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Executive summaries

Note by the Secretariat

Addendum

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Jordan

Legal system

Jordan signed the UNCAC on 9 December 2003 and ratified it on 24 February 2005. The implementing legislation — Law No. 28 of 2004 — was adopted by the Parliament on 8 June 2004 and published in the Official Gazette on 1 August 2004. The Law stipulates that the Convention is considered valid and effective for all its intended aims, and that the Prime Minister and Ministers shall be responsible for the implementation of its provisions.

Overall findings

The main pillars of the Jordanian legal framework to address corruption are the Criminal Code, the Anti-Corruption Act, the Anti-Money Laundering Act, the Right to Access Information Law, the Economic Crimes Act, the Ombudsman Law and the Financial Disclosure Act.

Jordan has also put in place an institutional framework to deal with the challenges posed by corruption. Several specialized agencies with ad hoc mandates include the Anti-Corruption Commission, the Audit Bureau, the Jordan Securities Commission, the Ombudsman Bureau, the Financial Disclosure Department, the Anti-Money Laundering Unit, the Inspectorates (internal control bodies within each ministry), the Ministries of Justice and Interior, the Judicial Council, the General Security Directorate and the Office of the Public Prosecutor.

The Anti-Corruption Commission (ACC), established in 2007, is tasked to coordinate and establish a comprehensive policy in prevention and combating corruption in the public and private sectors. The ACC started operationally functioning in 2008.

The work of ACC is guided by the National Anti-Corruption Strategy 2008-2012, which is organized around six main objectives: strengthening the capacity of ACC; prevention of corruption; education, training and public awareness; law enforcement; coordinating anti-corruption efforts; and international cooperation.

The findings of the review team disclosed a number of good practices which include, among others, the development of a comprehensive anti-corruption strategy and the separation of the office of the Attorney-General from the office of the Minister of Justice to ensure a high level of prosecutorial independence.

The review also disclosed a number of challenges which need to be addressed, including better coordination of national institutions in the implementation of UNCAC. There is also the need to systematically implement the UNCAC provisions using administrative and legislative means, as appropriate. Finally, Jordan indicated the need for technical assistance in areas such as legislative drafting, joint investigations and general capacity-building.

Criminalization and law enforcement

Criminalization

Jordan has adopted legislative measures to criminalize bribery of public officials, both in its active and passive forms. The "public official" is defined in article 2 of the Economic Crimes Law in a broad manner.

The reviewers took note of relevant jurisprudence of the Court of Cassation and observed that a more precise definition of "official duty", either in legislation or in jurisprudence, would facilitate the successful prosecution of the offence. The development of consistent case-law to specify whether it is necessary for the actions of the public official to fall within the scope of his/her functions or it suffices that he/she has only a connection to them, may also be an alternative.

The Jordanian authorities indicated that article 16 of UNCAC was not implemented in the domestic legal system, as the criminalization of foreign public officials and officials of public international organizations contradicts the immunities offered to international public officials mentioned in the United Nations Convention on Diplomatic Immunities and Privileges of 1946, to which Jordan is a party since 1 June 2008. However, the review team was of the opinion that Jordan could implement at least paragraph 1 of article 16, relating to the active bribery of such officials by nationals and residents who do not enjoy diplomatic immunity. At a later stage of the review process (September 2011), the Jordanian authorities referred to the New Amendment of the Anti-Corruption Commission Law, which was still under discussion in the Parliament and provided for the criminalization of foreign public officials, including officials of international organizations, unless they enjoy diplomatic immunity, for both active and passive bribery. In this connection and with regard to article 16, paragraph 2, of UNCAC, the Jordanian authorities requested technical assistance, should the amendments not be approved, in terms of a summary of good practices/lessons learned and legislative drafting.

The findings of the review team indicated that section 422 of the Criminal Code captures all the indicators of article 17 of UNCAC (embezzlement of, misappropriation or other diversion of property by a public official). Given that, according to the same article, "any person" can be the perpetrator of these crimes, all indicators required by article 22 of UNCAC (embezzlement of property in the private sector) are also covered.

Jordan reported that the same nexus of legislative provisions were used for the criminalization of bribery and trading in influence in both their active and passive forms. The reviewers, although acknowledging the optional nature of article 18 of UNCAC, noted with concern the lack of substantive distinction between the two crimes in the domestic legislation.

Regarding the domestication of article 19 of UNCAC (abuse of functions), the Jordanian law is broad given that the "undue advantage" is not an element of the offence in the national law.

Jordan confirmed the criminalization of illicit enrichment through article 6 of the Financial Disclosure Law of 2006, which prescribes criteria for declaration of assets and sanctions for failure to declare. The law provides for confiscation of illicit assets. It does not prescribe limits for retaining records of declared assets, but a proposal has been made to set such a limit to five years.

The Financial Disclosure Department (FDD), which is located in the Ministry of Justice, has the mandate to ensure asset declaration by public officers. During the country visit, it was stressed by the Jordanian authorities that, although the issue does not fall within the scope of the current review cycle of the implementation of UNCAC, technical assistance was required to draft new legislation which would provide the Financial Disclosure Department with the powers to verify the information included in the asset declarations.

The review team noted that the Jordanian legislation, and particularly articles 171 and 173 of the Criminal Code, had not entirely captured the conduct of bribery in the private sector, because of the restricted meaning of the term “every person”, as used in article 170 of the Criminal Code. At a later stage of the review process (September 2011), the Jordanian authorities reported that the New Amendment of the Anti-Corruption Commission Law, which was still under discussion in the Parliament, provided for the criminalization of bribery in the private sector.

The anti-money-laundering legislation of 2007 was amended in May 2010 to address observed deficiencies in the domestic anti-money-laundering regime, as well as create administrative and financial autonomy for the Jordanian Financial Intelligence Unit. The anti-money-laundering legislation provides for a wide range of predicate offences.

The Jordanian legislation criminalizes acts which on the one hand, have a negative impact on the proper and fair administration of justice (crimes against the judicial administration and crimes against the course of justice), but, on the other, do not seem to fully and precisely meet the requirements set forth in article 25 of UNCAC to establish as criminal offences a broad range of specific conducts resulting in obstruction of justice.

While acknowledging Jordan’s considerable efforts to achieve compliance of the national legal system with the UNCAC criminalization provisions, the reviewers identified a series of gaps and/or grounds for further improvement and highlighted the following issues for the attention of the competent Jordanian authorities:

- Construe the offences of active and passive bribery of national public officials in a way that provides for a more precise definition of their “official duty”. For the purpose of enabling successful and effective prosecution, develop consistent case-law to specify whether it is necessary for the actions of the public official to fall within the scope of his/her functions or it suffices that he/she has only a connection to them

- Continue efforts and finalize ongoing work geared towards ensuring that the mandatory provision of article 16, paragraph 1, of UNCAC on the criminalization of active bribery of foreign public officials is effectively incorporated and implemented at the domestic level

- Continue efforts to finalize the updating of domestic legislation with a view to criminalizing bribery in the private sector, in line with article 21 of UNCAC, to cover those private and public liability companies that do not access public funds

- Consider the criminalization of embezzlement/misappropriation under article 22 of UNCAC by expanding the scope of existing legislation to cover all subsectors in the private entities

- Continue efforts to finalize the updating of domestic legislation with a view to criminalizing the passive bribery of foreign public officials and officials of public international organizations
- Ensure that the criminalization of obstruction of justice is achieved through ad hoc criminal law provisions in full line with the specific requirements set forth in article 25 of UNCAC
- Explore the possibility of criminalizing trading in influence as a self-standing corruption-related act which is distinct from the bribery offence.

Law enforcement

The sanctions applicable to persons who have committed corruption-related offences appear to be sufficiently dissuasive bearing in mind the maximum applicable penalty. The Jordanian authorities clarified that the Penal Code defined the term "temporary imprisonment" as a sanction ranging from 3 to 20 years, unless another article in the Code provided otherwise. Overall, the national legislation was found in compliance with article 29 of UNCAC on the statute of limitations.

Jordan has chosen to put in place a legal framework for the establishment of criminal liability of legal persons involved in the commission of UNCAC-based offences. Sanctions imposed, in this context, include fines against the legal person, as well as suspension or dissolution of the legal entity. There is no differentiation between natural and legal persons as to the civil liability for damage caused to a third party.

The Anti-Corruption Commission (ACC) may investigate any corruption case on its own accord or based on information from any party. ACC also has the right to seize property, impose travel bans, and suspend from work without pay. While ACC is a new agency that only became operational in 2008, it is noteworthy that in the first ten months of 2008 it examined 465 cases and transferred 82 cases to the courts or other relevant institutions. In 2009, it examined 834 cases and in 2010, 890 cases.

In addition, the General Security Directorate (GSD) is responsible for the prevention, investigation, apprehension and prosecution of crimes, including corruption-related offences. GSD cooperates with ACC in the investigation and prosecution of corruption. To effectively carry out its functions, GSD regularly uses special investigation techniques such as surveillance and forensic analysis, and provides evidence to ACC at its request. In 2010, 10 reports were shared by GSD with ACC.

Article 97 of the Constitution guarantees the independence of the judicial branch. While the King must approve the appointment and dismissal of judges, in practice judges have independence from the Government and are supervised solely by the Judicial Council and the Directorate of Judicial Inspection. At a later stage of the review process (September 2011), the Jordanian authorities referred to a new amendment to the Constitution which aimed at enhancing the independence of judiciary. It will be followed by a set of legislative acts amending the current Independence of Judiciary Act to reflect such independence.

The Judicial Council has the mandate to appoint, promote, transfer and discipline judicial officers. There are no judges designated to handle corruption cases and

there are currently no special training on anti-corruption issues for judges. Although judges enjoy immunity, the Judicial Council has the right to waive such immunity and refer any judge to the General Prosecutor, if deemed necessary. No such case has occurred so far. The Judicial Council has the right to disengage a judicial officer within three years of the appointment if convicted of an offence prior to his appointment.

The Public Prosecutor supervises the prosecution authorities and, with regard to corruption, seconds prosecutors to ACC. The supervision of the Ministry of Justice is only administrative, hence there is no intervention in the function of the prosecution. There is a code of conduct that applies to both judges and prosecutors. The conditions of service for both judges and prosecutors are the same.

Jordan has put in place an adequate domestic regime for the freezing, seizure and confiscation of assets derived from corruption offences. There is no framework for non-conviction-based confiscation, but civil forfeiture can be initiated by the victim of a crime. Where an accused has absconded, the court can confiscate assets without a conviction. The New Amendment of Anti-Corruption Commission Law, still under discussion in the Parliament, provides that the court may continue to proceed with the case in order to confiscate assets derived from corruption offences even if the criminal case was dropped or the penalty has been waived. The domestic legislation also provides for interim seizure of assets, carried out by the General Security Directorate through the court process.

Despite the existence of an administrative procedure to protect whistle-blowers, there is a need for enacting special legislation on the protection of witnesses, experts and informants. At a later stage of the review process (September 2011), the Jordanian authorities reported that the New Amendment of the Anti-Corruption Commission Law, which was still under discussion in the Parliament, introduced four provisions on the protection of witnesses, experts and informants, based on the UNCAC requirements.

In this regard, the Jordanian authorities highlighted the following challenges: weak inter-agency coordination; limited capacity in terms of human resources and institutional infrastructure; limited awareness of state-of-the-art programmes and practices for witness and expert protection; and limited financial resources for implementation.

Jordan further indicated that the following forms of technical assistance would assist in rendering the protection of witnesses, experts and reporting persons more effective: summary of good practices/lessons learned; legal advice in the development of the rules and regulations necessary to implement relevant legal provisions; capacity-building for authorities responsible for establishing and managing protection programmes; and on-site assistance by specialized experts. None of these types of assistance has been provided so far.

The national legislation allows persons who have suffered damage as a result of an act of corruption to initiate legal proceedings in a civil court in order to obtain compensation. This is a general clause covering both corruption and other cases, since any person who has suffered damage as a result of a crime has the option either to merge the criminal with the civil case in the criminal court or file a separate civil case. However, the accused person may request the civil court to

adjourn proceedings before the civil court until a final judgment is reached by the criminal court.

There is not yet a legal framework for plea bargaining in Jordan, but mitigation of punishment can be negotiated depending on the circumstances. The New Amendment of the Anti-Corruption Commission Law, which was still under discussion in the Parliament, provides for waiver of two thirds of penalty for those who provide information or evidence during investigation leading to the recovery of proceeds derived from corruption-related offences. In addition, if such information or evidence is given to the Anti-Corruption Commission before the discovery of the corruption case, a full waiver of penalty could be provided.

Jordan has not entered into agreements or arrangements with other States to allow for a mitigated sanction or immunity from prosecution in exchange for substantial cooperation with regard to a corruption offence. In the absence of bilateral or multilateral legal agreements, cooperation is provided in accordance with the rules of international comity. Technical assistance in the form of a summary of good practices/lessons learned would assist Jordan in implementing paragraph 5 of article 37 of UNCAC.

In the field of inter-agency cooperation for purposes of investigation and prosecution of corruption offences, a number of memoranda of understanding have been signed between competent authorities. A similar MoU has been signed between ACC and the Audit Bureau, which is an independent institution set up by the Constitution with the — mostly preventive — mandate to audit revenue and expenditure as well as public accounts of the State, and ensure compliance with financial regulations. However, suspicious transactions uncovered in the course of its audit work are not reported directly to ACC; they are reported first to the Minister in charge of the particular ministry and the Minister of Finance who set up a joint investigation Committee.

Inter-agency cooperation and information-exchange for the purpose of investigating and prosecution of money-laundering offences, in particular, is promoted through the Anti-Money Laundering Unit (FIU). The assessment of AML efforts of Jordan by the reviewing experts showed that:

- Jordan has an operational FIU that manages the country’s AML regime
- FIU, though located within the Central Bank of Jordan (CBJ), has appreciable level of financial, administrative and operational autonomy. FIU has its own budget and staff and the head is appointed by the AML National Committee. The Committee does not interfere in the operations of FIU
- FIU has access to the databases of relevant domestic authorities and has powers to request for additional information from both reporting institutions and relevant authorities in furtherance of its operations
- AML/CFT inspections are carried out by relevant regulators. Various AML/CFT Regulations and Manuals (with the exception of the insurance sector) have been issued to guide reporting institutions on their obligations under the AML/CFT regime

- Statistics for the years 2008, 2009 and 2010 indicate that 195, 150 and
190 suspicious transactions were filed to FIU respectively. Adequate security measures are taken to guarantee the security of relevant information

- FIU has sent 21 and 11 intelligence to ACC in 2008 and 2009 respectively, although ACC officials could not confirm these statistics at the time of the country visit. The Commission could not also confirm if any of the information/intelligence sent to it by the FIU has resulted to prosecution and/or conviction

- Technical assistance is required to strengthen the capacity of FIU

- FIU's non-membership in the Egmont Group limits its ability to exchange information with some FIUs. Efforts are being made to join the Egmont Group. Currently, AMLU/FIU has signed Memoranda of Understanding (MOUs) with four countries on exchange of information. The Unit does not provide spontaneous information/intelligence to other FIUs except on request

- Banking secrecy is lifted in cases prescribed in the banking law. Each case is considered separately. The Central Bank ensures, in this regard, the adherence of the entities which are subject to its oversight and supervision. FIU can access any information it requires from the reporting entities by virtue of AML laws

- CBJ has a range of graded measures to sanction non-compliant banks, including administrative sanctions such as warnings to fines and revocation of licenses. There appears to have been no administrative sanctions imposed in recent times. In cases of violations of AML legislation, prosecutors are informed for the initiation of criminal proceedings

- The regulations issued by CBJ has the force of law and attract penalties because they are issued as subsidiary legislation under the main laws

- CBJ considers it a welcome idea to conduct joint inspections with the FIU in future to enable FIU to focus on AML issues while it deals on general compliance issues

- Under the Jordanian AML regime, there is no limit to cash transaction. For effective implementation of article 23 of UNCAC and AML law, the Jordanian authority may consider setting a limit to cash transaction mandating people to go through financial institutions in view of the vulnerability of cash to money-laundering. Against this background, transaction above certain limit should be required to pass through the financial system. This will create audit trail that will facilitate investigation and prosecution in case of any corruption case.

A key factor for increasing the effectiveness of cooperation between different national authorities involved in the fight against corruption is the establishment of a national criminal database within the Anti-Corruption Commission, in which

information from different agencies will be gathered. Technical assistance was needed for the establishment of such a database.

The rules of criminal jurisdiction, as contained in the Criminal Code, apply to corruption-related offences. Jurisdiction is established over acts committed within the national territory, acts committed by Jordanian nationals, as well as acts for which extradition is denied on the grounds of nationality. However, no information was provided to the reviewing experts with regard to other jurisdictional bases foreseen in article 42 of UNCAC. The reviewing experts further highlighted the need for a mechanism to foster consultations between the competent authorities of Jordan and other States in cases of multiple jurisdictions over corruption offences, in line with article 42, paragraph 5, of UNCAC.

Overall, with regard to UNCAC requirements in the area of law enforcement, the following additional observations are brought to the attention of the Jordanian authorities:

- Continue efforts to strengthen the accountability of the judiciary through a consistent and strict application of all legal and disciplinary means to sanction corruption
- Continue efforts to finalize and put in place ad hoc legislation on the protection of witnesses, experts and informants, coupled with the adoption and implementation of appropriate administrative measures to give practical affect to such legislation
- Consider putting in place a comprehensive and solid framework for non-conviction-based asset forfeiture
- Update existing legislation to provide for a more comprehensive and flexible scheme of criminal jurisdiction over corruption offences
- Consider entering into agreements or arrangements with other States to allow their law enforcement authorities to propose a mitigated sanction or immunity from prosecution in exchange for substantial cooperation with regard to a corruption offence.

International cooperation

Beyond being one of the first Arab countries to sign UNCAC, Jordan hosted the first session of the Conference of the States Parties to UNCAC and joined the voluntary UNCAC pilot review programme. Jordan plays a key role in the Good Governance for Development (GfD) in Arab Countries Initiative and its Network on Supporting UNCAC Implementation in Arab Countries. Jordan also participates in the Council of Arab Ministers of Justice and Council of Arab Ministers of the Interior, as well as the Programme of Governance in the Arab Region (POGAR). Moreover, the reviewing experts identified as a good practice that the Jordanian Anti-Corruption National Strategy has a distinct component on international cooperation.

Extradition

Extradition is governed by bilateral agreements with other countries, which require that the offence is punishable in both the requesting and requested States. Paragraph 2 of article 44 of UNCAC is not implemented due to the strict application

of the double criminality requirement in extradition relations based on bilateral or regional agreements. Technical assistance in the form of legal advice to adopt a more flexible approach on this matter was needed.

The Extradition Act, enacted in 1927, prescribes criteria for extraditing offenders, among which is the threshold of extraditable offences (not less than one year of imprisonment). A review of this Act has already started.

Information gathered in the course of the review indicated that Jordan has a policy of not extraditing its nationals and, instead, initiating domestic criminal proceedings and requesting evidence from the requesting State.

As part of regional efforts exerted by the Arab League to unify Arab legislations, the Council of Arab Ministers of Justice has adopted the model Arab law on judicial assistance in criminal matters, which could be used as a legal basis if the parties concerned agree.

Jordan is also party to the Arab League Extradition Agreement of 1952 and the Riyadh Arab Agreement for Judicial Cooperation of 1983.

Jordan has concluded bilateral treaties or agreements on extradition and judicial cooperation in criminal matters with Syrian Arab Republic, Lebanon, Turkey, Tunisia, Egypt, United Arab Emirates, Yemen, Algeria, Kuwait and Azerbaijan.

The national authorities have not yet informed the Secretary-General of the United Nations whether they consider UNCAC as a legal basis for extradition. This omission has been indicated during the country visit. At a later stage of the review process (September 2011), the Jordanian authorities reported that a relevant notification would be sent in due time to the Secretary-General reflecting the national position on this matter. An ad hoc committee convened to discuss this issue had recommended that Jordan use bilateral and regional agreements, rather than UNCAC, as a legal basis for extradition.

From an operational point of view, the Interpol National Bureau is located within the General Security Directorate and is in charge of coordinating practical arrangements for extradition of offenders. Where a case of corruption has international dimensions, the Anti-Corruption Commission cooperates with the Interpol National Bureau.

Where Jordan is involved as a requested State, the extradition process may take between 12 and 18 months. However, the process can be expedited if the relevant documentation is properly submitted (maximum 4 months). The Jordanian authorities underscored that they would benefit from technical assistance in this area.

Mutual legal assistance

With the domestication of UNCAC in the Jordanian legal order, the national authorities are in a position to grant MLA requests on the basis of the Convention. Generally, mutual legal assistance is based on treaties, but there have been instances where MLA requests were granted in the absence of treaties. There is no legal restriction in affording MLA in respect of legal persons.

Until the country visit in March 2011, Jordan had not notified the Secretary-General of the central authority designated to receive requests for mutual legal assistance and

either to execute them or to transmit them to the competent authorities for execution. After the country visit, Jordan informed UNODC, through Note Verbale IO.15/468 of 29 March 2011, that the "Ministry of Justice is the only authority which is responsible for requesting legal assistance regarding corruption". The designation was given under a written instrument by the Prime Minister in 2010. This notification was sent accordingly to the United Nations Office for Legal Affairs (OLA).

For the purpose of fully implementing paragraph 14 of article 46, the Jordanian authorities may wish to provide a similar notification regarding the language in which incoming MLA requests can be accepted, despite the fact that in the context of the review process it was indicated that such requests should be submitted in Arabic. At a later stage of the review process (September 2011), the Jordanian authorities reported that a relevant notification would be sent in due time to the Secretary-General of the United Nations reflecting the national position on this matter. It is almost certain that the language would be Arabic.

Double criminality is generally required for incoming MLA requests. Assistance can be denied on the basis of the political or military nature of the relevant offence(s) or where the execution of the request may be detrimental to the national sovereignty or public order.

All MLA requests are channelled both through the central authority and diplomatic. UNCAC-related assistance requests are rare, however, with only two such requests made in 2008. The procedure for MLA developed by the International Cooperation Directorate of the Ministry of Justice is published on the website of the Ministry in Arabic.

Other forms of international cooperation

Jordan is bound by regional and bilateral agreements on the transfer of sentenced persons, such as the Riyadh Arab Agreement for Judicial Cooperation and the bilateral agreements with Cyprus and Egypt.

The reviewing experts observed that the implementation of article 47 of UNCAC on the transfer of criminal proceedings might be problematic given that there appears to be no domestic framework to facilitate the transfer of proceedings, especially in situations where the requesting country is neither a party to UNCAC nor has a treaty with Jordan.

Jordan has not entered into bilateral or multilateral agreements or arrangements on law enforcement cooperation. However, it considers UNCAC as the basis for law enforcement cooperation in respect of the offences covered by the Convention. Challenges encountered in the field of law enforcement cooperation include, inter alia, weaknesses in inter-agency coordination, as well as limited capacity and resources for implementation. Moreover, there is no practical experience in conducting joint investigative teams.

With a view to ensuring more effective implementation at the domestic level of articles 48 and 49 on law enforcement cooperation and joint investigations respectively, Jordan would be interested in receiving the following forms of technical assistance: Summary of good practices/lessons learned; model agreement(s)/arrangement(s) as basis for the conclusion of bilateral instruments; technological assistance (e.g. set-up and management of

databases/information-sharing systems); capacity-building programmes for authorities responsible for cross-border law enforcement cooperation; and the development of an action plan for implementation. Jordan would further need technical assistance to assess the effectiveness of the measures adopted to establish or enhance channels of communication with other States Parties' law enforcement authorities, agencies and services.

The following remarks are made with the intention to assist the national authorities in rendering international cooperation mechanisms more robust and effective:

- Explore the possibility of relaxing the strict application of the double criminality requirement in cases of UNCAC-based offences, in line with article 44, paragraph 2, of UNCAC
- Ensure that any crime established in accordance with UNCAC is not considered or identified as a political offence that may hinder extradition
- Continue to make best efforts to ensure that extradition proceedings are carried out in the shortest possible period
- Take prompt action, as appropriate, towards clarifying whether or not UNCAC can be used as legal basis for extradition purposes
- Consider amending the domestic legal framework to more expressly allow for the provision of mutual legal assistance under certain circumstances even in the absence of dual criminality
- Continue to explore opportunities to actively engage in bilateral and multilateral extradition arrangements with foreign countries, with the aim to enhance the effectiveness of extradition, mutual legal assistance, transfer of criminal proceedings and other forms of international cooperation in criminal matters, with special emphasis on law enforcement cooperation and joint investigations
- Finalize the process of notification regarding the use of UNCAC as a legal basis for extradition and, in the interim, enter into agreements or arrangements with other States parties to UNCAC, as well as non-States parties to the Convention, to strengthen extradition mechanisms.

Sao Tome and Principe

Legal system

Sao Tome and Principe signed the Convention on 8 December 2005 and ratified it on 12 April 2006. Sao Tome and Principe deposited its instrument of ratification with the Secretary-General on 12 April 2006. The implementing legislation is in Resolution 37/VII/05, which was adopted by Parliament on 24 November 2005, and enacted by Presidential Decree No. 5/2006. It entered in force on 15 May 2006, the same day that it was published, pursuant to article 13 of the Constitution of Sao Tome and Príncipe. Article 13 states that generally accepted rules of international law and international conventions, which are ratified by an act of Parliament and come into effect, shall form an integral part of Sao Tome and Principe's domestic

law. In theory, international agreements prevail over domestic law, but implementing legislation is required to give them direct effect in the domestic legal system, pursuant to article 37.1 of the Constitution.

The Penal Code of 1886 contains the majority of the offences established by UNCAC and is currently being revised for amendment. Law No. 8/2003 on simple embezzlement, qualified embezzlement and peculation and Law 15/2008 on the conversion, transfer or concealment of goods or products further seek to implement UNCAC. The Criminal Procedure Code applies to the investigation, prosecution and trial phases of criminal proceedings.

Sao Tome and Principe is a civil law jurisdiction that has adopted the majority of its domestic legal system from Portugal.

Amendments to the Penal Code were approved by Parliament in 2009, but vetoed by the President of the Republic. The Minister of Justice informed the governmental experts that it was vetoed for four technical issues concerning specific offences not related to UNCAC. The Minister of Justice stated that a new Penal Bill, taking these four issues into consideration, was to be presented to Parliament this year.

Overall findings

The legislative framework of Sao Tome and Principe provides a basis in which UNCAC offences are criminalized. The pending amendments to the Penal Code and implementation of the Government Programme to Fight Corruption, coupled with the implementation of the recommendations of the governmental experts, will provide for a solid framework.

The Ministry of Justice is the body that is responsible for anti-corruption work, in general. The Economic Crime Unit of the Judicial Police, established at the end of 2010, is to become the specialized law enforcement agency for combating corruption and economic crimes. As it becomes operational, this Unit will be key in strengthening Sao Tome and Principe's existing law enforcement, predominately, between the Ministry of Justice, Judicial Police, Financial Intelligence Unit, Court of Auditors and the Central Bank.

International cooperation under the Convention, and in corruption-related matters in general, is new to Sao Tome and Principe and there is not have much experience in this area. International cooperation has tended to be with countries in the Community of Portuguese Language Countries. However, it has sought to extend this to other countries, mainly in the region. Sao Tome and Principe is also a member to INTERPOL.

Criminalization and law enforcement

Criminalization

Sao Tome and Principe has a legislative framework that criminalizes the majority of UNCAC-related offences. These are established in the Penal Code, Law No. 8/2003 and Law No. 15/2008. A number of recently prepared legislative amendments to the Penal Code are still pending. These amendments cover a wide range of areas, and would specifically cover active and passive bribery of national public officials, abuse of functions, attempt in and participation to the commission of money-

laundering offences attempt in the commission of money-laundering offences, and extending the range of criminal offences to be included as predicate offences.

Illicit enrichment is not criminalized as a separate offence in Sao Tome and Principe. Constitutional limitations pertaining to the presumption of innocence hinder the implementation of article 20 of the Convention.

A good practice noted by the review, regarding article 22 of the Convention (Embezzlement of property in the private sector) was that Sao Tome and Principe's penalties for embezzlement would be aggravated according to the value of the embezzled asset and further aggravated according to in what capacity the offender received these assets.

While noting the draft amendments that are in place, the review concluded that in certain areas improvements could be made. As a result, it is recommended that Sao Tome and Principe adopt appropriate measures for the purpose of:

(a) Criminalizing active bribery of foreign public officials and officials of public international organizations;

(b) Furnishing copies of its anti-money-laundering laws to the Secretary-General of the United Nations, pursuant to UNCAC article 23 subparagraph 2(d); and

(c) Criminalizing the obstruction of justice in UNCAC article 25 paragraph (a).

With regard to the optional UNCAC provisions, Sao Tome and Principe may consider taking the following steps to enhance the effectiveness of its domestic measures:

Criminalizing passive bribery of foreign public officials and officials of public international organizations, trading in influence in both the active and passive forms, and bribery in the private sector.

Law enforcement

Provisions relevant to law enforcement are included in the Penal Code, Criminal Procedure Code, Public Servant Statute, Law No. 5/2002, Law No. 3/2003, Law No. 8/2003 and Law No. 15/2008. The proposed amendments to the Penal Code would further provide for administrative and criminal liabilities of legal persons, and the criminalization of accomplices.

Sao Tome and Principe in Law No. 5/2002 appears to strike a balance between the rights of citizens and ensuring their presence at court proceedings. Law No. 3/2003 also provides that when a probation is granted it is to equal that of the time served, with the aim of facilitating the social reintegration process. The Public Servant Statute outlines the procedures by which an accused public official is to be penalized (i.e. fines, suspension, terminated), while the Penal Code allows the judge to exercise his or her discretion and to disqualify a convicted person from holding public office. In this regard, the Court of Auditors in Sao Tome and Principe also has an important role to play as a unique body that has the mandate to review or consider matters that are brought to its attention (i.e. by institutions, individuals), which may also be corruption-related. The Court does not have the administrative capacity to intervene in a given case, but can consider three types of penalties or

actions: disciplinary; financial; and criminal. However, it is to be noted that the Court cannot hand down convictions or criminal sanctions; if there is reason to believe that criminal activity was involved, then the matter has to be referred to the normal courts through the prosecution service. The Court is able to consider any matter within its competency (i.e. financial) and in this regard, the privilege of immunities can also be waived. It was further confirmed that functional immunity may be lifted for Parliamentary Members pursuant to the Organic Law of Parliament, if there is concrete and sufficient evidence that points to corruption-related offences. Furthermore, the lifting of bank secrecy can be at the discretion of a judge, pursuant to the Criminal Procedure Code, and the principle of compensation for damage is set out in the Civil Code.

The recently established Economic Crime Unit is to become operational and for it to be effective, it will need to be granted the necessary capacity to carry out its functions, including its staff should have the appropriate training and resources to carry out their tasks. Cooperation between national authorities exists; for example, according to article 16 of Law No. 15/2008, the Attorney-General is to be informed immediately about suspicious transactions, which could come from the Central Bank, Gambling Supervision Authority, Solicitors' Chambers, General Inspection of Economic Activities, General Direction of Notary, Chamber of Auditors and Bar Association. With respect to suspicious transactions, there has been no reference made to the role of the Financial Intelligence Unit (FIU). This was created by Law No. 15/2008 and Decree No. 60/2009, but there is no harmonization between the two. Article 4(b) of Decree No. 60/2009 requires FIU to first be informed about suspicious transactions and for it to then inform the Attorney-General. New amendments are being drafted for Law No. 15/2008 to also mention the role of FIU.

Pursuant to the Penal Code and Penal Procedure Code, Sao Tome and Principe has established the "territoriality principle". The "protection principle" in Law No. 15/2008 only refers to offences relating to concealment and money-laundering. The Judicial Treaty with Portugal was cited as an example of where Sao Tome and Principe could have jurisdiction over offences that were committed in Portugal but the alleged offender is located in Sao Tome and Principe. Moreover, Sao Tome and Principe's legal system establishes the *nullum crimen sine lege* principle which permits criminal proceedings only when the act is qualified as a criminal offence by an existing law.

With regard to the optional UNCAC provisions, Sao Tome and Principe may consider taking the following steps to enhance the effectiveness of its domestic measures:

(a) Using discretionary legal powers relating to the prosecution of persons to enhance the effectiveness of law enforcement measures;

(b) Establishing procedures for the disqualification of convicted persons from holding office in an enterprise that is in part owned by the State;

(c) Adopting measures, such as legislative, to enhance its existing framework on UNCAC article 31 (Freezing, seizure and confiscation);

(d) Enacting comprehensive legislation on witness and whistle-blower protection;

(e) Enacting legislation to include mitigating punishment that takes into account when the offender assists the competent authorities in the investigation or prosecution of an offence through substantive cooperation, as well as granting immunity from prosecution to a person who provides substantial cooperation;

(f) Entering into agreements or arrangements with other States parties where cooperation between law enforcement authorities would be beneficial; and

(g) Establishing jurisdiction over the (active and passive) personality and protection principles, as well as when the alleged offender is in its territory and not extraditable as s/he is one of its nationals; where appropriate, consulting with other States parties who are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct with a view to coordinate their actions.

International cooperation

Extradition

Sao Tome and Principe relies on its Judicial Treaty with Portugal on the Prohibition of Extradition and the Extradition Convention for the Community of Portuguese Language Countries (Determinant Acts of Extradition) for extradition. However, domestic legislation is required to give international agreements direct effect in Sao Tome and Principe, pursuant to article 37.2 of the Constitution. Further extradition agreements are being negotiated with the African Union and also at a subregional level. If no agreement or arrangement exists, then extradition can be considered on a case-by-case basis. In principle, UNCAC could be used as a legal basis for extradition, but this has neither been notified to the Secretary-General of the United Nations nor used in practice to date.

In principle, UNCAC offences are extraditable offences in the domestic law of Sao Tome and Principe, subject to also the concept of dual criminality. However, as Sao Tome and Principe has not criminalized all UNCAC offences, its requirement of dual criminality renders some UNCAC offences non extraditable. Moreover, pursuant to its Constitution, Sao Tome and Principe will not extradite its own nationals. It could not be classified whether the Criminal Procedure Code would allow for the recognition and enforcement of foreign criminal judgments in Sao Tome and Principe.

It is recommended that Sao Tome and Principe adopt appropriate measures for the purpose of:

(a) Enhancing their efforts to put in place domestic legislation with a view to giving practical effect to existing or future bilateral/multilateral agreements or arrangements, as well as providing for the necessary substantive and procedural requirements, including the minimum penalty requirement;

(b) Applying the *aut dedere aut judicare* principle;

(c) Not refusing extradition on the sole ground that the offence involves fiscal matters; and

(d) Consulting with the requesting State party before refusing extradition.

With regard to the optional UNCAC provisions, Sao Tome and Principe may consider taking the following steps to enhance the effectiveness of its domestic measures:

(a) Making of UNCAC as a legal basis for extradition; alternatively, encouraging the national authorities to continue their ongoing efforts to conclude bilateral and multilateral agreements or arrangements on extradition;

(b) Establishing expedited extradition procedures and simplified evidentiary requirements; and

(c) Denying a request for extradition where there are substantial grounds to believe that the request was made to prosecute or punish a person because of their sex, race, religion, nationality, ethnic origin or political opinions or other related prejudice.

Transfer of sentenced persons and criminal proceedings

The Convention on the Transfer of Sentenced Persons between Members of the Community of Portuguese Language Countries and Mutual Assistance on Penal Matters Convention among the Portuguese Speaking Countries Community regulate the transfer of sentenced persons and criminal proceedings, respectively, between members of this Community.

Sao Tome and Principe may consider taking the following steps to enhance the effectiveness of its domestic measures:

(a) Enhancing their efforts to put in place domestic legislation with a view to giving practical effect to existing or future bilateral/multilateral agreements or arrangements on the transfer of sentenced persons;

(b) Entering into such bilateral or multilateral agreements or arrangements with States outside of the Community of Portuguese Language Countries; and

(c) Adopting a practice, policy or arrangement that regulates the possibility of transferring criminal proceedings to members not in the Community of Portuguese Language Countries.

Mutual legal assistance

Sao Tome and Principe relies predominately on its Judicial Treaty with Portugal and a bilateral agreement with Angola, as well as the Mutual Legal Assistance on Penal Matters Convention among the Portuguese Speaking Countries Community, which it has signed but not yet ratified.

There is no domestic provision on the requirement of dual criminality for mutual legal assistance. However, during the country visit, it was confirmed that dual criminality is required. No corruption-related mutual legal assistance requests have been made or received Sao Tome and Principe to date.

During the country visit, the governmental experts were informed that the Ministry of Justice in Sao Tome and Principe is the central authority responsible for mutual legal assistance. No notification has yet been received by the Secretary-General of the United Nations. Such requests and related information are to be addressed to it through diplomatic channels. In urgent circumstances, requests and related

communications can also be addressed to Sao Tome and Principe through the International Criminal Police Organization.

It is recommended that Sao Tome and Principe adopt appropriate measures for the purpose of:

(a) Enhancing their efforts to put in place domestic legislation with a view to giving practical effect to existing or future bilateral/multilateral agreements or arrangements on mutual legal assistance;

(b) Affording the widest measure and purposes of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to UNCAC-related offences, also for which a legal person may be liable;

(c) Addressing the confidential nature of information received and not declining to render mutual legal assistance on the ground of bank secrecy;

(d) Rendering assistance that does not involve coercive action pursuant to UNCAC article 46, subparagraph 9(b);

(e) Notifying the Secretary-General of the United Nations of the central authority responsible for mutual legal assistance, as well as the language(s) acceptable to Sao Tome and Principe, according to UNCAC article 46, paragraphs 13 and 14.

(f) Complying with the rule of speciality and ensuring that a request contains the requirements contained in UNCAC article 46, paragraph 15;

(g) Providing for mandatory consultation with the requesting State party before refusing a request and before postponing its execution; and

(h) Giving protection to witnesses, experts and other persons who consent to give evidence.

With regard to the optional UNCAC provisions, Sao Tome and Principe may consider taking the following steps to enhance the effectiveness of its domestic measures:

(a) Ratifying the Mutual Legal Assistance on Penal Matters Convention among the Portuguese Speaking Countries Community and giving it practical effect;

(b) Transmitting information relating to criminal matters to a competent authority in another State Party pursuant to UNCAC article 46, paragraphs 4 and 5, as well as allowing for copies of Government records, documents or information that are not available to the general public to be provided to the requesting State party;

(c) Not affecting the obligations under any other treaty that govern or will govern mutual legal assistance, and also not prosecuting, detaining, punishing or subjecting a transferred person to any other personal liberty restriction;

(d) Using UNCAC as a legal basis for mutual legal assistance and notifying this to the Secretary-General of the United Nations;

(e) Establishing a comprehensive legal framework allowing for the transfer to and from Sao Tome and Principe of persons whose presence is requested,

according to UNCAC article 46, paragraphs 10 and 11, or alternatively, permitting a hearing to take place by videoconference; and

(f) Producing a practice paper on the handling of mutual legal assistance requests in respect of the costs and timelines with a view to increasing understanding by relevant institutions and agencies.

Law enforcement cooperation

Sao Tome and Principe relies on its Judicial Treaty with Portugal, the Extradition Convention for the Community of Portuguese Language Countries (Determinant Acts of Extradition), Mutual Legal Assistance on Penal Matters Convention among the Portuguese Speaking Countries Community and memberships (i.e. to INTERPOL) for law enforcement cooperation.

It is recommended that Sao Tome and Principe adopt appropriate measures for the purpose of:

> Enhancing its efforts to put in place domestic legislation with a view to giving practical effect to existing or future bilateral/multilateral agreements or arrangements on mutual law enforcement cooperation, bearing in mind the effective measures outlined in UNCAC article 48, paragraph 1.

With regard to the optional UNCAC provisions, Sao Tome and Principe may consider taking the following steps to enhance the effectiveness of its domestic measures:

(a) Considering UNCAC to be the basis for mutual law enforcement cooperation; and

(b) Providing for direct cooperation between foreign law enforcement agencies and those in Sao Tome and Principe, also through the use of modern technology.

Joint investigations and special investigative techniques

During the country visit, Sao Tome and Principe provided that it carries out joint investigations with the Community of Portuguese Language Countries, but the specific legal basis was not stated. The Judicial Police are the responsible authority in Sao Tome and Principe.

Pursuant to the new Criminal Procedure Code, a judge in Sao Tome and Principe can allow for special investigative techniques to be used.

With regard to the optional UNCAC provisions, Sao Tome and Principe may consider taking the following steps to enhance the effectiveness of its domestic measures:

(a) Entering into agreements or arrangements on joint investigations and the use of special investigative techniques, and factor in who is to bear such costs on the international level;

(b) Enhancing their efforts to put in place domestic legislation with a view to giving practical effect to existing or future bilateral/multilateral agreements or arrangements on joint investigations and special investigative techniques, and in their absence, on a case-by-case basis; and

(c) Providing for a framework in which the scope and manner in which such investigations are to be carried out are defined, including the use of controlled delivery.

Training and technical assistance

The challenges facing Sao Tome and Principe are: firstly, limited capacity and limited resources available in the country; secondly, certain specificities and inadequacy of existing normative measures such as laws and regulations; and lastly, competing priorities of the country.

The major technical assistance priorities of Sao Tome and Principe are institutional capacity-building and legislative support. Examples regarding the former include the development of an action plan for implementation, on-site assistance and capacity-building programmes for the authorities concerned with the implementation of the Convention. Needs regarding the latter include model legislation and treaties, legislative drafting and legal advice. Members of the Community of Portuguese Language Countries, mainly Portugal and Brazil have provided some technical assistance, but this has not been targeted towards UNCAC implementation.