yet in force and quoted below for information.

Article 18: Undertaking to witness

1. A witness appearing in the requesting State Party in response to a request shall be given an undertaking by the requesting State Party that he shall not be subject to prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions occurring before the time of the departure of the person from the requested State Party.

2. The undertaking provided for in paragraph 1 above shall cease in the case of a witness appearing in response to a request under Article 17; when the witness having had, for a period of 15 consecutive days from the dates when the person was notified by the competent authority of the requesting State Party that his/her presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving, has nevertheless remained in the requesting State Party, or having left that State has voluntarily returned to it.

595. There has been no experience in the application of this provision.

(b) Observations on the implementation of the article

596. Ethiopia has not implemented the provision and is encouraged to include the elements of the provision relating to safe conduct in the draft Directive on International Cooperation. Article 18 of the IGAD Convention will allow the State under review to partially implement the provisions of article 46 subparagraph 27 of the Convention once the IGAD Convention enters into force and provides a legal framework for application.

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 the article

597. Ethiopia indicated that, unless otherwise agreed, the ordinary costs of executing a mutual legal assistance request are usually borne by the requested State, while unusual costs are borne by the requesting State. However, under the mutual legal assistance treaty with Sudan (Article 8), the requesting Party shall bear the costs incurred in the execution of legal assistance.

598. In practice, Ethiopia usually covers the costs for executing requests it receives for mutual legal assistance, but not for extradition, as most mutual legal assistance requests have related to the service of judicial documents and did not involve extraordinary costs.

599. The following information is provided for information.

600. *The draft Directive on International Cooperation provides that costs related to a particular suspect or defendant should be borne by that person. According to the draft Directive, unless the request entails a minimum cost, all costs shall be covered by the requesting country.*

601. *Article 39 of the IGAD Convention on Mutual Legal Assistance in Criminal Matters was also quoted as relevant.*

Article 39: Costs

The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance

to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne

(b) Observations on the implementation of the article

602. Ethiopia has not implemented this provision and is recommended to address the issue of costs in the draft Directive on International Cooperation in line with the Convention, which does not presently correspond to the provision under review. Article 39 of the IGAD Convention will allow Ethiopia to enhance the implementation of the provisions of article 46 subparagraph 28 once it enters into force and serves as a legal basis.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

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;

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

603. Though the matter is not addressed in any law, treaty or regulation, there have been no issues in providing publicly available documents to a requesting State. Ethiopia is able to provide such information on request. Article 13 of IGAD Convention on Mutual Legal Assistance in Criminal Matters is provided for information.

Article 13: Provision or production of records

1. A request under this Convention may seek the provision or production of any documents, records or other material relevant to a criminal matter arising in the requesting State Party.

2. The requested State Party may provide copies of documents, records or other material not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

(b) Observations on the implementation of the article

604. Ethiopia has not adopted a relevant provision in its existing law or treaty but implements the provision as a matter of practice. It is recommended that Ethiopia address the matter in the draft Directive on International Cooperation. The implementation of the provision of article 46 subparagraph 29 (a) will be enhanced through article 13 of the IGAD Convention once the IGAD Convention enters into force.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(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 the article

605. Though the matter is not addressed in any law or regulation, if the information sought is not classified, Ethiopia could in principle provide documents or records that are not publicly available to a requesting State. There has been no experience or requests in this regard. Article 13 of the IGAD Convention on MLA has been referred to (see above subparagraph 29 (a) of article 46.)

(b) Observations on the implementation of the article

606. Ethiopia has not adopted a relevant provision in its existing law or treaty but would implement the provision as a matter of practice. Ethiopia may wish to address the matter in the draft Directive on International Cooperation. Article 13 (2) of the IGAD Convention cannot serve as an indicator of implementation of article 46 subparagraph 29 (b) before it has entered into force.

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 the article

607. As described previously, Ethiopia has one bilateral treaty on MLA in place with Sudan. The Sudan treaty covers, inter alia, mutual legal assistance (termed judicial cooperation) in civil and criminal matters. However, the mutual legal assistance treaty with Sudan covers only assistance in criminal matters regarding the service of summons or other judicial documents and the obtaining of evidence (Article 23). Negotiations are underway to enter into further treaties on international cooperation with Botswana, India and South Africa, as well as China and the United Arab Emirates.

608. At the regional level, Ethiopia has recently ratified the Inter-Governmental Authority on Development (IGAD) Convention on mutual legal assistance, although this is not yet in force. IGAD brings together eight countries in East Africa that include all of Ethiopia's neighbours. The IGAD Convention, once ratified and in force, will provide a framework

for international cooperation between Ethiopia and other regional States with which Ethiopia is likely to have a close relationship.

(b) Observations on the implementation of the article

609. Ethiopia is bound by one bilateral agreement with Sudan, which does not cover all forms of MLA under the Convention. Further agreements are currently being negotiated in the area of MLA. The entry into force of the IGAD Convention will allow Ethiopia to further enhance this dimension. In the meantime, as outlined above, Ethiopia has applied the Convention directly in cases of mutual legal assistance. Pending the entry into force of the draft Directive on International Cooperation, Ethiopia is urged to consider adopting additional treaties, and the reviewers acknowledge indications by Ethiopia on the need to adopt more bilateral agreements.

(c) Challenges, where applicable

610. Ethiopia has identified the following challenges and issues in fully implementing the article under review:

1. Limited capacity (e.g. human/technological/institution/other)

In general, the Ministry of Justice as the central authority for international cooperation faces challenges in gathering statistics on cooperation in criminal matters. There is no database to register the number of requests for extradition and mutual legal assistance that have been made or received, or to track the underlying offences involved. Ministry of Justice officials explained that there was an intention to develop a system to track requests in the future.

There is also a lack of experience and capacity by the newly formed international cooperation unit in the Ministry of Justice. Staff is not specialized in international cooperation but in general law.

2. Inadequacy of existing norm measures (constitution, laws, regulations etc.)

As of July 2015, the Directive on international cooperation was still in draft form.

(d) Technical assistance needs

611. Ethiopia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned

There is no provision in Ethiopian domestic legislation for mutual legal assistance requests. This will greatly hamper Ethiopia's ability to provide mutual legal assistance, particularly in those cases requiring coercive measures.

2. Legal advice

Ethiopia's Criminal Justice Policy of 9 August 2009 recognizes that "The laws in the sector need to be brought up to date so as to ensure no legal obstacles to effective international law enforcement cooperation and mutual legal assistance." The Policy further states that "The request for international cooperation and its implementation must be processed mainly through the Ethiopian diplomatic channels, but the law should be reviewed and a system must be established to allow direct communications with the concerned organs depending on the nature of the issue and the laws and agreements on which it is based. The role of coordinating related activities in this regard will be that of the Ministry of Justice."

The legislation should seek to follow international best practices and be as flexible as possible. It will recognize multilateral treaties as a legal basis for mutual legal assistance requests. The legislation should also set out the criteria and process for making, evaluating and executing requests for assistance.

3. On-site assistance by an anti-corruption expert;

One of the primary advantages of the establishment of a central authority is the creation of a team of staff that are experts in the intricacies of international cooperation cases. In order to ensure the development of this expertise, the cooperation cases. In order to ensure the development of this expertise, the members of the central authority should be encouraged to participate in relevant training. To that end, the use of mentors to guide the development of the central authority can be particularly effective.

4. Capacity-building programmes for authorities responsible for international cooperation in criminal matters;

Ethiopia's Criminal Justice Policy of 9 August 2009 recognizes that "International cooperation in criminal matters is becoming more complex. It places heavy responsibilities on law enforcement agencies, prosecution services and the Judiciary. It is necessary to build the capacity of these agencies to engage more effectively in international cooperation and live up to our country's international legal obligations in relation to cooperation in criminal matters. ... We need to strengthen the capacity of our law enforcement and justice agencies to engage more effectively in international cooperation activities."

As has already been noted, the Ministry of Justice participated in the Business Process Reengineering (BPR) initiative with other government agencies. One of the issues examined through this process related to the international aspects of criminal law and a number of gaps in practice were identified. The BPR recommended that the International Cooperation on Legal Affairs team, which is responsible for all international cooperation matters, including extradition, mutual legal assistance and the transfer of sentenced persons, be staffed by five prosecutors, but in practice there are only 2-3 prosecutors assigned at the current time.

There is a need to develop a system or database to register the number of requests for extradition and mutual legal assistance that have been made or received, and to track the underlying offences involved.

5. Model agreements/arrangements

In order to ensure the smooth processing of requests for international cooperation, the International Cooperation on Legal Affairs team needs to develop clear systems and processes for both incoming and outgoing requests. Some of this will be set out in domestic legislation, while other parts may simply be developed through inter-agency agreement and internal practice. The types of improvements that could be considered include, inter alia, the adoption of templates for the preparation of requests (including training on the use of these tools, such as UNODC's Mutual Legal Assistance Request Writer Tool, which has been provided to the International Cooperation on Legal Affairs unit), the standardization of practices in responding to and preparing requests and the tracking of the execution of requests to ensure follow-up.

Ethiopia indicated that the forms of technical assistance previously mentioned have been partially provided. UNODC has provided copies of the Model Law on Extradition and the Model Law on Mutual Legal Assistance that have been developed by UNODC as a tool for Member States seeking to adopt or amend their domestic legislation. Further support would help Ethiopia in its implementation of the article under review.

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 the article

612. Ethiopia referred to Article 43 of IGAD Convention on Mutual Legal Assistance in Criminal Matters, which is not yet in force and cited below for information.

IGAD Convention on Mutual Legal Assistance in Criminal Matters

Article 43: Consultation in the event of concurrent jurisdiction

1. Where criminal proceedings are contemplated or pending in two or more State Parties against the same person in respect of the same conduct, those State Parties shall consider the appropriate venue for the proceedings to be taken in the interests of the proper administration of justice.

2. In considering the appropriate venue for proceedings, State Parties shall inter alia take into account the following:

- a) location of accused;*
- b) location, protection and other interests of witnesses and third parties;*
- c) interests of any victim and third parties;*
- d) location of documents, exhibits and other relevant material;*
- e) availability and nature of sanctions in the event of conviction;*

- f) capability to address sensitive or confidential information or material;*
- g) delay;*
- h) evidential problems;*
- i) confiscation and proceeds of crime;*
- j) resources and costs;*
- k) any other issue of public interest.*

613. Ethiopia explained that there is no specific legislation or experience on the transfer of criminal proceedings.

(b) Observations on the implementation of the article

614. While at present Article 43 of the IGAD Convention is subject to the entry into force, it may allow the State under review to partially implement the provisions of article 47 of the Convention as soon as it becomes a legal basis. However, at the time of the review, there was no legislation or practice on the transfer of criminal proceedings.

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 the article

615. Ethiopia indicated that it has partially implemented the paragraph. Law enforcement cooperation is done through the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO), which was established in February 1998 to collectively curb cross-border crime within the region covering eleven countries: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania and Uganda. INTERPOL, which has its sub-regional bureau in Nairobi, is also invaluable in strengthening law enforcement cooperation.

616. Ethiopia also cited Article 47 of the AML Proclamation 780/2013 as relevant:

1/ The [Financial Intelligence] Center shall have the responsibility and power to receive mutual legal assistance and extradition requests sent by competent foreign authorities with respect to money laundering and financing of terrorism, and it shall transmit them to the competent authorities for execution.

2/ Requests and answers shall be transmitted either by post or by other more rapid means of transmission that provides a written or materially equivalent record under conditions allowing the Center to establish authenticity.

3/ Requests and their annexes shall be made in Amharic or English or accompanied by a translation in Amharic or English.

617. Ethiopia cooperates mainly on the basis of bilateral arrangements, in particular with IGAD countries such as Kenya, Sudan and Djibouti. The Customs and Revenue Authority has Memoranda of Understanding (MOUs) in place with its counterparts and border commissions in the Netherlands, Kenya, Uganda, Tanzania, Israel, South Africa, Denmark and Australia. All international relations are done through INTERPOL and, to a lesser extent, through EAPCCO. INTERPOL exercises a key coordination role in disseminating information on possible suspects and their whereabouts to other involved countries from the INTERPOL network. Through INTERPOL, Ethiopia is also able to pursue proceeds of crime abroad once a court order has been obtained. Extradition arrangements are also effected through INTERPOL. INTERPOL has also provided training and capacity building to investigators in the Ethiopian Police and in other countries.

618. Ethiopia indicated that law enforcement cooperation is critical in ensuring that cases with transnational dimensions are effectively investigated. Ethiopian police are increasingly faced with the challenges of combating transnational crimes and need to be able to quickly and easily cooperate with police in other countries, particularly those neighbouring Ethiopia. This cooperation may be particularly important in cases relating to

trafficking in persons, where cooperation will be required in order to ensure the protection of the victims of the crime and the successful prosecution of the crimes.

619. Opportunities for exchanges, joint trainings and networking can also be pursued. This cooperation has also been formalized through memoranda of understanding between law enforcement agencies when required, including through the EAPCCO and INTERPOL.
620. Regarding subparagraph 1(b) of the article under review, Ethiopia cited Article 6, paragraphs (12), (37) and (38) of the Ethiopian Federal Police Commission Establishment Proclamation as relevant.

Ethiopian Federal Police Commission Establishment Proclamation

Article 6: Powers and Duties of the Commission

The Commission shall have the powers and duties to: ...

(12): investigate crimes committed in foreign countries against the interests of the Country based on mutual agreements entered into between the states;

(37): establish relations with the relevant foreign states police institutions and governmental and non-governmental organizations with regard to police affairs and

(38): Establish relationship and exchange information with international police; disseminate information of criminals wanted at international level to regional police commissions and pursue and arrest same.

621. As described above, cross-border cooperation in investigations and prosecutions remains a fairly new, although growing, enterprise in Ethiopia, with attention focused to date on police-to-police arrangements, notably with INTERPOL and EAPCCO.
622. Concerning subparagraph 1(e) of the article under review, Ethiopia indicated that it has had no experience with posting liaison officers overseas, or receiving liaison officers from other countries.

(b) Observations on the implementation of the article

623. Ethiopia has a framework for cooperation between various police and other law-enforcement services, which allows for the implementation of article 48 subparagraph 1. This framework includes the EAPCCO, INTERPOL, the Ethiopian Federal Police Commission Establishment Proclamation, and the IGAD Convention, once the latter enters into force. Ethiopia has also established a focal point in FEACC for asset recovery matters involving the Asset Recovery Inter Agency Network for Eastern Africa (ARIN-EA) and the StAR/INTERPOL Asset Recovery Focal Points network. Through the latter network Ethiopia has received a request from Kenya for information on a company alleged to have been involved in fraudulent activities in Kenya. A further case example, FEACC vs. Remila Lewey Usman and Others, was provided in which the Federal Ethics and Anti-corruption Commission cooperated with the South Sudanese Commission in an embezzlement matter. The assistance was given on an anti-corruption agency-to-anti-corruption agency basis.

624. Ethiopia is encouraged to continue to strengthen law enforcement cooperation in matters involving offences under the Convention, including with States outside the region.

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 the article

625. Ethiopia indicated that it has partially implemented the provision. Ethiopia cooperates mainly on the basis of bilateral arrangements, in particular with IGAD countries such as Kenya, Sudan and Djibouti. All international relations are done through INTERPOL and, to a lesser extent, through EAPCCO.

626. Ethiopia is not precluded from considering the Convention as a legal basis for mutual law enforcement cooperation in respect of corruption offences, although there has been no experience in its application in this regard.

(b) Observations on the implementation of the article

627. Although the Convention has not been applied as a legal basis for international law enforcement cooperation in Ethiopia, Ethiopia would consider UNCAC as a basis for direct law enforcement cooperation, in addition to existing mechanisms available through INTERPOL and bilateral agreements with Kenya, Sudan and Djibouti. The IGAD Convention can also enhance the implementation of the provision under review once it enters into force.

628. During the country visit, Ethiopia informed that the Financial Intelligence Centre (FIC) has a total of three MOUs in place with the United Kingdom, Zimbabwe and South Africa, with four others under negotiation. Furthermore, the FIC has made an application to join the Egmont Group.

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 the article

629. Internationally, Ethiopia cooperates through INTERPOL, which uses the I-24/7 global communication system and database that tracks lost travel documents, wanted persons, stolen motor vehicles and DNA. Ethiopia also participated in the StAR-INTERPOL Global Platform on Asset Recovery. This platform uses secured communication system among the States parties.

(b) Observations on the implementation of the article

630. Through its cooperation with INTERPOL and the modern technological resources at INTERPOL's disposal, the State under review has implemented the provisions of article 48 subparagraph 3.

631. The StAR-INTERPOL global platform on asset recovery further strengthens Ethiopia's existing mechanisms.

(c) Challenges, where applicable

632. Ethiopia has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation (e.g. human/financial/other)

Law enforcement agencies in Ethiopia will take measures to strengthen their relationships with their counterparts in other countries and encourage the informal sharing of information and intelligence on crime and criminal groups. Ethiopia will consider following international best practice and establishing a national police information and communication centre within the National Police.

(d) Technical assistance needs

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

1. Technological assistance (e.g. set-up and management of databases/ information-sharing systems);

Ethiopia will take measures to strengthen the relationship of its law enforcement agencies with their counterparts in other countries and will continue to encourage the informal sharing of information and intelligence on crime and criminal groups. Ethiopia may also consider following international best practice and establishing a national police information and communication centre within the National Police in order to effectively ensure the exchange of information and intelligence on an international level. Such a

centre would be responsible for gathering and coordinating the exchange of information and other cooperation for all law enforcement agencies in Ethiopia.

Ethiopia has received technical assistance from INTERPOL, but believes it could benefit from further assistance.

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 the article

634. Ethiopia has not concluded any agreements or arrangements on joint investigations with other countries. Ethiopia has had no experience with joint investigations in corruption cases. Ethiopian border commissions have conducted joint investigations in terrorism and organized crime cases.

(b) Observations on the implementation of the article

635. Joint investigations are conducted on a case by case basis, mostly in terrorism and organized crime cases involving border commissions. There has been no experience in joint investigations in corruption cases, although an example involving joint investigative work with authorities in Kenya in a terrorism case was referred to.

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 the article

636. Ethiopia has cited Article 46 of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation (434/2005) as relevant.

Interception of Correspondence and Letters

1/ Where it is necessary for the investigation of corruption offence, head of the appropriate organ may order the interception of correspondence by telephone, telecommunications and electronic devices as well as by postal letters.

2/ Where it is necessary, evidence gathered through video camera, sound recorder, and similar electronic devices may be produced as evidence.

3/ An order given in accordance with sub-article (1) of this Article shall indicate the offence which gives rise to the interception, and the duration of the interception, and, if it is a telephone or telecommunication, the link to be intercepted. Unless head of the appropriate organ decides otherwise, the duration of the interception may not exceed four months.

637. Ethiopia indicated that a judge will weigh the admissibility of evidence derived from special investigative techniques on make a decision on a case by case (fact-specific) basis. In one criminal case, evidence obtained through CCTV cameras was admitted. In a case involving forged certificates of gold, undercover operations and surveillance were employed.

638. Ethiopia indicated that there are no issues regarding the admissibility of such evidence, which can be admitted in the same manner as recorded evidence.

639. Ethiopia further indicated that it has not implemented paragraph 2 of the provision, as it has no such agreements or arrangements in place at the international level.

640. Concerning paragraph 3, Ethiopia indicated that it has partially implemented the provision. In principle, Ethiopia may cooperate with other countries in using special investigative techniques on case by case basis.

641. Ethiopia indicated that it has not implemented paragraph 4 of the provision. Officials at the National Police explained that there has been no experience in the use of controlled delivery in corruption cases, though the police can employ controlled delivery techniques in criminal cases, including at the international level.

(b) Observations on the implementation of the article

642. Article 46 of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation (434/2005) gives Ethiopia the right to use special investigative techniques in their efforts to combat corruption, including the interception of telephonic correspondence, telecommunications and video cameras, etc. The provision of article 50 has been partially implemented in Ethiopia. Ethiopia may wish to adopt relevant measures on the use of special investigative techniques (including electronic or other forms of surveillance, undercover operations and controlled delivery) and to ensure the admissibility of evidence derived therefrom.