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Review of implementation of the United Nations Convention against Corruption

Executive Summary

Note by the Secretariat

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II. Executive summary

Haiti

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

Haiti signed the United Nations Convention against Corruption on 10 December 2003 and deposited its instrument of ratification with the Secretary-General of the United Nations on 14 September 2009.

The legal system of Haiti follows the civil law tradition. In accordance with article 276.2 of the Constitution, the Convention forms part of national legislation and repeals all laws that are contrary to it. The Criminal Code was promulgated in 1835 and was in the process of being revised during the country visit.

The main anti-corruption bodies of Haiti are the Anti-Corruption Unit (ULCC), the National Procurement Commission (CNMP), the General Inspectorate of Finance (IGF), the Central Financial Intelligence Unit (UCREF), the High Council of the Judiciary (CSPJ), the Superior Court of Auditors and Administrative Disputes (CSCCA), the Association of Certified Accountants, the judiciary police (including in particular its Office of Financial and Economic Affairs), the Ministry of Justice and Parliament.

In 2012, the Government established an inter-agency committee comprising the Anti-Corruption Unit, the Central Financial Intelligence Unit, the General Customs Administration (AGD), the National Tax Directorate (DGI) and the prosecution authorities. The mandate of the committee is to combat corruption, smuggling, tax evasion and money-laundering.

The different aspects of public service are governed by articles 234 to 244 of the Constitution.

Since the adoption of the National Anti-Corruption Strategy in 2009, a number of legislative measures have also been introduced, including the Act on Preventing and Combating Corruption and the Act on Money-Laundering and the Financing of Terrorism. However, the effectiveness of the anti-corruption legislation could not be assessed owing to a lack of statistical data.

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)

A public official is defined as “any natural person who is engaged under an instrument of appointment or a contract governed by public law to work for an institution or a public entity of the National Public Administration” (art. 4 of the Decree of 17 May 2005 amending the General Civil Service Regulations), regardless of whether that person is elected, chosen or appointed, whether he or she is paid, and whether he or she is appointed on a temporary or a permanent basis. Active bribery of national public officials is a criminal offence under article 14 of the Act on Preventing and Combating Corruption. Article 11 of the Act covers the acceptance by public officials of offerings, promises or gifts. The solicitation of undue advantages by those officials is a criminal offence under article 5.1 of the Act. None of those provisions cover intangible benefits, undue advantages intended for a third-party beneficiary, the failure by public officials to act in the exercise of their duties or indirect corruption.

The absence of one of the normative elements (intangible benefits or an undue advantage for a third party) limits the possibilities of classifying the conduct in question.

Active and passive bribery of foreign public officials and officials of public international organizations is a criminal offence (art. 6 of the Act).

Haiti has criminalized active and passive trading in influence (art 5.9 of the Act). The indirect commission of the offence, intangible benefits and the concept of third-party beneficiary are not covered. The concept of an undue advantage that results from the commission of the offence of trading in influence is limited to the types of advantages set out in the article.

Bribery in the private sector is not established as an offence.

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

The laundering of the proceeds of serious crime (punishable by more than three years' imprisonment) is established as an offence under articles 1.1 and 4.2 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences. However, not all of the offences established in accordance with the Convention are punishable by three years' imprisonment. The Act on Money-Laundering and the Financing of Terrorism also covers the laundering of money (arts. 5 and 57) raised through the commission of one of the predicate offences listed in article 8 of that Act, which includes some of the offences provided for by the Convention, such as the misappropriation of public funds by persons holding public office. Article 5.3 of the Act on Preventing and Combating Corruption also stipulates that any person found guilty of money-laundering for facilitating attempts to disguise the origin of the property and income of the perpetrator of an act of corruption will be punished in accordance with the provisions of the Act on Money-Laundering and the Financing of Terrorism.

Haiti applies the same penalty as that applied to the offence itself to participation in, conspiracy to commit, attempts to commit and aiding and abetting the commission of a money-laundering offence (arts. 4.2.1 and 4.2.2 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences and art. 57 of the Act on Money-Laundering and the Financing of Terrorism). Haiti also indicated that the offences of participation, attempt and aiding and abetting were covered by articles 2 and 44 of the Criminal Code.

Haiti has not furnished copies of its money-laundering laws to the Secretary-General of the United Nations.

Concealment is an offence under article 46 of the Criminal Code and articles 2, 5.2 and 5.3 of the Act on Preventing and Combating Corruption, as well as article 5 (c) of the Act on Money-Laundering and the Financing of Terrorism. The continued retention of property is not covered.

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

Articles 130 to 134 of the Criminal Code punish misappropriation and other diversion of property by certain categories of public officials. Article 5.4 of the Act on Preventing and Combating Corruption also establishes as an offence the misappropriation of property that belongs to the State and territorial authorities, independent institutions and autonomous agencies, but does not include other categories of property transferred to public officials by virtue of their office or duties.

Abuse of functions is a criminal offence (art 5.5 of the Act), but unlawfully refraining from acting is not covered.

Illicit enrichment is covered by articles 241 to 243 of the Constitution and is established as an offence under article 5.2 of the Act.

With regard to the embezzlement of property in the private sector, article 32 of the Decree of 23 August 1960 establishing a special regime for public limited companies punishes, in accordance with article 337 of the Criminal Code, directors who misuse business property. Article 5.14 of the Act, which applies only to

managers, punishes the abuse of property belonging to businesses in which the State holds interests, non-governmental organizations, foundations or cooperatives that receive donations, public subsidies or tax exemptions.

Obstruction of justice (art. 25)

Article 21 of the Act on Preventing and Combating Corruption establishes as an offence the use of physical force, threats or intimidation or the offering of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding relating to the commission of offences established in accordance with the Act. Articles 183 to 192 of the Criminal Code punish attacks against judges and police officers.

Liability of legal persons (art. 26)

The legislation of Haiti recognizes the civil, administrative and criminal liability of legal persons (art. 58 of the Act on Money-Laundering and the Financing of Terrorism, arts. 91 and 92 of the Act Establishing the General Rules relating to Public Procurement and Concession Agreements for Public Works and arts. 7 and 8 of the Act on Preventing and Combating Corruption).

The Act on Preventing and Combating Corruption is also applicable to all legal persons (art. 2). Article 7 of the Act establishes the criminal liability of legal persons in relation to corruption offences and specifies that that liability does not exclude the liability of natural persons who are personally responsible for committing corruption offences and their accomplices. The sanctions applicable to legal persons include increased fines and other penalties such as restrictions on business activities or dissolution.

Participation and attempt (art. 27)

Participation is established as an offence under articles 44 and 45 of the Criminal Code. Those who assist in or incite the commission of an offence are also regarded as accomplices.

Attempt is punishable in respect of all crimes (art. 2 of the Criminal Code). However, in relation to ordinary offences (*délits*), attempt is punished only if it is specifically provided for by the law that criminalizes the offence (art. 3 of the Criminal Code). Attempt is established for some, but not all, corruption offences. The preparation of an offence is not, per se, a criminal offence.

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

The legislation of Haiti provides for penalties applicable to corruption offences that take into account the gravity of the offence. The applicable penalties include imprisonment, fines, the return of property, disqualification from holding public office for five years and, in the case of offences provided for by the Act on Preventing and Combating Corruption, publication by the print media of the decision rendered.

Members of the legislature can be arrested during the exercise of their duties only with the permission of the chamber to which they belong (art. 115 of the Constitution). A two-thirds majority of the Chamber of Deputies is required to indict the President, the Prime Minister, ministers and secretaries of State, members of the Permanent Electoral Council, members of the Superior Court of Auditors and Administrative Disputes, judges and members of the prosecution service of the Court of Cassation and the Ombudsman (art. 186 of the Constitution). The Government Commissioner does not have discretionary power; he or she refers any complaints or claims that are received to the investigating judge (art. 43 of the Code of Criminal Procedure).

The legal system provides for release pending trial (art. 96 of the Code) and release from custody (art. 80 of the Code). The President may also grant a pardon (art. 146 of the Constitution). There is no possibility of parole or early release.

Articles 140, 191, 192, 198 and 199 of the Decree of 17 May 2005 provide for the suspension or removal of an official. The authorities confirmed that disciplinary proceedings against public officials may be conducted in parallel to criminal proceedings.

The Act on Preventing and Combating Corruption provides for an additional penalty that prohibits public officials from holding office in the National Public Administration or from exercising the professional activity in which they were engaged at the time they committed the act of corruption, for a term of five years (art. 22 of the Act).

Haiti has not established measures to promote the reintegration of convicted offenders into society.

Persons prosecuted for corruption offences who cooperate with the competent authorities may receive a reduced sentence. That reduction in sentence is determined by the judge (art. 16 of the Act). Such persons may not, however, obtain a total exemption from their sentence. No measures have been taken to provide protection for accused persons who cooperate with the authorities, and Haiti has not entered into any agreements on the treatment of accused persons who cooperate at the international level.

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

Article 18 of the Act on Preventing and Combating Corruption provides that a law must be adopted to ensure the protection of reporting persons, witnesses and experts. At the time of the country visit, a bill relating to witness protection was being adopted by Parliament. Reference was made to some witness protection measures in the context of very specific offences such as kidnapping or hostage-taking.

Victims may participate in legal proceedings (arts. 50 and 51 of the Code of Criminal Procedure), and any person who has been a victim of an offence may institute civil proceedings to obtain compensation (art. 1168 of the Civil Code).

Haiti has not entered into any agreements with other States for the relocation of protected persons.

There are no specific measures for the protection of reporting persons, although a bill had been tabled in Parliament during the country visit. Article 19 of the Decree of 8 September 2004, establishing the Anti-Corruption Unit, provides that the Director General of the Unit must ensure that the identity of involved persons and witnesses acting as informants is protected and that no retaliatory measures are taken against informants or witnesses.

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

Article 4.2.9 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences and article 64 of the Act on Money-Laundering and the Financing of Terrorism establish measures for the freezing, seizure and confiscation of property and income derived from money-laundering. If the property to be confiscated is not available, property of an equivalent value may be confiscated in respect of money-laundering offences. Those provisions also provide for the possibility of confiscating property in the absence of a conviction, and of confiscating all the property acquired by the offender since he or she began to commit the offence, unless the parties concerned are able to clearly demonstrate the lawful origin of that property.

The freezing and seizure of the proceeds of crime, as well as property, tools or other instruments used or intended to be used to commit offences, is possible (art. 25 of

the Code of Criminal Procedure and art. 46 of the Act on Money-Laundering and the Financing of Terrorism).

Funds confiscated in application of the Act are returned to the State and are managed by the Special Fund for Combating Organized Crime (art. 68). The funds may be sold at auction by the Office for the Administration of Special Funds.

Article 20 of the Act on Preventing and Combating Corruption provides that bank secrecy cannot be invoked to prevent the Anti-Corruption Unit from obtaining information from financial institutions in accordance with article 12 of the Decree of 8 September 2004 establishing the Unit. Articles 3.3.1 and 3.4.1 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences provide that bank secrecy cannot be invoked as a ground for refusing an information request relating to an investigation into economic crimes. Articles 41 to 43 of the Act on Money-Laundering and the Financing of Terrorism cover bank secrecy.

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

Article 17 of the Act on Preventing and Combating Corruption provides for a statute of limitations period of 20 years for all corruption offences, while penalties and fines are not subject to a statute of limitations period. The Constitution provides that the statute of limitations period of 20 years relating to illicit enrichment begins only on the date on which an official leaves service or the date of suspension of the “factors that prevented prosecution” (art. 243). Offences other than corruption offences are subject to a statute of limitations period of between 3 and 20 years. Articles 41 to 43 of the Criminal Code establish the rules relating to determination of the sentence on the basis of previous convictions, but do not expressly provide for the possibility of taking into consideration the offender’s criminal record in another State.

Jurisdiction (art. 42)

Article 13 of the Code of Criminal Procedure establishes the jurisdiction of the courts of Haiti over all offences committed in its territory. Articles 5, 6 and 7 of the Code of Criminal Procedure allow the courts of Haiti to try Haitian nationals, foreigners and their accomplices for offences committed outside the country when such offences undermine State security or have been committed against a Haitian national. Haiti has not established its jurisdiction over offences committed on board a vessel that is flying the flag of Haiti or on board an aircraft that is registered in Haiti, offences committed by a stateless person who has his or her habitual residence in Haiti, or acts preparatory to money-laundering that have been committed abroad.

Article 4 of the Act on the Extradition of Fugitive Criminals of 4 December 1912 provides that Haiti does not extradite its nationals who are subject to the jurisdiction of the national courts. Haiti can coordinate its actions with other States that are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct.

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

Articles 91 to 94 of the Act laying down the General Rules governing the Award, Performance and Regulation of Procurement Contracts of 12 June 2009 establish administrative sanctions against tenderers and holders of procurement contracts, as well as against agents of the contracting authority, for fraudulent practices. Those sanctions may even include the cancellation or termination of contracts. The authorities indicated that the principle according to which an agreement based on the commission of an offence is considered null and void is also applicable in cases of corruption.

Articles 50 to 57 of the Code of Criminal Procedure grant any person who believes they have suffered harm as a result of an offence the right to bring a civil suit before

an investigating judge. Through that suit, the victim may claim compensation for the damage he or she has suffered, in accordance with article 1168 of the Civil Code.

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

The Anti-Corruption Unit is one of the national institutions responsible for preventing and detecting corruption. It has the power to conduct investigations, but has no direct authority to prosecute cases of corruption. Cases are referred to the judicial authorities, including the Government Commissioner in particular, so that those authorities can prosecute. In practice, that procedure is the reason behind the delays in and lack of follow-up to investigations. No statistics on the delays or on corruption cases in general were provided; the absence of that information affects analysis of the extent of the delays. Procedures relating to the selection, promotion and discipline of agents of the prosecution service are not sufficiently regulated to ensure the independence of those members of the judiciary.

The separation of powers must be strengthened to ensure the independence of the judiciary. In that regard, the Act on the Status of Judges of 17 December 2007 should be amended to include the automatic renewal of judges' tenure. That amendment would fill the legal vacuum between the appointment and the promotion of judges.

Cooperation between the national authorities is provided for by the law and inter-agency agreements. The resolution adopted by the Government Council on 20 June 2012 established the Inter-Agency Committee against tax evasion, smuggling, corruption and the laundering of assets.

Article 19 of the Code of Criminal Procedure establishes the obligation of public officials to report acts of corruption of which they become aware, and article 241 of the Constitution requires officials to report offences against the public treasury and cases of illicit enrichment to the competent authority.

Cooperation between the private sector and the national authorities is provided for by articles 2.2.5 to 2.2.7 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences (which requires the preparation of reports on suspicious transactions) and by the Act on Money-Laundering and the Financing of Terrorism. However, no formal measures of cooperation between the national authorities and the private sector were observed in practice.

Haiti has set up a website and a hotline for reporting acts of corruption. Anonymous complaints are accepted.

2.2. Successes and good practices

- The legislative and institutional reforms, including the establishment of the Anti-Corruption Unit and the adoption of a national anti-corruption strategy, demonstrate the Government's commitment to combating corruption

2.3. Challenges in implementation

General recommendations relating to chapter III of the Convention:

- Continue to develop the country's criminal statistics system in order to be able to systematically produce consolidated statistical data at each stage of proceedings (investigation, prosecution and conviction)

Specific recommendations:

- Amend the Act on Preventing and Combating Corruption so that it includes provisions on intangible benefits, advantages for third parties, the concept of refraining from acting and indirect commission (art. 15 (a) and (b)) and the concept of solicitation by a public official (art. 15 (b))
- Expand the offences of embezzlement and misappropriation or other diversion of property to include all categories of public officials, as well as all categories

of property, including property that is not public but is linked to a public official by virtue of his or her office (art. 17)

- Consider criminalizing the indirect commission of trading in influence, advantages for third parties and intangible benefits. Also consider extending the scope of undue advantages resulting from the commission of the offence of trading in influence to all categories of advantages (art. 18 (a) and (b))
- Consider making it a criminal offence for a public official to refrain from acting in the exercise of his or her official duties (art. 19)
- Consider criminalizing bribery in the private sector (art. 21)
- Consider extending the offence of embezzlement of property in the private sector to all persons and all entities of the private sector (art. 22)
- Endeavour to apply the offence of money-laundering to the widest possible range of predicate offences and, as a minimum, to a comprehensive range of criminal offences established in accordance with the Convention (art. 23 (2) (a) and (b))
- Consider defining the concept of “concealment” and ensuring that it encompasses the elements provided for by the Convention (art. 24)
- Haiti could consider criminalizing attempt, as defined by the Convention, for all corruption offences and acts preparatory to those offences (art. 27 (2) and (3))
- Assess whether restricting the scope of jurisdictional and procedural privileges applicable to certain categories of public officials would help to ensure the effective investigation, prosecution and adjudication of corruption offences (art. 30 (2))
- Consider prohibiting persons convicted of corruption offences from holding office in an enterprise owned in whole or in part by the State (art. 30 (7) (b))
- Endeavour to promote measures to facilitate the reintegration into society of persons convicted of offences (art. 30 (10))
- Amend the legislation relating to confiscation to allow either confiscation of property of an equivalent value for corruption offences, or confiscation of the proceeds of all offences which have been transformed, converted or intermingled, as well as all the income and benefits derived from such proceeds (art. 31 (4) to (6))
- Continue legislative reforms to establish the effective protection of witnesses, experts and their relatives. Consider entering into agreements with other States parties in respect of such protection (art. 32 (1) to (3))
- Consider implementing the appropriate measures to protect reporting persons (art. 33)
- Continue to strengthen the role of the Anti-Corruption Unit and the independence of the investigation, prosecution and judicial authorities by providing them with the appropriate resources (art. 36)
- Strengthen cooperation between the State authorities to ensure the monitoring of corruption cases between the Anti-Corruption Unit, the prosecution services and the courts. Strengthen the independence of the specialized authorities and their ability to coordinate their actions in order to effectively handle corruption cases (art. 36)
- Consider granting immunity from prosecution to offenders who cooperate with the investigation and prosecution authorities. Take measures to protect those persons and consider entering into agreements or arrangements relating to their treatment at the international level (art. 37 (3) to (5))

- Establish channels of cooperation and information exchange between the national authorities in order to ensure more effective coordination (art. 38)
- Promote cooperation between the national investigation and prosecution authorities, and between those authorities and private sector entities in relation to corruption offences (art. 39 (1))
- Haiti could consider amending its national legislation to enable any previous conviction in another State to be taken into consideration when determining a sentence (art. 41)
- Establish the jurisdiction of the courts over offences that have been committed on board a vessel that is flying the flag of Haiti or on board an aircraft that is registered in Haiti (art. 42 (1) (b))
- Haiti could also consider establishing the jurisdiction of its courts over:
 - Corruption offences that are committed by a stateless person who has his or her habitual residence in its territory, against one of its nationals or against the State (art. 42 (2) (a), (b), (d))
 - Acts preparatory to money-laundering that take place entirely abroad (art. 42 (2) (c))
 - Offences that are committed by a non-citizen in its territory whose extradition is refused (art. 42 (4))

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

Haiti requires the following technical assistance to implement the above recommendations:

- Assistance to build the capacity and know-how of staff working for audit institutions and the judiciary
- Financial assistance to establish a national criminal record database permitting the regular publication of statistical data
- Legislative assistance (inter alia, arts. 15, 18 and 22)
- Financial assistance to protect the identity of witnesses through the use of videoconferences (art. 32)

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)

Extradition is governed by the Constitution, the Act on the Extradition of Fugitive Criminals, the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences, the Act on Money-Laundering and the Financing of Terrorism (for offences related to money-laundering) and the treaties ratified by Haiti.

Haiti does not make extradition conditional on the existence of a treaty, but may grant extradition on the basis of reciprocity. Haiti recognizes the Convention as a legal basis for extradition, but has never used it in practice. Haiti reported that the offences established by the Convention are included in the bilateral treaties to which the country is a party. Haiti has concluded bilateral treaties with the Dominican Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Extradition cannot be granted in the absence of dual criminality, which is determined on the basis of the conduct underlying the offence. The offences for

which another State may seek extradition are those which are punishable by a minimum of three years' imprisonment, which is the case for the majority of corruption offences given that articles 7 to 20 of the Criminal Code rank them among the serious offences. Extradition for offences committed in connection with Convention offences is not possible.

Haiti does not extradite its nationals (art. 41 of the Constitution and art. 4 of the Act on the Extradition of Fugitive Criminals). Therefore, the principle of *aut dedere aut judicare* applies. In such situations, the authorities will transfer the case to the prosecution authorities without delay, in the same way as for other serious offences. The application of sentences imposed by the authorities of another State is not possible unless expressly provided for by a treaty (art. 502 of the Code of Civil Procedure).

Extradition for political offences is prohibited (arts. 8 and 9 of the Act on the Extradition of Fugitive Criminals). Haiti indicated that corruption offences are not regarded as political offences. Moreover, the country cannot refuse an extradition request on the sole basis that the offence concerned is a fiscal offence.

Haiti has not established a simplified extradition procedure for cases in which the person agrees to be extradited. Article 28 of the Act on the Extradition of Fugitive Criminals provides for the possibility of placing the person in custody in urgent cases. The Act does not provide for the possibility of consultation with the requesting State party before the requested State Party refuses extradition. However, the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences contains a number of provisions in that regard.

Haiti has not entered into any bilateral or multilateral agreements on the transfer of detainees. Haiti has already accepted the transfer of one person sentenced in his or her country of origin on the basis of the principle of reciprocity.

Haiti has no domestic provisions on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Haiti has not adopted a general legislative framework on international cooperation. Articles 5.2.1 to 5.2.6 and articles 5.4.1 to 5.4.10 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences, and articles 79 to 83 of the Act on Money-Laundering and the Financing of Terrorism contain provisions on international cooperation in the specific case of money-laundering offences. The draft Act on Preventing and Combating Corruption contained an article aimed at extending the provisions on extradition and mutual legal assistance to corruption offences. However, that provision was removed upon the adoption of the final text. Consequently, there are no domestic provisions on international cooperation in the case of corruption offences.

Haiti can use the Convention as a legal basis and can directly apply article 46, particularly in its relations with other States parties when they are not bound by an alternative agreement. International treaties take precedence over ordinary laws (art. 276.2 of the Constitution) and Haiti indicated that the country could grant mutual legal assistance measures not involving coercive measures, even in the absence of dual criminality, which is generally required.

The reasons for which a request for assistance may be made in accordance with article 46 (3) of the Convention are largely covered by the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences, which is limited to money-laundering offences.

On the basis of the principle of direct application of the Convention, Haiti may grant a request for assistance based on offences committed by legal persons and transmit information without prior request.

The central authority is the Ministry of Justice and Public Security, which is also responsible for a number of other areas. Requests must be sent through diplomatic

channels. In urgent cases, requests may also be transmitted through the International Criminal Police Organization (INTERPOL) or by direct communication to the authorities of Haiti, provided that they are transmitted simultaneously through diplomatic channels (art. 5.4.2 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences).

The principles of speciality and confidentiality are upheld in Haiti through the direct application of the Convention and the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences.

Article 5.2.2 of the Act sets out a greater number of grounds for refusing a request for assistance than those laid down in the Convention. A request for assistance cannot be refused solely on the basis of bank secrecy, in accordance with article 5.2.2 of the Act, and Haiti indicated that a request for cooperation in relation to a corruption offence cannot be refused on the sole ground that the offence has fiscal aspects.

There are no statistics on the time frame for executing and responding to requests for assistance.

The transfer of sentenced persons or persons serving a sentence for the purpose of giving testimony, the use of videoconferences and safe conduct are not provided for by national legislation.

The costs relating to a request for assistance must, in principle, be borne by the requesting State (art. 5.4.10 of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences), but ad hoc arrangements may be made.

Haiti indicated that the administrative records available to the general public would be provided to the requesting State, and clarified that the country had no data protection act.

Haiti has concluded a bilateral agreement with the United States.

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

The authorities of Haiti cooperate through organizations and networks such as INTERPOL and the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States. Haiti also cooperates with the National Police of the Dominican Republic and through ratified multilateral agreements.

Cooperation with the law enforcement authorities and joint investigations take place on the basis of the Convention against Corruption and the United Nations Convention against Transnational Organized Crime. Accordingly, the law enforcement authorities of Haiti have been able to collaborate with the National Police of the Dominican Republic despite the absence of domestic legal provisions. In the past, liaison officers have been appointed. The basic sharing of information relating to law enforcement takes place mainly with the United States.

Haiti has adopted legislation on the use of special investigative techniques such as electronic surveillance to investigate corruption (art. 19 of the Act on Preventing and Combating Corruption) which renders the provisions of the Act on the Laundering of Assets derived from Drug Trafficking and other Serious Offences (art. 3.3.1) applicable in corruption cases. Haiti has not concluded any agreements on the use of special investigative techniques at the international level.

3.2. Successes and good practices

- The legislation of Haiti provides for a wide range of measures with regard to mutual legal assistance (art. 46 (3))

3.3. Challenges in implementation

- Continue to make the efforts necessary to establish an information system and make it fully operational, in order to systematically gather information relating to cases of international cooperation
- Consider strengthening the central authority (specialized trained staff, management and monitoring, language skills) in respect of all forms of international cooperation
- Consider modernizing extradition legislation by establishing a single regime for all offences and clarifying the procedures and the legal bases for extradition. Such legislation might include mechanisms to accelerate and simplify evidentiary procedures and clarify the grounds for refusal (art. 44)
- Haiti could consider granting extradition in the absence of dual criminality and authorize extradition for offences linked to those established in accordance with the Convention but which are not extraditable owing to the term of imprisonment they carry (art. 44 (2) and (3))
- Clearly establish the jurisdiction of its courts and implement the procedures necessary to prosecute its nationals if extradition is refused (also consider the possibility of authorizing temporary extradition or extradition for the purposes of enforcing a sentence) (art. 44 (11) to (13))
- Consider regulating and implementing a simplified extradition mechanism (art. 44 (9))
- Consider entering into agreements on the transfer of sentenced persons (art. 45)
- Adopt legislation on all the cases of mutual legal assistance provided for by the Convention and establish clear grounds for refusal (art. 46 (3) and (8))
- Consider authorizing the direct transmission of requests for assistance to the central authority (art. 46 (13))
- Consider allowing the transfer of detained persons or persons serving a sentence for the purpose of giving testimony (art. 46 (10) to (12))
- Haiti could consider allowing the conduct of hearings by videoconference (art. 46 (18))
- Consider establishing time limits for procedures and keeping records of the length of proceedings to enable the execution of requests for mutual legal assistance (art. 46 (13) and (24))
- Consider establishing measures of safe conduct for witnesses (art. 46 (27))
- Consider strengthening the procedures relating to the transmission of copies of government records (art. 46 (29))
- Consider adopting legislation on the transfer of criminal proceedings or concluding agreements with other States in that regard (art. 47)
- Consider concluding bilateral and multilateral agreements on mutual legal assistance and direct cooperation between the law enforcement authorities (art. 46 (30) and art. 48 (2))
- Adopt legislation to allow the use of special investigative techniques such as controlled delivery and, if necessary, conclude agreements or arrangements on the use of such techniques in the context of international cooperation (art. 50)

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

Haiti requires the following technical assistance to implement the above recommendations:

- Assistance to improve its laws on international cooperation (arts. 44 and 46)
 - Development of new treaties and agreements (arts. 44, 46, 47, 48 and 50)
 - Assistance to build the specific capacities and expertise of the central authority and to coordinate the judicial and prosecution authorities in relation to international cooperation (arts. 44, 46 and 50)
-