



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

Distr.: General  
9 January 2012  
English  
Original: French

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**Implementation Review Group**

**Third session**

Vienna, 18-22 June 2012

Item 2 of the provisional agenda\*

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

**Executive summaries**

**Note by the Secretariat**

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\* CAC/COSP/IRG/2012/1.



## **II. Executive summaries**

### **France**

#### **Legal system**

Under article 55 of the French Constitution, duly ratified international treaties constitute an integral part of the domestic legal system and override any other contrary provision of domestic law.

France ratified the United Nations Convention against Corruption on 11 July 2005 and deposited an instrument of ratification on 11 December 2005. The implementing act was published in the Official Journal on 5 July 2005 and entered into force on 14 December 2005.

France has a civil-law system with origins in Roman law. The general rules on criminal law are set out in the Penal Code and the Code of Criminal Procedure.

#### **Overall findings**

In general, the reviewers have observed an adequate implementation by France of the provisions of chapters III and IV of the United Nations Convention against Corruption. The reviewing process has highlighted a series of good practices. For example, the reviewers have noted a remarkable synergy resulting from close cooperation among the authorities responsible for combating corruption.

The creation of the Agency for the Management and Recovery of Seized and Confiscated Assets\* under the Act of 9 July 2010 was an interesting exercise worth sharing with other countries. The Agency may dispose of frozen assets even before a ruling has been passed if it considers that there is a risk of depreciation. It has authority to assist the French courts in carrying out seizures or confiscations at the request of another State. Part of its funding comes from the sale of confiscated products.

In its decision of 9 November 2010, the Supreme Court of Appeal found that the legal action pursued by a certain anti-corruption association was admissible in order for the association to achieve its objectives. That decision could also be used as a model for other State parties to the United Nations Convention against Corruption.

With regard to international cooperation, the reviewers have noted that France has established 29 joint investigation teams, including some relating to international corruption cases, and have encouraged the competent French authorities to share this experience with other States.

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\* Translator's note: Many sources cite the current title of this Agency as "Agence de gestion et de recouvrement des avoirs saisis et confisqués" (AGRASC).

## **Criminalization and law enforcement**

### **Criminalization**

In the French system, corruption offences are set out in the Penal Code.

Bribe-giving or bribe-taking committed by a French national public official is considered a criminal offence under articles 433-1 and 432-11; “national public official” is understood in a broad sense, covering “a person holding public authority, discharging a public service mission, or vested with a public electoral mandate”. Bribe-taking by national judicial staff is specifically set out in article 434-9. However, in practice, convictions relating to “illegal conflicts of interest” (art. 432-12) and “favouritism” (art. 432-14) are more frequent than those relating to bribery offences as such.

Bribe-giving and bribe-taking by a foreign or international public official is set out in articles 435-1 and 435-3. The same offences in relation to foreign or international judicial staff are set out in articles 435-7 and 435-9. Those provisions derive from the Anti-Corruption Act of 14 November 2007.

The embezzlement, misappropriation or other illicit diversion of public property by a national public official is considered an offence (art. 432-15), even if it arises out of an act of negligence by that official (art. 432-16).

Active and passive trading in influence constitutes an offence, and includes situations in which influence is supposed but has not been exerted. France criminalizes active trading in influence with an international public official, an elected member of an international organization or members of the international judicial services. However, trading in influence is not an offence when it relates to a decision taken by a foreign public official or by a member of a foreign parliament.

French law does not provide for an “abuse of functions” offence, since several criminal offences (misappropriation of public funds, illegal conflicts of interest and favouritism) encompass this concept in their definition. Moreover, France has not created an additional offence for illicit enrichment, since articles 321-1 and 321-6 of the Penal Code relating to the receipt and failure to justify resources, and article 168 of the General Tax Code (CGI) have the same objective.

Corruption in the private sector is criminalized under articles 445-1 and 445-2. Embezzlement of property in the private sector is covered by articles L.241-3 and L.242-6 of the Commercial Code (abuse of company property) and article 314-1 of the Penal Code (breach of trust).

Article 121-2 of the Penal Code extends the principle of the liability of legal persons to all offences, including those committed in other countries. Such liability may be administrative or criminal. The range of punishments applicable to legal persons includes fines, confiscation of the object used or intended for commission of the offence, public display or dissemination of the sentence and disqualification from the pursuit of activities in the exercise of which or in connection with which the offence was committed. The maximum fine applicable to legal persons is equal to five times that applicable to natural persons.

Obstructing the effective functioning of the justice system is criminalized under several provisions of the Penal Code: 434-14 (false testimony), 432-15 (subornation

of perjury), 433-3 (threats and intimidation towards a public official) and 431-12 (subornation committed abroad).

Money-laundering and concealing the proceeds from crime are set out in articles 324-1 and 324-2. Receiving proceeds from crime (arts. 321-1 and 324-1) is an offence.

Aiding and abetting and attempt are punishable by French law and apply fully to corruption-related offences.

The Code of Criminal Procedure provides for a 10-year statute of limitations period for serious crimes and a three-year limitation period for lesser offences. Accordingly, with the exception of bribe-taking by national judicial staff, which constitutes a serious crime, all other offences set out under the United Nations Convention against Corruption have a limitation period of three years. Statutory and case law provide for a suspension of this period in the case of legal or material hindrance. The judge also has some discretion in recalculating the starting point of the period. According to the Ministry of Justice, limitation periods do not pose a problem, even for lengthy investigations.

While noting that the French legal system adheres very closely to the United Nations Convention against Corruption, the reviewers have identified some scope for improvement:

- Explore the possibility of criminalizing trading in influence in relation to foreign public officials or members of foreign parliaments;
- Consider reviewing the maximum fine applicable to legal persons, in particular when the legal person has gained huge profit from lucrative contracts obtained through bribery;
- Plan to extend the limitation period from three to five years for offences punishable by less than three years' imprisonment, and from three to seven years for offences punishable by more than three years' imprisonment.

### **Law enforcement**

Punishments for corruption-related offences can amount to 10 years' imprisonment and a fine of 150 thousand euros. The Penal Code provides for optional supplementary penalties, the list of which includes a period of ineligibility for elected officials found guilty of corruption.

In France, members of Parliament do not benefit from immunity. However, they may only be arrested, or subject to other measures restricting their personal freedom, with the authorization of the Office of the parliament to which they belong. Ministers benefit from only one jurisdictional privilege — they are tried by the Court of Justice of the Republic for acts committed in the performance of their duties. The President of the Republic is not responsible for any acts committed in that capacity. He or she may not, during his or her term of office, be called to testify before any French court or authority. Neither may he or she be subject to criminal proceedings, investigation or prosecution.

Witnesses and experts are protected by law (art. 706-57). Victims may act as civil parties at all stages of proceedings. At their request, a judge that has been

designated to the victims will intervene to ensure that their human rights are respected.

Under article 40 of the Code of Criminal Procedure, any person wishing to report an offence must consult a State Prosecutor. That article also applies to civil servants who have a duty to report acts that could be considered criminal. If a civil servant does not fulfil that duty, disciplinary measures may be taken against him. Since 2007, personnel in the private sector who report possible offences have enjoyed protection against any form of disciplinary or discriminatory measure under article L.1161-1 of the Labour Code. The prosecutor may employ the principle of discretionary prosecution. However, if the identity and address of the perpetrator are known, and there is no legal obstacle to the initiation of criminal proceedings, the prosecutor may only drop proceedings if doing so is warranted by the specific circumstances relating to the commission of the acts. State prosecutors are placed under political authority through their hierarchical position under the Minister of Justice.

Whatever their nature, the direct or indirect proceeds from an offence may be seized or confiscated. Value confiscation may be ordered if the confiscated object has not been seized previously or is not available.

In France the Central Service for the Prevention of Corruption (SCPC), a small team of six persons, is solely responsible for prevention. The Court of Audit also works in the field by retrospectively monitoring the management of all administrations and public or semi-public bodies. The French Financial Intelligence Unit, TRACFIN — an anti-laundering body — intervene when a report is lodged by professionals engaged in countering money-laundering and the financing of terrorism. On the enforcement side the main services responsible are the Central Office for the Suppression of Major Financial Crime (OCRGDF), the central anti-bribery division (BCLC), the financial division of the Paris Prefecture and specialized courts.

There are two routes available to victims to obtain compensation for damages: either civil proceedings before a civil court or the institution of a civil action in the context of criminal proceedings.

The law allows for a person who has attempted to commit an offence or misdemeanour to be exempted from punishment if he or she cooperates effectively with the responsible authorities. The perpetrators of a crime or offence may receive a reduced sentence for the same reason.

Bank secrecy does not override judicial authority in the case of proceedings that are already under way. What is more, investigators may examine the national file of bank accounts (FICOBA), created in 1983 and managed by the Budget Ministry, which maintains a list of all accounts opened in France by natural and legal persons, on the basis of compulsory tax declarations.

Cooperation with the private sector is provided for in the Monetary and Financial Code, which contains provisions relating to the obligation of financial institutions and specific categories of professionals to report any offences to the State Prosecutor and disclose any suspicions to TRACFIN.

With regard to criminal records, the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which was signed by Belgium, Bulgaria, the Czech Republic, France, Germany, Italy, Luxembourg, Poland, Slovakia, Spain and

the United Kingdom, provides for the interconnection of criminal records, allowing the almost entirely automated and secure exchange of data on convictions and extracts from records, with automatic translation enabled by a system of tables of offences and tariffs, which lists the unique codes for all States for each category of offence and penalty. The system was recently upgraded by the European Commission, whose relevant Framework Decisions have not yet been incorporated into French law.

France has established its jurisdiction with regard to corruption offences committed within its territory, including those committed against a French national. If the offence is committed outside France but the victim is a French national, France has jurisdiction only if the crime or offence is punishable by imprisonment. France also has jurisdiction over French nationals who are not extraditable in principle, or foreign nationals whose extradition France has refused. However, for a French citizen who has committed an offence abroad to be prosecuted in France, the law demands either an official conviction from the authorities of the country in which the act was committed, or a complaint lodged by the victim (art. 113-8 of the Penal Code). France is part of the Eurojust network of the European Union, allowing it to coordinate with Eurojust State parties in investigations and prosecutions that fall within its jurisdiction.

Experts have drawn up some additional recommendations in order to improve the implementation of the United Nations Convention against Corruption provisions on law enforcement:

- Plan a study of the implementation of the principle of discretionary prosecution in order to avoid any possibility of political interference in decisions taken by State Prosecutors;
- Explore the possibility of systematically enforcing the ineligibility penalty with regard to elected public officials who have committed or been complicit in corruption;
- Look into the possibility of allowing all natural and legal persons to consult the Central Service for the Prevention of Corruption (SCPC), or any new service set up within the field, in cases of suspected corruption offences;
- Explore the option for citizens to anonymously report suspected acts of corruption to SCPC;
- Guarantee the independence of State Prosecutors from the Ministry of Justice;
- Consider increasing the staff of BCLC, currently comprising 13 persons, in order to make its work more effective;
- Consider deleting the conditions set out in article 113-8 of the Penal Code in order to ensure the competence of French courts in all cases regarding offences committed by French nationals abroad.

## **International cooperation**

### **Extradition**

The provisions relating to extradition in the Code of Criminal Procedure, namely articles 696 to 696-47, apply in the absence of an international convention stipulating otherwise.

France has concluded 44 bilateral extradition treaties, but extradition is not conditional on the existence of a treaty. France may consider the United Nations Convention against Corruption as a legal basis for extradition where it has not concluded a treaty with the requesting State. Extradition is subject to dual criminality except for requests formulated within the framework of the European arrest warrant. Extraditable offences must be punishable by a minimum sentence of two years' imprisonment. As regards sentenced persons, the sentence passed must be equal to or higher than two months' imprisonment.

As a general rule, France does not extradite its nationals. However, the extradition of French nationals may be granted specifically for the purpose of criminal proceedings on condition of reciprocity under the Convention on simplified extradition procedure between the Member States of the European Union.

France may refuse to execute a European arrest warrant when the requested person, sought for purposes of enforcing a sentence or measure involving the deprivation of their liberty, is a French national and the competent authorities undertake to enforce that sentence or measure (art. 695-24 of the Code of Criminal Procedure).

The average length of extradition proceedings instituted through a European arrest warrant is two months and comprises a judicial phase only; the decision to extradite by the examining chamber of the Court of Appeal is subject to appeal before the Supreme Court of Appeal. Extradition proceedings involving non-European countries, which last one year on average, comprise both a judicial phase and an administrative phase. If the examining chamber rejects a request for extradition, the Government is bound by that decision. If the Government decides to extradite, it adopts an extradition decree. This decree is subject to appeal before the Council of State, which verifies whether or not the offence is a political offence and whether to annul the extradition decree on that basis. In urgent circumstances, France provides for the temporary detention of a person whose extradition is requested and measures to ensure the presence of the person at the extradition proceedings.

France may not extradite a person temporarily on the condition that he or she is later returned to French territory to serve the sentence passed. However, temporary extradition is possible if a bilateral convention is in place which provides for that possibility.

In the event that a request for extradition of a national for the purpose of enforcing a judgement is refused, French law does not provide for the possibility of enforcing in France a judgement issued in criminal proceedings in a foreign country. In such cases, the same person must be retried for the same offences in France.

The French legal system guarantees fair and non-discriminatory treatment to any person under prosecution. The provisions of the European Convention on Human

Rights are directly applicable in French law and have precedence in the event of a conflict.

Before refusing any requests for extradition, France consults with the requesting State via diplomatic representations. A request for extradition may not be refused on the sole ground that the offence is considered to involve fiscal matters.

The reviewers have concluded that France has put in place the measures required by the United Nations Convention against Corruption in its legislative and treaty regime. They have recommended, however, that the competent authorities consider making it possible to enforce in France a judgement passed in criminal proceedings in a foreign country if a request for extradition of a national for the purpose of serving a sentence is refused.

### **Mutual legal assistance**

In French law, the scope of application of mutual legal assistance is very wide and includes provisions for its application in urgent circumstances. In addition to the conventions concluded within the framework of the European Union and the Council of Europe, France has concluded 42 bilateral treaties with countries from all continents. The scope of these bilateral treaties may be wider than that provided for in the Code of Criminal Procedure (arts. 694 to 694-4) in order to ensure that mutual legal assistance is afforded to the fullest extent possible.

Mutual legal assistance is not conditional on dual criminality, regardless of the coercive or non-coercive nature of the action requested, and even extends to offences committed by legal persons.

Every year, France both receives and submits several hundred requests for mutual legal assistance. During 2009 and 2010, France received approximately thirty requests relating to corruption. It has not encountered any particular problems relating to their execution.

Bank secrecy does not constitute grounds for refusing to render mutual legal assistance. France may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

France authorizes judicial authorities of other countries to hold videoconference hearings of witnesses or experts (art. 706-71 of the Code of Criminal Procedure) when the needs of the investigation or preliminary inquiries justify doing so.

A person being held in custody who could assist the investigation or trial in another country may, with their consent, be transferred to that country to assist the competent foreign authorities. This is provided for, with regard to member States of the Council of Europe, under the 1959 European Convention on Mutual Assistance in Criminal Matters or on the basis of a separate treaty or reciprocal agreement with third countries.

The central authority responsible for mutual legal assistance is the Directorate of Criminal Cases and Pardons at the Ministry of Justice. Requests and communications are to be addressed to the Directorate through diplomatic channels and, in urgent circumstances, through the International Criminal Police Organization (INTERPOL). Requests may be submitted in one of the official languages of the United Nations.

Whenever it receives a request that has not been drafted in the correct manner or does not contain the elements required under French law, the central authority, before possibly refusing the request, contacts the representatives of the requesting State and provides them with relevant information for completion of the request.

### **Law enforcement cooperation**

France cooperates with other countries for the transfer of sentenced persons under the 1983 Council of Europe Convention on the Transfer of Sentenced Persons. Bilateral agreements have also been concluded on the issue. The 1959 European Convention on Mutual Assistance in Criminal Matters and the 2000 Convention on Mutual Assistance in Criminal Matters between the member States of the European Union provide for the transfer of criminal proceedings.

France has agreed bilateral protocols with Member States of the European Union in particular, enabling direct cooperation between the French law enforcement services and their foreign counterparts.

France may establish joint investigation teams (arts. 695-2 and 695-3 of the Code of Criminal Procedure) with the member States of the European Union. France may also engage in this form of cooperation with other countries on the condition that the countries in question are parties to a convention containing similar provisions to those of the Convention on Mutual Assistance in Criminal Matters between the member States of the European Union of 29 May 2000.

Certain special techniques are authorized for use in investigating, prosecuting, conducting preliminary inquiries in respect of and judging offences involving corruption and trading in influence that are committed by or in relation to public officials (art. 706-1-3 of the Code of Criminal Procedure). These techniques include surveillance, undercover operations, the interception of correspondence sent via telecommunications systems and the use of sound and image detection technology in certain places or vehicles. The law also provides for using surveillance for offences involving money-laundering and concealment by an organized group.

## **Togo**

### **1. Legal and institutional framework**

Togo signed the Convention on 10 December 2003 and ratified it on 18 May 2005. Togo deposited its instrument of ratification with the Secretary-General on 6 July 2005.

Article 140 of the Constitution of the Fourth Republic of 14 October 1992, as revised by Law No. 2002-029 of 31 December 2002, states that duly ratified international treaties take precedence over national laws, provided that the treaties are also applied by the other States parties. Treaties on certain subject matters as listed in article 138 of the Constitution can be ratified only by a law. For instance, treaties modifying legal provisions, *inter alia*, are referred to in that article, and a law authorizing the ratification of the United Nations Convention against Corruption was adopted on 18 May 2005, as indicated above. However, a new law is required in order to implement the provisions of the Convention, since those

provisions include the criminalization of certain offences and establish the corresponding sanctions. No such law had yet been adopted at the time of the review.

Togo is also a party to the African Union Convention on Preventing and Combating Corruption and to the Protocol on the Fight against Corruption of the Economic Community of West African States (ECOWAS) (both ratified on 14 September 2009).

The main legal instruments relevant to implementation of the provisions of the United Nations Convention against Corruption are the Criminal Code of 1980 (Law No. 80-01 of 13 August 1980), amended by Law No. 2002-02 of 20 February 2002; the Code of Criminal Procedure of 1983 (Law No. 83-01 of 2 March 1983); and the Law on Combating Money-Laundering of 2007 (Law No. 2007-016 of 6 July 2007).

Togo is a civil-law jurisdiction with an inquisitorial system of criminal procedure. The judicial system of Togo is comprised of a unified court system operating at three levels: courts of first instance, courts of appeal and a supreme court. Prosecutions are carried out by the public prosecution service (Prosecutor of the Republic) under the hierarchical authority of the Minister of Justice, or by an investigating judge. They can also be initiated by public officials authorized by a special law to do so (customs, tax and water and forestry authorities). Victims of criminal offences may also initiate prosecution by filing a civil action before an investigating judge. The prosecution service, and in exceptional cases, investigating judges direct judicial police investigations for that purpose. There is no specialized prosecution service or court dealing with corruption.

Other legal instruments relevant to the institutional framework for implementation of the Convention are the Law establishing the General Regulations applicable to Public Officials of 1968 (Law No. 1 of 4 January 1968); the Law on Drug Control of 1998 (Law No. 98-008 of 18 March 1998); the Law on the Organization and Operation of the Court of Audit of 1998 (Law No. 98-014 of 10 July 1998); the Organic Law on the Status of Judges of the Court of Audit of 2009 (Law No. 2009-003 of 15 April 2009); the Organic Law on the Status of Judges of 1996 (Law No. 96-11 of 21 August 1996); and the Law on Tribal Leaders and their Status in Togo of 2007 (Law No. 2007-002 of 8 January 2007).

Relevant instruments on bilateral and multilateral cooperation as provided by Togo include a judicial agreement between France and Togo and an extradition treaty between Benin, Ghana, Nigeria and Togo.

A national commission to combat corruption and economic sabotage was created by presidential decrees No. 2001-095/PR of 9 March 2001 and No. 2001-109/PR of 19 March 2001, which set out nominations for membership of the Commission. The decrees were amended and supplemented by presidential decrees No. 2001-160/PR and No. 2001-161/PR of 14 September 2001. The Commission was initially tasked with preventing corruption by, inter alia, gathering information on the situation with regard to corruption in Togo and on the status of implementation of existing instruments to prevent and combat corruption, and with proposing legal and regulatory measures to eradicate corruption and economic sabotage. Its mandate was expanded to include awareness-raising and the gathering of further information. Presidential Decree No. 2002-030/PR of 27 May 2002 established an economic and financial unit within the Commission to carry out investigations relating to

corruption and economic sabotage. To that end, the unit was tasked with verifying, upon judicial order, the commission of such offences, gathering evidence and creating a database on such acts and their perpetrators.

Among the institutions relevant to the fight against corruption, the Inspectorate General of State, the Financial Intelligence Unit (CENTIF, established by the Law on Combating Money-Laundering of 2007) and the Court of Audit (established by the Constitution in 1992 and operational since 2009) are of particular importance. CENTIF was established in accordance with the obligations undertaken by Togo as State member of the West African Economic and Monetary Union (UEMOA), which recommends harmonized provisions on money-laundering and financial intelligence units in the eight States of the Union. Togo is also a member of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA). Other relevant stakeholders are parliamentarians, the Public Procurement Commission, the Bar Association, civil society, the private sector and the media.

## **2. Reform efforts**

As mentioned above, legislation to implement the Convention had not yet been adopted at the time of the review; however, Togo submitted a draft law implementing the provisions of the Convention for the consideration of the reviewers in accordance with paragraph 33 of the guidelines for governmental experts and the secretariat. The draft law had initially been prepared in 2008 with the assistance of UNODC, and validation workshops had been held to discuss the draft, but it had not been submitted for parliamentary approval owing to internal constraints and outstanding issues. Those issues included, inter alia, the possibility of anonymous complaints, the scope of asset declarations for public officials and the mandate and composition of the proposed new anti-corruption body.

Owing to the political instability of Togo in the past two decades, the relevant institutions, including the aforementioned National Commission to Combat Corruption and Economic Sabotage and its Economic and Financial Unit, have been faced with numerous challenges. The draft law against corruption and a draft national anti-corruption strategy have not yet been adopted, and key institutions have only recently become operational. The Commission, in its first years of operation (2001-2004), concentrated on the recovery of embezzled funds (1 billion CFA francs were recovered in two major cases involving the Treasury and the Office of Agricultural Products), but its activities have since been suspended owing to the impetus to advance the draft law implementing the Convention and the pending establishment of a new anti-corruption body.

The draft law submitted to the reviewing governmental experts contains criminalization provisions and also provides for the establishment of a new anti-corruption body to replace the existing Commission. Togo indicated that, in view of the challenges it faced with regard to the keeping of records and the compilation of statistics throughout the criminal justice system, specialized authorities were to look into those issues and a periodic evaluation mechanism was to be included in the aforementioned draft anti-corruption law.

The relative weakness of the judicial sector in general has compounded those difficulties and led to a low number of investigations and prosecutions. Broader

reform of the criminal justice system and modernization of the judicial sector is being carried out and is expected to contribute to the fight against corruption. One of the key aspects of that reform is to be the adoption of legal instruments on ethics for justice practitioners. The Criminal Code and the Code of Criminal Procedure are also to be reviewed comprehensively as part of the reform programme.

While the question of whether specific reform of anti-corruption legislation should take place before or at the same time as that comprehensive reform process was discussed, the Togolese authorities were of the view that the anti-corruption reforms should be pursued earlier. In that regard, Togo indicated that it wished to use the outcome of the review process in order to move forward with those reforms and foremost with the adoption of the draft law implementing the United Nations Convention against Corruption and the establishment of a new anti-corruption body. Once the draft law is finalized, it is to be submitted to the relevant stakeholders for discussion and validation. It will then be adopted by the Council of Ministers and submitted to the National Assembly for review and adoption into law and publication in the Official Journal.

### **3. Observations on implementation**

#### **Chapter III. Criminalization, articles 15 to 25**

In general, owing to the constraints outlined above with regard to data collection and the low number of investigations and prosecutions, few cases were reported to illustrate the implementation of the various provisions of the Convention.

Criminal offences are covered by the Criminal Code of 1980 (Law No. 80-01 of 13 August 1980), amended by Law No. 2002-02 of 20 February 2002. Specific legislation to implement the Convention has not yet been adopted.

Article 208 of the Criminal Code partially covers active and passive bribery. The scope of the definition of “public official” is broad, since it refers to “a person vested with public authority or charged with a public service remit, or holding elected public office, or any agent of the State.” However, the concept of an undue advantage for a person or entity other than the public official is not addressed. There is no specific mention or exclusion of foreign public officials or officials of public international organizations that would satisfy the provisions contained in article 16 of the Convention.

Article 202 of the Criminal Code partly criminalizes the embezzlement, misappropriation or other diversion of property by a public official, referring to “any official or agent of the State, of a local authority, public institution or company in which the State or another public authority has acquired an interest or, more generally, any agent or official of a legal entity under public law who has embezzled, removed, misappropriated or dissipated public funds or equivalent effects, or items, securities, deeds or movable property that were in his or her possession by reason of, or in connection with, the performance of his or her duties” but not to the benefit derived from such illicit acts for another person or entity. The Togolese authorities reported that several cases had been brought under this provision in the first years of work of the National Commission for the Fight against Corruption and Economic Sabotage but that most of those cases had been settled

when the offenders returned the misappropriated funds or property at the investigation stage. Those persons had nonetheless been subject to disciplinary proceedings.

Trading in influence is also criminalized in article 208 of the Criminal Code, but that article similarly makes no mention of undue advantage for another person. Togo has not implemented the provisions of articles 19 to 21 of the Convention on abuse of functions, illicit enrichment and bribery in the private sector, respectively. Articles 98 and 103 to 106 of the Criminal Code partly implement the provisions on embezzlement of property in the private sector through the concept of breach of trust and abuse of company assets.

The Law on Combating Money-Laundering of 2007 addresses the provisions of article 23 of the Convention. It was noted during the country visit that that Law was being revised. The Law was originally drafted in order to ensure the compliance of Togo with its obligations as State member of the West African Economic and Monetary Union and with the Union's directive of 19 September 2002. It was verified as fully implementing article 23, subparagraphs 1 (a) and (b), of the Convention, and Togo provided details of a case illustrating the application of those provisions. Togo has also implemented subparagraphs 2 (a) to (d) of the same article and has included among the predicate offences established all the serious crimes and offences set out in the Criminal Code, thereby ensuring the widest possible range of predicate offences. At the time of the review, CENTIF had received 20 reports of suspicious transactions, on the basis of which four cases were brought before the courts. Of those four cases, two resulted in freezing orders and one in a provisional reimbursement order.

The concealment or continued retention of property when the person involved knows that such property is the result of any of the offences under the Convention, as covered by article 24 of the Convention, is addressed by articles 98, 121 and 122 of the Criminal Code of Togo, with the limitation that several offences under the Convention are not criminalized in domestic legislation. Details of specific cases were provided to illustrate the implementation of that provision. Articles 140 to 148 and 157 to 166 of the Criminal Code cover the elements of the offence of obstruction of justice.

### **Chapter III. General provisions and law enforcement, articles 26 to 42**

Togo provides for the liability of legal persons in articles 40 to 43 of the Criminal Code and, specifically with regard to money-laundering, in article 42 of the Law on Combating Money-Laundering of 2007. The latter is more specific with regard to the applicable sanctions and applies, as indicated above, to a wide range of predicate offences. Further sanctions are provided for with respect to public procurement.

The general provisions of articles 27 and 28 of chapter III of the Convention have been partly implemented by Togo in its Criminal Code and its Law on Combating Money-Laundering of 2007. Participation in an offence as provided for in the Convention is covered by articles 12 to 14 of the Criminal Code. Attempt is covered by article 4 and preparation by a criminal group for an offence is covered by articles 187 and 188. Togo provided details of specific cases relating to complicity in breach of trust. Knowledge, intent and purpose as elements of an offence are also

addressed by articles 302 and 303 of the Code of Criminal Procedure and judges are afforded broad discretion in evaluating whether the evidence in a given case satisfies the court, in keeping with the standards of civil-law jurisdictions.

Regarding the statute of limitations period, article 7 of the Code of Criminal Procedure provides for a limitation of 10 years for offences qualified as serious crimes, five years for offences and one year for misdemeanours. The classification of offences is determined by the severity of the corresponding sanctions. The possible suspension of the statute of limitations where the alleged offender has evaded the administration of justice is not addressed.

Concerning the implementation of article 30, appropriate sanctions — in the form of both imprisonment and financial penalties — were found to have been established. Paragraph 2 of article 30 is implemented by articles 53 and 127-129 of the Constitution of 1992, articles 442-447 of the Code of Criminal Procedure of 1983 and article 28 of the Law on Tribal Leaders and their Status in Togo. With specific regard to the immunity of members of the National Assembly, the Bureau of the Assembly has sole authority to lift such immunity when requested to do so by the Minister of Justice. With regard to the exercise of discretionary legal powers, the principle of prosecutorial discretion is applied in Togo. Accordingly, prosecutors may decide to dismiss a case and investigating judges may issue a ruling that the conditions for opening an investigation are not satisfied or dismiss the proceedings. The prosecution services are under the hierarchical authority of the Minister of Justice. The Law establishing the General Regulations applicable to Public Officials of 1968 governs provisions concerning disciplinary sanctions.

With respect to the implementation of article 31 of the Convention, Togo has implemented several of the provisions of that article through the relevant articles of the Criminal Code of 1980, articles 119 to 120 of the Law on Drug Control of 1998 and article 45 of the Law on Combating Money-Laundering of 2007. Those provisions have also been implemented in practice and details of specific cases were provided to the reviewers. However, several aspects are not addressed by the domestic legal framework, such as the administration of confiscated property.

With regard to witness protection, article 163 of the Code of Criminal Procedure imposes criminal sanctions on “any person who by means of threats, abuse of power, intrigue, promises, gifts, assault or inducement has undermined or attempted to influence a witness in legal or disciplinary proceedings”, and the Togolese authorities reported that, in practice, that provision applies to witnesses and experts and their relatives, who are protected against possible retaliation if necessary by change of address or the intervention of security forces, among other measures. Other elements of article 32 of the Convention have not been implemented and discussions were held on how to balance the rights of the accused person with the need to protect victims and witnesses. Whistle-blower protection is afforded by the Law on Combating Money-Laundering of 2007 for those who report suspicious transactions in good faith.

Article 34 has been implemented with respect to public procurement. Togo has implemented the provisions of article 35 of the Convention on compensation for damage through articles 1 to 4 and 68 to 74 of its Code of Criminal Procedure. Those provisions are applied generally to all victims of criminal offences through

civil actions and the possibility to institute civil proceedings in parallel with criminal proceedings.

With regard to the institutional framework to prevent and combat corruption, Togo has partially implemented article 36 on specialized authorities by establishing the Economic and Financial Unit within the National Commission to Combat Corruption and Economic Sabotage. However, law enforcement also rests with the national police and the judicial police as directed by prosecutors and investigating judges. The effectiveness of investigations was seen as lacking and it was reported that cases were often caught up in backlogs in the judicial system. The judicial police, however, has been trained in combating corruption and has a mobile verification team that assists the Inspectorate General of State and other authorities.

Togo has partially implemented the provisions of article 37 of the Convention on cooperation with law enforcement authorities through articles 15, 16 and 189 of the Criminal Code and articles 43 and 44 of the Law on Combating Money-Laundering of 2007. Similarly, some of the provisions of article 38 of the Convention are found in the Code of Criminal Procedure and the practice of the prosecution services reflects cooperation and generally satisfactory coordination among the different services. National authorities have cooperated with the private sector within the framework of the Law on Combating Money-Laundering, CENTIF conducting regular information and training sessions with financial institutions and the private-sector organizations referred to in article 5 of that Law. The National Commission to Combat Corruption and Economic Sabotage has also engaged the private sector in efforts to implement the Convention through national awareness-raising and drafting workshops. However, few cases of corruption have been reported by the private sector.

Togo has partially implemented article 40 on bank secrecy through the Law on Combating Money-Laundering of 2007, and practice was noted with regard to the scope of those provisions. With regard to the implementation of article 42 on the establishment of jurisdiction over the offences set out in the Convention, Togo has complied with all the mandatory provisions relating to jurisdiction.

#### **Chapter IV. International cooperation, articles 44 to 50**

The legal instruments of Togo relevant to international cooperation are Law No. 2007-016 of 2007 on combating money-laundering; the extradition treaty between Benin, Ghana, Nigeria and Togo; the judicial treaty between France and Togo; and the agreement on cooperation in criminal police matters between Benin, Ghana, Nigeria and Togo of 10 December 1984. The relevant regional instruments are the ECOWAS Protocol on the Fight against Corruption and the African Union Convention on Preventing and Combating Corruption. There are no specific chapters or provisions governing international cooperation in the Code of Criminal Procedure.

It was noted during the country visit that there were not many cases of international cooperation and that corruption-related letters rogatory were usually issued in connection with money-laundering or drug-trafficking offences. The judiciary faced challenges in the area of international cooperation in that the processing of letters rogatory by the senior investigating judge responsible for reviewing requests took a long time.

Togo does not make extradition conditional on the existence of a treaty. Togo does not extradite its own nationals. The instruments and legislation cited above contain extradition provisions tailored to their material and regional scope, thereby covering the parties to those instruments. For instance, article 15 of the African Union Convention on Preventing and Combating Corruption states that that article “shall apply to the offences established by the State Parties in accordance with this Convention” and that “offences falling within the jurisdiction of [this] Convention shall be deemed to be included in the internal laws of State Parties as crimes requiring extradition. State Parties shall include such offences as extraditable offences in extradition treaties existing between or among them.” According to paragraph 4 of the same article, “a State Party that does not make extradition conditional on the existence of a treaty shall recognize offences to which [this] Convention applies as extraditable offences among themselves.” With regard to expediting procedures and simplifying evidentiary requirements, the Law on Combating Money-Laundering of 2007 contains provisions enabling requests to be sent directly to the prosecution service and copied to the Minister of Justice. Where additional information is necessary, a deadline of fifteen days for the transmission of such information may be agreed upon unless such a measure is incompatible with the nature of the case.

Article 45 of the Convention has been implemented only through the extradition treaty between Benin, Ghana, Nigeria and Togo and therefore applied only to the contracting Parties. Article 14, paragraph 1, of the treaty states that “any national of a contracting party sentenced to deprivation of liberty may, at the request of the State of which he or she is a national and subject to his or her consent in writing, be delivered to the authorities of that State to serve his or her sentence. The transfer costs shall be borne by the requesting State. The release of such a person before the expiration of his or her sentence may be effected only with the consent of the contracting party that sentenced him or her.”

The same instruments and legislation applicable in relation to extradition apply also to mutual legal assistance, which limits their scope of application both materially and geographically. The reviewers were informed that the Minister of Justice was the central authority for mutual legal assistance. The contact details are as follows: P.O. Box 121, Lomé, Togo; telephone: +228 22210975; e-mail: justice@justice.gouv.tg. Togo requires dual criminality but seeks to apply the rule in a flexible manner in accordance, inter alia, with its obligations under the African Union Convention on Preventing and Combating Corruption. Only the Law on Combating Money-Laundering of 2007 contains provisions governing grounds for refusal, within the scope of the offences that it covers, and does not include bank secrecy.

Article 47 of the Convention on transfer of criminal proceedings is partly implemented by article 47 of the Law on Combating Money-Laundering of 2007, which states that “if the criminal prosecuting authority of a UEMOA member State considers, for any reason whatsoever, that there are major obstacles to the bringing of proceedings or the continuation of proceedings that have already begun and that adequate criminal proceedings are possible on national territory, it may request the competent judicial authority to carry out the necessary action against the alleged perpetrator. The provisions of the preceding paragraph shall also apply when the request is made by an authority of another State, and when the rules in force in that

State authorize its national prosecuting authority to make a request for the same purpose. The transfer request shall be accompanied by such relevant documents, papers, files, objects and information as may be in the possession of the prosecuting authority of the requesting State.”

Togo has also partly implemented article 48 of the Convention on law enforcement cooperation through article 18 of the African Union Convention on Preventing and Combating Corruption, article 15 of the ECOWAS Protocol on the Fight against Corruption and the agreement on cooperation in criminal police matters between Benin, Ghana, Nigeria and Togo of 10 December 1984. Those provisions are aimed at enhancing law enforcement cooperation among the States parties. It was noted during the country visit that exchanges regularly took place through the national central bureaux of the International Criminal Police Organization (INTERPOL). Togo had partly implemented article 49 of the Convention on joint investigations through the ECOWAS Protocol but not article 50 on special investigative techniques.

#### **4. Recommendations and technical assistance needs**

The reviewing States parties commended Togo for its reform efforts as described during the country review process. The draft anti-corruption law that was submitted to the reviewers was viewed as implementing most of those provisions of the Convention that had not already been incorporated in the domestic legal and institutional framework. The reviewers urged Togo to expedite those reforms and in particular to support the finalization of the draft law and its submission to the National Assembly for discussion and adoption. The draft law included legal provisions implementing the Convention and an institutional component establishing a new anti-corruption body. It was also noted that the involvement of other national stakeholders was key to that process.

As regards the existing institutional framework, a number of institutions relevant to the prevention and combating of corruption needed to be further supported and strengthened. The Court of Audit, CENTIF, the Public Procurement Commission and the Inspectorate General of State were key institutions that had been operational only in recent years and needed to be strengthened.

With regard to international cooperation, the conclusion of bilateral and multilateral treaties was to be encouraged. Specific legislation on international cooperation, whether to be included in the draft law against corruption or in the Code of Criminal Procedure, was required in order to implement fully the provisions of chapter IV. The reviewing experts and the secretariat had also provided comments on the proposed draft anti-corruption law, as requested by Togo under paragraph 33 of the guidelines for governmental experts and the secretariat. The draft law was found to implement most of those provisions of the Convention not already covered by existing legislation or regulations.

Challenges facing Togo in the implementation of chapters III and IV were identified, namely limited resources with respect to human, financial and technological capacity and a lack of inter-agency coordination. Those challenges were due, inter alia, to the lengthy transition of the work of the existing National Commission to Combat Corruption and Economic Sabotage and the pending

establishment, in accordance with the draft law against corruption, of the new anti-corruption body. More broadly, the limited capacity of the judicial and law enforcement sectors was also an impediment to the effective investigation and prosecution of, and securing of convictions for, corruption offences.

The technical assistance needs identified during the country review included assistance in legislative drafting. Model legislation and model treaties on international cooperation were requested in order to unify and harmonize the existing legal framework for extradition and mutual legal assistance. Togo also requested assistance in drafting codes of conduct.

The review found that capacity-building assistance for the relevant stakeholders, both in general and specifically on the basis of the draft law following its adoption by the National Assembly, would be crucial for the successful implementation of the Convention. Specific training for the judicial and law enforcement sectors was highlighted, and could be incorporated in the current programme for modernization of the judicial sector. Specialized training for anti-corruption experts and training in international cooperation were also identified as needs.

Togo also requested assistance in developing a strategy and action plan that would enable it to fully implement the Convention and the recommendations emerging from the country review process. The draft anti-corruption law provides for the establishment of a new anti-corruption commission to replace the existing National Commission to Combat Corruption and Economic Sabotage, with strengthened powers and an inclusive approach. Assistance in the establishment and operation of the new commission would also be sought in order to enable the commission to carry out its functions of, inter alia, national coordination, prevention, investigation and follow-up on the implementation of the Convention in Togo.