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**Executive summary**

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## II. Executive summary

### Guinea-Bissau

#### 1. Introduction: Overview of the legal and institutional framework of Guinea-Bissau in the context of implementation of the United Nations Convention against Corruption

Guinea-Bissau acceded to the Convention on 10 September 2007.

Guinea-Bissau is part of the African Union, the Economic Community of West African States (ECOWAS), and the West African Economic and Monetary Union (WAEMU). The President of the Republic is the head of State and the Prime Minister is the head of the Government. The National People's Assembly (NPA) holds legislative power.

Guinea-Bissau has a civil law system; ratified international conventions are published in the Official Bulletin and have the status of law. The legislation implementing the Convention includes the Criminal Code (CC), the Criminal Procedure Code (CPC), the Uniform Law on Money-Laundering (ULML) and Law No. 14/97 on Political Functions.

Criminal procedure is based on the accusatory system (art. 42 (5) of the Constitution) and investigations are led by the Attorney-General's Office.

The main institution tasked with combating corruption is the Supreme Anti-Corruption Inspectorate. The National Financial Intelligence Processing Unit (CENTIF) is responsible for combating money-laundering and the financing of terrorism.

Reviewing the practical implementation of the Convention proved difficult owing to a lack of case examples and statistics.

#### 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)*

The term "public official" as used in the CC and CPC is not defined.

While the active bribery of "officials" is criminalized (art. 248 CC), the offering of an undue advantage is not covered. The authorities confirmed that third-party beneficiaries may be persons or entities. The official's consent or approval is required for the indirect commission of the offence and the official must be aware that a benefit is given to a third party.

While passive bribery is criminalized (art. 247 CC), benefits for third parties that are entities are not covered, the official must be aware of the actions of the intermediary for the indirect commission of the offence and the official is not punished when, prior to committing the act, he/she voluntarily repudiates the promise or offer or returns the goods.

Bribery of foreign public officials and of officials of public international organizations is not criminalized and nor is bribery in the private sector.

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

Money-laundering is criminalized (arts. 2 and 3 ULML, based on the WAEMU Uniform Law).

Guinea-Bissau applies an "all crimes approach" to money-laundering. All offences, including those committed abroad, are predicate offences (arts. 1 and 2 ULML). So called "self-laundering" is criminalized.

Concealment is not criminalized.

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

Embezzlement and misuse of property are criminalized (arts. 249 and 250 CC). Benefits for entities as third parties are not covered and embezzlement is limited to public or private funds or to movable property.

Abuse of functions committed by holders of political functions (defined in art. 3 of Law No. 14/97 on Political Functions) is criminalized (art. 24 of Law No. 14/97). Undue advantages for entities as third parties and abuse of functions committed by any other public officials are not criminalized.

Illicit enrichment is not criminalized.

Aspects of embezzlement in the private sector — in the case of persons entrusted with the use or administration of third-party interests, services or assets — are criminalized (arts. 170 and 171 CC).

*Obstruction of justice (art. 25)*

Guinea-Bissau has not criminalized obstruction of the giving of testimony or production of evidence. Only obstruction of the enforcement of a final judgment is criminalized (art. 229 CC).

The making of threats against a judge by a person vested with political, public, military or police authority in order to prevent the free exercise of the judge's duties is criminalized (art. 228 CC). The use of violence or serious threats against public officials, military agents or police forces to hinder the exercise of their functions or force them to act against their duties is also punishable (art. 238 CC). Threats made by other persons against judges, the use of physical force and threats against officials not listed in article 238 CC, and the use of intimidation to interfere with the exercise of official duties of a judge or a justice or law enforcement official, are not covered.

*Liability of legal persons (art. 26)*

The criminal liability of enterprises and legal persons governed by private law for offences committed "with the aim of achieving their own ends in the implementation of decisions taken by their bodies" has been established (art. 11 (1) CC). The directors of the bodies of an enterprise, or any person acting on behalf of a third party, shall be individually liable for any acts perpetrated as representatives of the entity, when acting in their own interests or abusing their position (art. 11 (2) CC). Criminal liability of legal persons for money-laundering (arts. 38 to 42 ULML) and civil and administrative liability (interpreted to include the liability of legal persons) have also been established (art. 84 CC and art. 483 of the Civil Code).

Fines are tripled for offences committed by enterprises (art. 54 CC) and enterprises may also be dissolved and their assets confiscated (art. 55 CC).

*Participation and attempt (art. 27)*

Participation (arts. 14 to 19 CC and art. 3 ULML) and attempt (art. 28 CC and art. 3 ULML) are criminalized. Preparation with a view to commit offences relating to corruption is not criminalized.

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

Sanctions for offences relating to corruption range from fines to imprisonment for up to 12 years and take into account aggravating and mitigating circumstances (art. 74 (1) CPC).

Immunities and jurisdictional privileges of the President (art. 72 of the Constitution), of the members of the NPA and of the members of the Government (art. 82 of the Constitution) and the procedures to lift such immunities are regulated by articles 32 to 35 of Law No. 14/97.

The Attorney-General's Office makes decisions on prosecution (art. 48 (h) CPC). There are no guidelines on prosecution.

Pretrial detention is possible and there are alternatives to such detention (arts. 152 to 167 CPC and art. 74 ULML). Conditional release is possible but does not take into account the gravity of the offence (arts. 305 to 307 CPC).

Only members of the NPA accused of corruption can be suspended (by the NPA itself, art. 34 of Law No. 14/97). Neither the reassignment nor the removal of accused officials is possible. When their service is terminated, officials are prohibited from exercising public functions for three years (art. 13 of Law No. 9/97). This does not include holding office in an enterprise owned in whole or in part by the State.

The Disciplinary Statute for Central, Regional and Local Administration Officials and Agents (Law No. 9/97) sets out the disciplinary system. It is clarified in article 7, No. 2 that disciplinary and criminal proceedings are independent.

No measures have been taken to promote the social reintegration of offenders.

The Court may order a special reduction of a penalty when there are mitigating circumstances that significantly attenuate the illegality of the act or the guilt of the agent (art. 71 CC). The authorities confirmed that this mitigation could be applied to offenders who cooperate with the authorities. Article 44 ULML also provides for reducing the punishment of such offenders.

Guinea-Bissau cannot grant immunity from prosecution to offenders who cooperate with the authorities and has not taken measures to protect such persons. No arrangements or agreements in this regard have been entered into at the international level.

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

Witness protection measures have not been established. At the time of the country visit, a draft bill on witness protection had been submitted to the NPA.

Measures to protect reporting persons have not been taken.

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

The confiscation of the proceeds of crime is regulated by law (art. 83 CC; with respect to money-laundering, arts. 41 and 42 ULML). Property, equipment or other instrumentalities used or intended for use in the commission of money-laundering offences may be confiscated (art. 41 (10) and art. 42 (2) ULML). With respect to other offences, such property, equipment or other instrumentalities may only be confiscated in certain circumstances (art. 82 (1) CC).

Police agents may seize and freeze assets in the case of offences committed in flagrante delicto or when there is a strong suspicion that a person is hiding objects associated with a crime or is preparing to evade justice (art. 58 CPC). In other cases, the freezing and seizure of assets associated with the offence or of assets that could be used as evidence must be authorized by the Attorney-General's Office (art. 141(1) CPC). In the case of money-laundering, the investigating judge may order precautionary measures (art. 36 ULML).

Seized assets are managed by appointed depositaries (art. 141 (2) CPC). The management of confiscated property is not regulated.

Confiscation of proceeds that have been transformed or converted into other property, and of income and other benefits derived from proceeds of crime or of property into which such proceeds were transformed or converted, is possible (art. 83 CC and art. 45 ULML).

Proceeds of crime intermingled with property acquired from legitimate sources and income or other benefits derived from such proceeds are liable to confiscation, up to

the assessed value of the intermingled proceeds, only in money-laundering cases (art. 45 ULML).

Bank and financial records may be confiscated by means of a court order in cases of money-laundering (art. 33 (2) ULML).

Guinea-Bissau does not require that an offender demonstrate the lawful origin of property liable to confiscation.

The rights of bona fide third parties are protected (art. 142 CPC and art. 45 ULML).

Bank secrecy cannot be invoked in money-laundering cases (art. 34 ULML). While there are no procedures established to lift bank secrecy in cases other than money-laundering, the authorities confirmed that in practice, such lifting was possible through a court order (art. 42.4 Constitution).

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

Criminal liability for corruption offences expires within 3 to 15 years after the commission of the offence (arts. 87 and 88 CC). Evasion of justice by an offender does not constitute grounds for suspending the limitations period for prosecution (art. 93 CC).

Previous convictions and recidivism may be taken into account when sentencing (arts. 67, 68 and 69 CC). In practice, this information is not available owing to difficulties encountered in record-keeping.

*Jurisdiction (art. 42)*

Guinea-Bissau has established its jurisdiction over offences committed in its territory (art. 5 CC and art. 46 ULML) and aboard vessels or airplanes (art. 6 CC), over some offences (other than corruption offences) committed against the State (art. 7 CC) and over offences committed by or against a national, if the perpetrator is located in Guinea-Bissau (art. 7 CC). In the latter case, if the perpetrator has no habitual residence in Guinea-Bissau, criminal law applies only under certain circumstances.

Guinea-Bissau has not established its jurisdiction over offences committed abroad by stateless persons who have their habitual residence in Guinea-Bissau, or over acts of preparation carried out abroad for the purpose of committing crimes associated with money-laundering and cannot coordinate actions with other States.

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

Compensation for damage caused by an offence is obligatory (art. 84 CC), and civil action may be pursued in order to obtain such compensation (art. 483 Civil Code and art. 99 (2) of Law No. 2/2012).

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

There is no specialized body established to counter corruption through law enforcement that fulfils the requirements of article 36 of the Convention. The specialized anti-corruption unit of the judicial police lacks independence, training and resources and CENTIF has received very few reports regarding suspicious transactions.

All public officials are required to report crimes of which they become aware in the exercise or by virtue of their functions (art. 177 (2) CPC). Police officers are required to report the commission of any offence (art. 177 (1) CPC). Article 231 CC provides for sanctions against any person who, being aware of the commission of an offence in the context of public service and of the obligation to report it, fails to do so. While there is no general obligation for public officials to provide all necessary information to the investigating and prosecuting authorities, article 6 of the CPC obliges all public authorities to cooperate with the courts of justice upon request.

Suspicious transactions must be reported to CENTIF (arts. 14 and 26 ULML). The authorities indicated that fewer than 10 suspicious transaction reports had been received, and that there had been no convictions for money-laundering.

There is a telephone hotline for reporting crime and anonymous reports are accepted.

## **2.2. Successes and good practices**

- If convicted, the President is removed from office and re-election is not possible (art. 72, para. 3 Constitution).

## **2.3. Challenges in implementation**

It is recommended that Guinea-Bissau:

- Define the term “public official” in accordance with article 2 of the Convention (art. 2 (a))
- Continue efforts to establish a national system of crime statistics disaggregated by offence, status of the proceeding and outcome
- Criminalize the offering of an undue advantage and remove the requirement for the official to give consent or approval for the indirect commission of the offence and to be aware of the benefit given to a third party (art. 15 (a)). Also criminalize any undue advantage granted to third parties that are entities, and remove the additional requirement for the need to be aware of the actions of the intermediary (art. 15 (b))
- Criminalize active bribery and consider criminalizing passive bribery of foreign public officials and officials of public international organizations (art. 16)
- Criminalize benefits provided to entities as third parties that are derived from embezzlement and misuse of property and extend the scope of the embezzlement offence to cover any property, public or private funds or any other thing of value entrusted to the public official (art. 17)
- Consider criminalizing active and passive trading in influence, illicit enrichment and active and passive bribery in the private sector (arts. 18, 20 and 21)
- Consider criminalizing undue advantages provided to entities as third parties, extending the scope of the offence to cover abuse of functions committed by public officials who are not holders of political office (art. 19)
- Consider criminalizing embezzlement in the private sector, including persons who direct or work for a private sector entity, making sure that there are no additional requirements that are not contained in the Convention (art. 22)
- Consider criminalizing concealment (art. 24)
- Criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence (art. 25 (a))
- Criminalize threats made by any person against judges, the use of physical force and threats against officials not listed in article 238 CC, and the use of intimidation to interfere with the exercise of official duties by a justice or law enforcement under the Convention (art. 25 (b))
- Remove the additional elements contained in “offences committed with the aim of achieving their own ends in the implementation of decisions taken by their bodies” (art. 26 (1))
- Assess the sanctions for legal persons with a view to increasing those sanctions if they are not found to be sufficiently effective and dissuasive (art. 26 (3))
- Criminalize the preparation of a corruption-related offence (art. 27 (3))

- Extend the limitations period for corruption-related offences or provide for the suspension of the statute of limitations for prosecution in the case of evasion of justice (art. 29)
- Assess whether establishing guidelines on prosecution would help maximize the effectiveness of law enforcement measures (art. 30 (3))
- Take into account the gravity of the offence when considering parole (art. 30 (5))
- Consider establishing procedures through which an accused public official may be dismissed, suspended (also in cases involving officials other than members of the NPA) or reassigned (art. 30 (6))
- Consider establishing procedures for the disqualification of all persons convicted of corruption-related offences from holding public office, and from holding office in an enterprise owned in whole or in part by the State (art. 30 (7))
- Endeavour to further promote the social reintegration of offenders (art. 30 (10))
- Provide for the confiscation of instrumentalities used in or destined for use in offences other than money-laundering, in all cases (art. 31 (b))
- Regulate the administration of confiscated property (art. 31 (3))
- Allow for the confiscation of proceeds of crime that have been intermingled with property acquired from legitimate sources, and of income or other benefits derived from such intermingled proceeds of crime outside the scope of application of the ULML, up to the assessed value of the intermingled proceeds (art. 31 (5) and (6))
- Allow for the confiscation of bank, financial and commercial records in cases other than those relating to money-laundering (art. 31 (7))
- Consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation (art. 31 (8))
- Adopt measures to provide effective protection in accordance with the Convention for witnesses and experts, their relatives and other persons close to them, apply such measures to victims who are witnesses, consider entering into agreements for the international relocation of witnesses and enable the views and concerns of victims to be presented during criminal proceedings (art. 32)
- Consider establishing measures to protect reporting persons (art. 33)
- Establish a specialized body to combat corruption through law enforcement and ensure that the body is granted the necessary independence, resources and training (art. 36)
- Consider granting immunity from prosecution to cooperating offenders and provide for the protection of such persons; Guinea-Bissau may also consider concluding agreements regarding the protection of cooperating offenders at the international level (art. 37 (3), (4) and (5))
- Strengthen cooperation between public officials and the investigative and judicial authorities, including by requiring officials to provide information to such authorities upon request (art. 38 (b))
- Encourage further cooperation between national authorities and the private sector, especially with regard to the reporting of suspicious transactions (art. 39 (1))
- Clarify in its legislation the procedure for lifting bank secrecy (art. 40)
- Clarify in its legislation the use of previous convictions abroad and continue to improve the record-keeping system (art. 41)

- Establish its jurisdiction over:
  - Offences committed abroad by stateless persons who have their habitual residence in Guinea-Bissau
  - Preparatory acts committed abroad with a view to the commission of a money-laundering offence in Guinea-Bissau
  - Offences committed by or against a national if the perpetrator is not present in Guinea-Bissau
  - All offences committed against the State (art. 42 (2) (a) to (d))
  - All offences committed by a national present in its territory if extradition is denied solely on the grounds of nationality, with no additional requirements
  - All offences committed by a foreign national present in its territory when extradition is denied, with no additional requirements (art. 42 (3) and (4))
- Consult with other States to coordinate actions (art. 42 (5)).

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

The following forms of technical assistance would be required:

- Legislative drafting support (arts. 18-20, 24, 37, 38 and 42)
- On-site assistance by an expert (arts. 18, 38 and 39)
- Summary of good practices and lessons learned (arts. 30 and 42)
- Capacity-building for:
  - Authorities responsible for witness protection (art. 32)
  - The private sector, particularly financial institutions (art. 39)
  - Investigative and judicial authorities (art. 42)
- Model laws (arts. 33, 34 and 36).

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

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

Guinea-Bissau has no specific legislation regarding extradition, but has concluded a judicial cooperation agreement with Portugal (PJCA) and a judicial convention with Senegal (SJC). Guinea-Bissau is party to the extradition convention of the community of Portuguese-speaking countries (CPLP EC), the Judicial Cooperation Agreement between Angola, Cabo Verde, Guinea-Bissau, Mozambique and Sao Tome and Principe (JCA A) and the ECOWAS Convention on Extradition (ECOWAS CE). The ULML contains provisions relevant to money-laundering cases.

The extradition of nationals and extradition for political reasons are not permitted (arts. 43 and 44 of the Constitution). The term “political reasons” is not defined. Nationals who are not extradited are tried in the national courts (art. 5 (1) CPLP EC; art. 10 (2) ECOWAS CE; art. 30 (2) JCA A; art. 47 (3) PJCA; and art. 22 (2) SJC). The Court of Appeal decides whether extradition should be granted (art. 40 (f) of the Amended Organic Law on Tribunals (AOLT)).

Extradition is contingent upon the existence of a treaty and is subject to dual criminality; extraditable offences are those punishable by a minimum sentence of imprisonment in both the requesting and the requested State of at least two years (art. 3 (1) ECOWAS CE, art. 29 (1) JCA A and art. 23 (a) SJC), of more than one year



(art. 46 (2) (a) PJCA), or of a maximum duration of no less than one year (art. 2 (1) CPLP EC). Not all corruption-related offences satisfy these requirements.

Offences that do not satisfy these requirements do not fall under the treaties. The authorities confirmed that corruption related-offences are not considered political offences. Guinea-Bissau considers the Convention to be the legal basis for extradition, but has not informed the Secretary-General thereof.

Extradition for related offences is possible (art. 3 (2) ECOWAS CE, art. 2 (3) CPLP EC, art. 46 (3) PJCA and art. 29 (2) JCA A).

Simplified extradition procedures exist (art. 19 CPLP EC, for money-laundering and art. 72 ULML).

Guinea-Bissau may detain persons sought for extradition (art. 40 (f) AOLT; art. 160 CPC; art. 74 ULML; art. 21 CPLP EC; arts. 30 and 31 SJC; art. 35 JCA A; and arts. 62 and 94 PJCA).

Foreign judgments may be enforced if the extradition of nationals for this purpose is refused and the sentence has been reviewed and upheld by the Supreme Court of Justice (art. 328 CPC; art. 68 PJCA; art. 20 SJC; and art. 67 ULML).

On the basis of reciprocity, foreigners enjoy the same rights (except for political rights) as citizens of Guinea-Bissau (art. 28 of the Constitution).

Extradition may be refused if Guinea-Bissau has substantial grounds for believing that a request for extradition was made on discriminatory grounds (art. 4 (2) ECOWAS CE; art. 71 (1) (c) PJCA; and arts. 24 and 28 of the Constitution). Constitutional protection from discrimination is based on neither nationality nor ethnic origin.

Extradition may not be refused on the sole ground that the offence is also considered to involve fiscal matters. Extradition may be refused if it is requested for an offence concerning customs, taxes, duties or exchange rates (art. 71 (1) (b) PJCA).

The authorities confirmed that, in practice, consultations with the requesting State are carried out before an extradition request is refused.

Guinea-Bissau cannot transfer sentenced persons.

The transfer of criminal proceedings is possible in money-laundering cases (art. 47 ULML) and in application of the ECOWAS Convention on Mutual Assistance in Criminal Matters (ECOWAS MLA, art. 21).

#### *Mutual legal assistance (art. 46)*

Mutual legal assistance (MLA) is based on bilateral and multilateral instruments (art. 329 CPC), such as the ECOWAS MLA, and the agreements with Angola, Cabo Verde, Mozambique, Portugal, and Sao Tome and Principe. The Convention may be used as a legal basis for mutual legal assistance.

Some agreements require dual criminality for the provision of mutual legal assistance, while others consider the lack of such assistance to be grounds for refusal (art. 24 JCA A and art. 33 (1) PJCA).

Mutual legal assistance may be provided for offences committed by legal persons. Guinea-Bissau may provide any form of assistance that would be permitted in domestic proceedings. In practice, Guinea-Bissau may share information spontaneously with other States.

A court order is required to lift bank secrecy for mutual legal assistance (art. 42.4 of the Constitution) in cases other than those related to money-laundering (art. 53 ULML).

The temporary transfer of detainees is possible if provided for in a treaty (art. 97 PJCA and art. 13 ECOWAS MLA) or in money-laundering cases (art. 60 ULML).

Guinea-Bissau does not have a central authority for mutual legal assistance; requests for such assistance are received through the International Criminal Police Organization (INTERPOL). The authorities confirmed that requests may be received in English, French and Portuguese. The Secretary-General has not been notified of the languages acceptable for making mutual legal assistance requests. Oral requests are not accepted.

Certain treaties contain provisions stipulating the contents of mutual legal assistance requests (art. 36 PJCA; art. 9 SJC; and art. 5 (1) ECOWAS MLA), and the ULML (art. 54) does so for money-laundering cases. Some treaties also allow the requested State to request additional information (art. 36 (5) PJCA and art. 5 (3) ECOWAS MLA).

Evidence obtained through the hearing of witnesses via videoconference would be admissible (art. 113 CPC) but such hearings are impossible in practice owing to infrastructural challenges.

In practice, Guinea-Bissau is able to comply with the principles of specialty and confidentiality. Those principles are also regulated by the ECOWAS MLA (arts. 8 and 9), and article 56 ULML provides for the confidentiality of mutual legal assistance requests.

The grounds for refusing mutual legal assistance are regulated in certain treaties (art. 55 ULML; art. 34 PJCA; art. 4 ECOWAS MLA; and art. 3 (1) and (2) JCA A). The requirement to communicate those grounds is also regulated in some treaties (art. 4 (5) ECOWAS MLA and art. 41 PJCA) and in article 55 ULML.

Article 4 (2) ECOWAS MLA establishes that mutual legal assistance cannot be refused on the sole ground that the request is also considered to involve fiscal matters.

In practice and on the basis of the ECOWAS MLA (art. 4 (3) and (4)), the execution of a request can be postponed if it interferes with an ongoing investigation, prosecution or judicial proceeding.

The safe conduct of persons transferred for the purposes of mutual legal assistance is regulated in article 59 ULML, article 15 ECOWAS MLA and article 4 SJC.

Guinea-Bissau bears the ordinary costs of executing incoming mutual legal assistance requests (art. 34 ECOWAS MLA), with the exception of the costs of experts and interpreters (arts. 8 and 43 PJCA) or of witnesses (art. 4 (1) JCA A).

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

The law enforcement authorities cooperate through INTERPOL, the Intergovernmental Action Group against Money Laundering in West Africa (GIABA), ECOWAS, the West African Police Chiefs Committee and other organizations.

Guinea-Bissau considers the Convention to be the legal basis for law enforcement cooperation. The judicial police has a memorandum of understanding with Portugal that facilitates the posting of liaison officers. The ULML contains a provision regarding direct international cooperation of judicial or police authorities (art. 57). CENTIF does not participate in the Egmont Group.

Guinea-Bissau lacks the capacity to cooperate in matters involving corruption-related offences committed through the use of modern technology.

The authorities confirmed that joint investigations may be undertaken by agreement on a case-by-case basis.

Special investigative techniques can be used in relation to cases involving controlled substances, but not in cases involving corruption.

### **3.2. Successes and good practices**

- Guinea-Bissau has shared information spontaneously with other States.

### 3.3. Challenges in implementation

It is recommended that Guinea-Bissau:

- Assess whether it would be beneficial to adopt comprehensive legislation regarding extradition and mutual legal assistance, ensuring that it contains all elements set out in the Convention (arts. 44 and 46)
- Ensure that extradition may be granted for all corruption-related offences, including by revising the applicable minimum periods of imprisonment (art. 44 (1))
- Grant extradition in the absence of dual criminality (art. 44 (2))
- Consider all corruption offences to be included in extradition treaties, endeavour to include such offences as extraditable offences in future treaties and define the term “political reasons” (art. 44 (4))
- Inform the Secretary-General that it considers the Convention a legal basis for extradition (art. 44 (6) (a))
- Endeavour to expedite extradition procedures and to simplify evidentiary requirements outside the scope of application of the ULML and the CPLP EC (art. 44 (9))
- Ensure the fair treatment of persons sought for extradition without imposing the condition of reciprocity (art. 44 (14))
- Allow the refusal of extradition requests if there are substantial grounds for believing that they have been made with the intention to prosecute or punish a person on account of that person’s nationality or ethnic origin (art. 44 (15))
- Ensure that extradition is not refused on the sole ground that the offence is also considered to involve fiscal matters (art. 44 (16))
- Consider entering into agreements to facilitate the transfer of sentenced persons (art. 45)
- Provide assistance that does not involve coercive action in the absence of dual criminality; Guinea-Bissau could also provide broader assistance in such cases (art. 46 (9))
- Facilitate the temporary transfer of detainees in cases outside the scope of the bilateral treaty with Portugal, the ECOWAS MLA and the ULML (art. 46 (10) to (12))
- Designate a central authority and notify the Secretary-General of that designation and of the languages acceptable for making mutual legal assistance requests; Guinea-Bissau may wish to accept oral mutual legal assistance requests in urgent circumstances (art. 46 (13) and (14))
- Allow for hearings via videoconference (art. 46 (18))
- Outside of the scope of the applicable treaties and the ULML, adopt provisions to establish:
  - The contents of mutual legal assistance requests, the grounds for refusing such requests and the requirement to justify refusal (art. 46 (15), (21) and (23))
  - That mutual legal assistance may not be refused solely on the basis that it is considered to involve fiscal matters (art. 46 (22))
  - The safe conduct of witnesses and transferred persons (art. 46 (27))
- Bear the ordinary costs of executing a request, including fees for experts and interpreters and witness expenses, unless otherwise agreed (art. 46 (28))

- Consider transferring criminal proceedings to another State, where appropriate, in cases of offences other than money-laundering or outside the scope of application of ECOWAS MLA (art. 47)
- Endeavour to cooperate in matters involving offences committed through the use of modern technology (art. 48 (3))
- Allow for the use of special investigative techniques, and for the admissibility of evidence derived therefrom, for corruption-related offences (art. 50 (1))
- Conclude agreements for the use of such techniques at the international level and, in the absence of such agreements, make decisions on a case-by-case basis, including methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced (art. 50 (2) to (4)).

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

The following forms of technical assistance would be required:

- Assistance in drafting legislation (arts. 44, 45 and 46)
- On-site assistance by an expert (art. 50)
- Capacity-building for:
  - Investigative and judicial authorities for cooperation in criminal matters (arts. 47 and 49)
  - The management of databases and information-sharing systems (art. 48).

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