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Review of implementation of the United Nations Convention against Corruption

Executive summary: Botswana

Note by the Secretariat

The present conference room paper is made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the fourth year of the first review cycle.

* CAC/COSP/IRG/2014/1.



II. Executive summary

Botswana

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

The Convention, to which Botswana acceded on 27 June 2011, entered into force in Botswana on 27 July 2011.

The country has a dual legal system, comprising customary law and received (or common) law, which consists of English and Roman Dutch law, as amended by statutes. As regards the written law, multiple specialized acts are relevant for this review, including the Corruption and Economic Crime Act (as amended) (CECA), the amended Proceeds of Serious Crime Act (POSCA), the Criminal Procedure and Evidence Act (CPEA), and the Penal Code (PC), which is applied as “*lex generalis*” to the specialized legislation.

The common law is constantly developed through case law, upon which the High Court and Court of Appeal, the highest court in Botswana, have ruled.

The Customary Courts have jurisdiction to hear a variety of civil and criminal matters, including offences of lesser gravity such as petty theft, but not corruption related matters.

Dedicated authorities to fight corruption are the Directorate on Corruption and Economic Crime (DCEC), the Director of Public Prosecution (DPP), the Attorney General, the Financial Intelligence Agency (FIA), the Police Service, the Directorate of Public Service Management (DPSM), the Administration of Justice (Courts), as well as other specialized law enforcement agencies.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

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

Sections 24 and 25 of CECA are the main provisions which criminalize active and passive bribery. Specific forms of bribery are covered in other sections, such as 26, 27 and 29 of CECA, 99 of PC and 94 of the Electoral Act. Case statistics on sections 24 and 25 were provided to demonstrate implementation.¹

CECA uses the term “public officer”, which was redefined under Section 3(c) of the CEC (Amendment) Act, 2013 and covers “(...) any person holding an office by election or appointment”. This applies to magistrates, judges, all judicial officers as well as Members of Parliament. Section 3(b) covers persons working for public enterprises, parastatals and any other organs where public moneys are used (Section 3(b)).

Section 2(1) PC comprises a broad definition of the term “public officer” and “person employed in the public service”. However, harmonization alongside the

¹ All case statistics provided and referenced in this report relate to the period 2010-2011.

corresponding definition in the CEC (Amendment) Act 2013 and against art. 2(c) of the Convention would ensure greater legal certainty.

Bribery of foreign public officials and officials of public international organizations is partially criminalized in Sections 99 and 2(1) of PC. The offence covers “any person in the employment of the government of a country other than Botswana, or of the United Nations or any agency thereof, who exercises functions of his office in Botswana”. It does not cover officials of other public international organizations. No cases exist to date.

Botswana partially criminalized active and passive bribery in the private sector in Sections 384 of PC and 28 of CECA, with limited application to principal-agent relations. Case examples were provided to show the implementation of the provisions. Additionally, Section 30 of CECA criminalizes corruption in public tendering procedures, and Section 94(f) of the Electoral Act addresses corruption in electoral matters.

Botswana has fully criminalized trading in influence in Section 25A CECA (introduced by the CEC (Amendment) Act, 2013). Also, Section 29(2) of CECA and Section 384 of PC contain relevant measures. There have been no prosecutions to date, but various cases are under investigation.

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

Botswana has criminalized money-laundering mostly in line with the Convention (Sections 14 and 15, POSCA). Botswana’s law extends to legal persons and their directors and managers, and also covers suspected criminal proceeds. However, the acquisition or use of criminal proceeds is not specifically addressed, nor is self-laundering clearly provided for. Predicate offences (“serious offences”, i.e. those punishable by imprisonment of not less than two years) include the majority, but not all UNCAC offences or foreign predicate offences. Pending legislation would address these issues. The reviewers welcome the continued collection of statistics on money-laundering.

Concealment and continued retention of property are criminalized in Section 15 of POSCA and Sections 317 to 320 of PC.

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

Botswana has criminalized embezzlement and misappropriation in various sections of CECA and PC, which cover all relevant aspects of the offence. The main provisions are Section 33 of CECA and Sections 102 and 103 of PC. Additionally, Section 24A of CECA could be of relevance for some misappropriation cases. The definition of property in Section 2 (1) (a) of PC is sufficiently broad to include all elements required by art. 2(d) of UNCAC. Case examples for Section 33 of CECA were provided.

Botswana has also considered the criminalization of embezzlement in the private sector, primarily in Sections 322 and 277 to 279 of PC. The content is limited to directors and officers of corporations or companies, which should capture the majority of cases, but not “all persons who direct or work in any capacity for a private sector entity” (UNCAC art. 22). Case examples were provided.

The abuse of functions by public officials is fully criminalized in Section 24A of CECA. Sections 104 and 100 of the Penal Code also contain relevant provisions that were used to prosecute cases before the 2013 CEC amendment. Case examples and statistics were provided for these PC provisions.

Botswana fully criminalized illicit enrichment in Section 34 of CECA. While there have been convictions, cases are at various stages of the criminal process, including one case before the court.

Obstruction of justice (art. 25)

Botswana has fully criminalized obstruction of justice in multiple provisions of PC. Section 123(f) covers “any person who (...) endeavours wrongfully to interfere with or influence a witness”. This broad provision subsumes the various acts under art. 25(a) of the Convention. Moreover, Section 120(b) prohibits acts endeavouring to “dissuade, hinder or prevent” the provision of testimony or evidence and Section 120(c), more broadly, covers anyone who “obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal”. Sections 111, 113 and 118 of PC are also relevant.

Obstruction of justice, in accordance with art. 25(b) of the Convention, is fully criminalized in Section 18(1) of CECA and Sections 109, 123(a), (c) and (i), 120(c) and 128 of PC. Section 109 of PC even addresses the obstruction of other categories of public servants than justice or law enforcement officials. Despite the broad legislation, only one case is currently with the DPP.

Liability of legal persons (art. 26)

Botswana has established the criminal liability of legal persons. It was explained that Section 2 of PC applies in regard to offences involving corporations of all kinds and any other association of persons capable of owning property, and that corporations could be made criminally liable for such corruption offences. Botswana also provided relevant case examples, including a case where both the natural and legal persons were charged.

The penalties provided by Section 36 of CECA (which were not adjusted during the 2013 amendment) are applicable to both natural and legal persons alike and may not be sufficiently dissuasive for legal persons. It was positively noted that the Corruption and Economic Crime (Amendment) Act, 2013 had integrated the possibility of blacklisting companies through an endorsement of the conviction in the Public Procurement and Asset Disposal Register.

Participation and attempt (art. 27)

All relevant forms of participation are covered in Sections 21, 391 and 392 of PC.

Any person who attempts to commit an offence is guilty of an offence according to Sections 389 of PC, in conjunction with Sections 388 and 390 of PC. The preparation of an offence (other than for example attempt, conspiracy or assistance) is not covered.

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

Botswana's legislation does not generally establish minimum penalties. The general penalty provision for most CECA offences is Section 36 of CECA which provides for a term of imprisonment up to ten years or a fine of P500 000, or both. In comparison, the PC provisions, which are relevant for the implementation of some offences under the Convention, mostly provide for imprisonment for up to one to three years, or a fine, or both. Penalty provisions are currently under review in Botswana. Within the legislative framework, the higher courts lay down sentencing principles by case law, considering the circumstances of the offence, the offender and interest of society.

According to Article 51 of the Constitution, the DPP has discretion to prosecute based on sufficient evidence vis-à-vis a reasonable possibility of conviction.

Botswana does not provide for criminal immunities, except for the Head of State and only while he/she is in office (Section 41, Constitution). The period of tenure of office is not taken into consideration in regard to the statute of limitations.

The CPEA provides for the possibility of granting bail at the discretion of the court. Sections 109(2) and 111(2)-(4) of CPEA, in particular, address relevant conditions for release on bail that consider the defendant's presence at subsequent criminal proceedings.

Parole can be granted according to Section 85 of the Prisons Act after the individual case was considered by a parole board. A specific programme to promote the reintegration of offenders into society is not in place, although legislation is being drafted.

The DPSM, a successor of the Public Service Commission, is the single employer of public officers in the central and local government, including teachers. The Public Service Act and functions of the DPSM do not apply to members of the Botswana Defence Force, the Police Service and the Prison Service (Section 3, Public Service Act). These officers are governed by respective rules on disciplinary matters in the Defence Force Act and Police Act. For judicial officers, the Judicial Service Commission governs disciplinary proceedings (Part III, Constitution).

Public officers can be suspended pending investigation or trial, according to Section 35 of the Public Service Act (previously entitled "interdiction"). Reassignment is not addressed in Section 35 but is possible as an administrative decision, according to DPSM. Disciplinary decisions can be taken notwithstanding criminal proceedings.

Corruption offences are normally considered serious misconduct (Section 27, Public Service Act) and lead to summary dismissal. A conviction of an offence or dismissal leads to disqualification from being reappointed in the public service, absent written approval by the Director or Permanent Secretary to the President (Section 18, Public Service Act). Out of 25 such requests, only 3 have been approved, none including a corruption offence. Section 18 of the Public Service Act does not clearly regulate cases of disqualification from holding office in an enterprise owned in whole or in part by the State.

The possibility of granting immunity to cooperating offenders is provided for by law. Sections 237 and 238 of CPEA contain relevant elements that protect the perpetrators, witnesses and accomplices who provide information and evidence relevant to an investigation. Decisions in regard to the mitigation of punishment are at the discretion of the courts on a case by case basis. No provisions for plea bargaining exist.

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

Section 123(1)(f) of PC establishes protection for witnesses in so far as it criminalizes broadly any interference with or influence of witnesses. Additionally, according to Section 123(1)(g) of PC any person who “dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding” is guilty of an offence. This could enable the pursuit of retaliation measures.

No specific witness protection scheme is in place, but CPEA provides for the possibility of closed hearings upon application of the parties. Also videoconferencing is possible on a case-by-case basis. Further measures have been taken in specific cases, such as relocation. No agreements on witness protection exist with other States.

Botswana has considered the protection of reporting persons (whistle-blowers) in Section 45A of CECA by criminalizing threats against or intimidation of persons reporting corruption allegations. Additionally, the section provides for the protection of the identity of informers during criminal proceedings. Relevant case law was cited. Currently legislation is being drafted to establish a comprehensive Whistleblower Act.

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

Confiscation, seizure and freezing is addressed in POSCA (notably Sections 3-5, 8, 17, 18, 20) and CECA (37, 10, 11, 38), as well as PC and CPEA. The threshold is conviction of a serious offence which includes the majority, but not all UNCAC offences. In minor cases, instruments and proceeds can be forfeited under other laws, such as the Drugs and Related Substances Act. Instrumentalities of crime are not covered in the legislation, except in specific cases (e.g., Section 56, CPEA). Pending legislation (referenced above) would expand the application to all criminal offences and instrumentalities and also establish non-conviction based forfeiture. FIA has administrative freezing powers to suspend a transaction for up to ten days (Section 24, FI Act). Value-based confiscation is provided for. The appointment of a receiver (Section 9, POSCA) or a judicial officer (Section 58, CPEA) to manage seized or confiscated property is possible. Sections 8 of CECA and 28 of the FI Act, 2009 address the production of banking and financial documents. Section 40(1) of CECA allows an inference to be drawn if an offender cannot explain the lawful origin of pecuniary resources or property, and case examples were provided.

Bank secrecy provisions are not a challenge to the investigation and seizure of bank, financial and commercial records, as Section 43(2)(b), (d), and (g) of the Bank Act in conjunction with Sections 7 and 8 of CECA provide sufficient exceptions to the confidentiality principle. Further provisions, such as Sections 248 and 249 of CPEA, can be used to obtain relevant information.

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

Section 26 of CPEA provides a 20 year prescription period for any offence (except murder, which is not time-barred). The cited provision does not provide the possibility of suspension of the period of limitations where the alleged offender has evaded the administration of justice. Nevertheless, a case example was provided in which such a suspension had been granted in practice.

The courts may consider previous convictions in other States during sentencing but not to establish a defendant's criminal liability (Section 283, CPEA). However, this possibility has never been used.

Jurisdiction (art. 42)

Jurisdiction is based on the territoriality principle, as regulated in Sections 4 and 5 of PC, and under general principles of common law.

According to Section 46 of CECA, the provisions of CECA apply in relation to citizens of Botswana, outside as well as within Botswana. Where an offence under Part IV of CECA is committed by a citizen outside Botswana, s/he may be dealt with in respect of such offence as if it had been committed in Botswana. The provision does not include stateless persons.

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

Section 42A of CECA provides the possibility of delisting or suspending companies convicted of offences under Sections 28 and 29 of CECA from acquiring projects.

The courts may decide on the compensation of damages and issue confiscation orders for convicted persons to pay compensation to victims (Sections 316 and 318, CPEA and Section 6, POSCA). Additionally, civil actions for damages can be instituted (Sections 12 to 16, CPEA).

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

The DCEC is mandated to combat corruption, economic crime and money-laundering. The appointment of the Director-General is by the President and dismissal is regulated under the Public Service Act, although plans are underway to delink DCEC from the Public Service and as such enhance its independence. The budget of DCEC is shared with other agencies in the Ministry. Staff is selected on a competency basis and the DCEC has a Training and Development department to assess the training needs of the agency. DPP has established a dedicated corruption prosecution unit to only prosecute corruption matters at the specialized Corruption Court. Other relevant agencies include FIA, whose responsibility is to combat money-laundering and financial crimes, the Botswana Police Service and DPSM.

Botswana has taken various measures to strengthen inter-agency coordination, including service level agreements, anti-corruption units and corruption prevention committees in every Ministry. The efforts to improve cooperation are positively noted by the reviewing experts and should be continued.

In regard to the investigation and pursuit of corruption and money-laundering cases, the DCEC, Police and the DPP cooperate closely. Alleged corruption cases received

by the police are referred to DCEC for investigation and DCEC relies on the police for support in specific situations.

Cooperation with the private sector is strengthened through various initiatives. FIA has conducted multiple trainings for financial institutions to familiarize them with their responsibilities and duties under the Financial Intelligence Act, 2009. Furthermore, a Memorandum of Understanding is in place between DCEC and the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) as a basis for collaboration in training events and development of guidance material for the private sector.

2.2. Successes and good practices

- Specialized anti-corruption units in specific government offices facilitate preliminary investigations and reports of wrongdoing to relevant institutions, such as the DCEC and the police. Further measures such as corruption prevention committees in every Ministry are noteworthy. These efforts should be continued.
- Regional presence of DCEC through local offices, and the establishment and operation of the Commonwealth Africa Anti-Corruption Center, housed in the DCEC, as a regional center of excellence, learning and training on anti-corruption and to enhance the sharing of experiences among participating countries.
- A specialized prosecution team in the DPP to handle corruption cases, thus simplifying lines of responsibility between DCEC investigators and DPP prosecutors and facilitating communication and joint training.
- The creation of a specialized judicial unit in the High Court of Botswana to handle corruption cases could serve as a way of reducing backlog and case turnaround times.
- Effective cooperation among the DCEC, DPP and police, as necessary for the pursuit of corruption and money-laundering cases, including through the exchange of personnel. The reviewers encourage continued cooperation among the DCEC, DPP, police, FIA and other relevant agencies, including the judiciary.
- Training of financial service institutions by FIA and the MoU between DCEC and BOCCIM, which lead to joint anti-corruption initiatives for the private sector.
- Jurisdiction in regard to corruption offences extends to conduct that occurred outside Botswana (Section 46 of CECA).

2.3. Challenges in implementation

- Ensure that the definition of “person employed in the public service” in Section 2(1) of PC covers the same scope of persons as under art. 2(c) of the Convention.
- Fully criminalize active bribery of foreign public officials and officials of public international organizations to include persons working for other public international organizations (Section 2(1), PC). In view of comprehensively

addressing all relevant corruption offences, Botswana may wish to consider including the offence (also its passive form) in CECA.

- Ensure that predicate offences include all offences under the Convention, including foreign predicate offences (Section 15, POSCA), and consider revisiting the applicable penalties for money-laundering; also fully address the acquisition and use of criminal proceeds, and provide for the possibility of self-laundering.
- Assess and address the potential risk of overlap in regard to investigation and prosecution of money-laundering offences.
- Furnish copies of the money-laundering laws to the United Nations.
- Ensure that the confiscation, freezing and seizure of instrumentalities is covered and strengthen the management of frozen, seized and confiscated assets (as provided for in pending legislation).
- Consider broadening the scope of criminalization of corruption in the private sector beyond principal-agent relations.
- In regard to embezzlement in the private sector, consider if legislative amendments are necessary to cover “all persons who direct or work in any capacity for a private sector entity”.
- Consider provisions for the suspension of the statute of limitations in cases where an offender has evaded the administration of justice.
- Consider establishing penalties for corruption offences which are sufficiently dissuasive, specifically in regard to legal entities, including international corporations.
- Also, consider the alignment of penalties for corruption offences covered in the CECA and the PC and the introduction of sentencing guidelines.
- Endeavour to promote the reintegration into society of persons convicted of corruption offences.
- Consider adopting plea bargaining measures, as indicated by Botswana’s authorities.
- Strengthen witness protection measures, for instance by developing a comprehensive legal framework and entering into agreements with other States, and ensure implementation of witness protection in practice.
- Further strengthen the available protection of reporting persons, including through a comprehensive Whistleblower Act.
- Strengthen the independence of the DCEC, including the appointment and dismissal of the Director-General and independence from the Public Service; consider establishing a Constitutional anchor for the Directorate; continue to dedicate, within existing means, sufficient resources for the operations of the agency; strengthen expertise and development of skilled personnel, especially for complex matters; continue awareness-raising on corruption and methods to report complaints to relevant authorities.

- For DPP, additional resources and capacity-building on corruption and money-laundering cases, as well as asset confiscation and international cooperation are needed. The measures should include DCEC, FIA, and the police.
- Continue to monitor the need for specialized expertise at the level of the High Court to address case backlog and turnaround times.
- Consider extending jurisdiction for corruption and money-laundering offences to cover art. 42, paragraphs 2 (c) and (d), 3 and 4.
- Consider strengthening collaboration between the DCEC and civil society on anti-corruption.

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

- Botswana indicated that it would require a range of technical assistance. On criminalization, such assistance predominantly includes summaries of good practices, on-site assistance and the development of implementation action plans. Specifically, subjects include the bribery of foreign public officials and the waiver of diplomatic immunities, awareness-raising in regard to the latest amendment of CECA (e.g. abuse of function and illicit enrichment) and investigation and prosecution of money-laundering and concealment.
- In relation to law enforcement, model legislation and other assistance for the establishment of witness and whistle-blower protection programmes and for a social reintegration scheme was pointed out.
- Various capacity-building needs in regard to money-laundering, confiscation, tracing, seizure and freezing of proceeds of crime for all relevant criminal justice institutions and the judiciary.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

Extradition is governed by the Extradition Act and two bilateral extradition treaties. The process of domestication of international treaties, including UNCAC, is an ongoing process in Botswana, which hinders the application of such treaties in practice. Extradition is subject to dual criminality and the existence of bilateral arrangements or the designation of countries (currently, all Commonwealth States). Extradition is limited to the extent that not all offences established under the Convention have been criminalized. Simplified extradition arrangements are available under the London Scheme.

The minimum imprisonment term of two years for an offence to be extraditable under the Act covers most but not all UNCAC offences and is subject to the terms of existing treaties. These establish a one-year threshold or take a list approach, and are being revised in line with international standards.

Botswana has refused extradition in four cases to date, three of which were due to the absence of a treaty and none of which related to corruption. An order by the Minister of Defence, Justice and Security authorizes the DPP to execute a request.

Political and military offences are exempted from extradition under Section 7(2) of the Extradition Act and the treaty with South Africa and one extradition request has been refused on these grounds. Botswana recognizes grounds for refusal in line with the Convention. However, nationality of the requested person is a mandatory ground for refusal in the absence of reciprocity and the *aut dedere aut judicare* obligation is not addressed. Botswana has never refused the extradition of a national.

The issues of fair treatment or the discriminatory purpose have not been invoked to date.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)

Botswana has not concluded agreements or laws on the transfer of prisoners. There is no law or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Botswana's Mutual Assistance Act (MACMA) provides the legal basis for mutual legal assistance (MLA). MLA is subject to dual criminality and the existence of bilateral arrangements (of which there are currently none) or the consent of the DPP. The Act is very broad in allowing Botswana to render assistance to any country upon consent of the DPP. Such consent was given in the past to non-Commonwealth countries, as necessary to execute incoming requests. MLA is limited to the extent that not all offences established under the Convention have been criminalized.

The process of domestication of international treaties, including UNCAC, is ongoing. Botswana subscribes to the Commonwealth (Harare) Scheme on MLA.

Requests are received through diplomatic channels and transmitted to the Office of the DPP, the central authority which assesses compliance of a request with the Act. A conduct based approach is taken when assessing dual criminality, as exemplified by case examples. Botswana applies both MACMA and other legislation, such as CPEA, CECA or PC in executing requests, and arrangements exist for information to be authenticated and transmitted. The average timeframe to execute a request is 1-2 months, and guidelines on applicable timeframes are in place.

MLA has not been refused to date, including in corruption-related matters. A case example was given where Botswana successfully recovered assets from another country.

Botswana relies on its cooperation through SARPCCO, INTERPOL and ARINSA (see below) to share pre-MLA information. Confidentiality requirements are observed. Bank secrecy is not a ground for refusal and banking records have been provided on request. The rule of specialty is observed in law and practice.

The CPEA provides for taking evidence on commission, and Botswana has authorized the taking of evidence by a foreign judicial authority.

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

Botswana is a member of the Eastern and South African Anti Money Laundering Group (ESAAMLG). Botswana's law enforcement authorities cooperate through the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and INTERPOL. Botswana is also a member of the Southern African Development Community (SADC) and the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA).

The DCEC is a member of the Southern African Forum against Corruption (SAFAC), the International Association of Anti-Corruption Authorities (IAACA), and the African Association of Anti-Corruption Authorities (AAACA).

Joint Permanent Consultative Commissions provide a platform for law enforcement cooperation with other countries. Some memorandums of understanding are in place (e.g. FIA and the police). INTERPOL channels have been used in the investigation of corruption matters and Botswana has executed requests through ARINSA to trace property in Botswana. Botswana could consider UNCAC as the basis for law enforcement cooperation.

Botswana participates in joint investigations and conducts special investigative techniques on a case-by-case basis in the absence of formal legal or administrative measures. Examples were provided.

3.2. Successes and good practices

- The electronic database in the DPP's office that classifies requests by date and category of offence is conducive to the timely, accurate and efficient execution and tracking of requests.
- Botswana has not refused any requests for MLA, including in corruption-related matters.
- The existence of guidelines on the timely execution of MLA requests by the central authority.
- The Commonwealth Africa Anti-Corruption Centre in DCEC to strengthen the capacity of anti-corruption agencies in 19 Commonwealth African countries.

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- The full domestication of international treaties on extradition and MLA as a matter of priority.
- Consider widening the scope of bilateral arrangements and countries designated for extradition and MLA, or providing for the possibility of extradition in the absence of a treaty (Section 3, Extradition Act).
- Revisit the Extradition Act and treaties to ensure all UNCAC offences are extraditable, including by reason of their period of imprisonment.
- Provide the notification under paragraph 6 of art. 44.

- Address the *aut dedere aut judicare* obligation and consider the enforcement of a foreign sentence where extradition of nationals is refused.
- Ensure that the discriminatory purpose on account of religion is covered among grounds for refusing extradition.
- Provide that consultations be held before extradition is refused, and before MLA is postponed or refused.
- Consider establishing a prisoner transfer law.
- Ensure that the element of non-coercive MLA is addressed.
- Consider more clearly specifying matters incidental to the temporary transfer of detained and convicted persons (art. 46(11) (c) and (d)).
- Adopt a limitation on use clause for greater legal certainty.
- Ensure that requesting States are notified of issues relating to confidentiality and any reasons for refusal.
- Consider addressing the postponement of MLA on the ground of ongoing criminal matters.
- Notify the United Nations of its central authority and required language for MLA.
- Consider legislatively clarifying the admissibility of evidence derived from special investigative techniques.

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

- Botswana indicated that it would require technical assistance, including legal advice and capacity-building, on extradition, MLA and prisoner transfer matters, and to enhance law enforcement cooperation.
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