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**Implementation Review Group**

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

**Executive summary**

**Note by the Secretariat**

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## II. Executive summary

### Mauritius

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

Mauritius signed the Convention on 9 December 2003, ratified it on 15 December 2004 and deposited its instrument of ratification with the Secretary-General on 14 November 2005.

A mixed-law system has developed in Mauritius characterized by a duality of concepts taken mainly from France and the United Kingdom of Great Britain and Northern Ireland. While Mauritius uses a Criminal Code, Civil Code and Civil Procedure Code derived from French law, it has also been strongly influenced by the United Kingdom with regard to law on evidence, legal procedure and administrative law. Mauritius inherited a written constitution, which is the supreme law of the land.

While the Criminal Code contains provisions concerning corruption, there has also been a sustained effort by the national authorities to combat corruption. Mauritius has established various institutions as regulatory bodies, in the banking and other sectors, and has also enacted a law on awarding public contracts. To bolster the fight against corruption, the Government Programme for 2012-2015 specifically refers to the desire and commitment of Mauritius to implement the Convention.

#### 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)*

Articles 5 and 4 of the Prevention of Corruption Act of 2002 (the 2002 Act) concern, respectively, bribery of and bribery by public officials. Bribery covers the acts of giving, agreeing to give or offering a gratification. The notion of promise is included in the definition of “gratification” found in article 2 of the 2002 Act. With regard to the beneficiary, according to the Interpretation and General Clauses Act 1974 (IGCA), the term “person” can encompass corporate and other entities. The notion of public official within the legislation on the prevention of corruption includes ministers, parliamentarians, members of the legislature, civil servants, members of public corporations etc. Nevertheless, with regard to bribing of a public official, in contrast to the article on bribery by a public official, it is not specified that the beneficiary may be a person or entity other than the public official. Article 4 also establishes a presumption, where it is proved that the public official solicited, accepted or obtained a gratification, that the gratification was obtained in connection with a bribery offence, unless proven to the contrary. However, this presumption does not exclude the obligation of the prosecution to prove the offence beyond reasonable doubt.

Mauritius has not yet adopted the necessary legislative or other measures to establish the bribing of or by foreign public officials and officials of public international organizations as criminal offences. In both its active and its passive forms, bribery in the private sector is also addressed in Mauritian legislation, mainly

under section 16 of the 2002 Act. However, making penalization of the acts of soliciting or accepting a gratification conditional upon the absence of consent of an official's superior does not seem to be entirely in the spirit of the Convention.

Trading in influence is an offence under section 10 of the 2002 Act.

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

Under article 3 of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA), any person who is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius the proceeds of any crime or property which he or she has reasonable grounds for suspecting derives from any crime is deemed to have committed a punishable offence. Participation in, conspiracy or the attempt to commit and aiding and abetting a crime are also covered by Mauritian legislation. The offence of laundering relates to a wide range of offences since it applies to all offences (i.e. those punishable by imprisonment for more than 10 days or by a fine of more than 5,000 rupees).

Acts committed in States where they do not constitute offences may, if those acts constitute offences in Mauritius, be regarded as predicate offences under article 23.

Concealment is also covered under Mauritian legislation.

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

Embezzlement, misappropriation or other diversion of property by a public official is addressed by articles 333 and 333A of the Criminal Code in general terms and by article 122 of the Criminal Code with regard to collectors and any person appointed to collect public money. Articles 333 and 333A also penalize embezzlement in the private sector.

With regard to the abuse of functions, section 7 of the 2002 Act makes the act of a public official using his or her office or position to obtain a gratification for himself or herself or for another person an offence.

Mauritius has not adopted legislative measures to make illicit enrichment a criminal offence but is considering introducing such an offence. Some officials, including parliamentarians, must declare their assets when they take up a position and also when they leave it.

*Obstruction of justice (art. 25)*

Legislation does not establish whether the use of physical force or threats to obtain false testimony or to interfere in the giving of testimony is punishable. Articles 6 of the 2002 Act and 279 of the Criminal Code do, however, cover the question of undue advantage ("gratification") in this context. Attempting to prevent the presentation of evidence is not specifically punishable. The use of violence, intimidation, any form of hindrance, or threats against a public official is punishable.

*Liability of legal persons (art. 26)*

Legal persons may be prosecuted based on their criminal, official or civil liability. Moreover, if an offence is committed by a legal person, anyone who, at the time of

the offence, was involved in the management of the entity in question is deemed to have also committed the offence.

*Participation and attempt (art. 27)*

Sections 2 and 45 of the IGCA and sections 37 and 38 of the Criminal Code provide for an appropriate penalty for participation and attempt.

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

The penalties for offences under the Convention appear to take into account the gravity of the offences.

Only the President and the Vice President have, according to article 30A of the Constitution, immunity from criminal prosecution during their term of office. No other public official has immunity from criminal prosecution.

The Director of Public Prosecutions (DPP) has discretionary powers. These powers are used to present, without exception, cases of corruption to the Intermediate Court. The Courts Act of 1945 states that intermediate courts can impose heavier sentences than lower courts.

The conditions attaching to release pending trial or appeal take into consideration the need to ensure the presence of the defendant at the criminal proceedings. As regards early release, the gravity of the offence is one of a number of criteria on which the decision is based.

Under Mauritian legislation, any public official, with the exception of members of the legislature, may be suspended or dismissed if accused of a corruption offence.

The 2002 Act allows the Director General of the Independent Commission against Corruption, after consultation with the DPP, to give an undertaking in writing to a person that any information he or she gives will not be used against him or her. The DPP may also grant immunity to individuals involved in an offence who cooperate with law enforcement and detection services and who, according to their version of events, are able to substantiate an accusation against another person. Furthermore, cooperating with the law enforcement officials is considered a mitigating circumstance for the purpose of sentencing.

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

With regard to the protection of reporting persons, article 49 of the 2002 Act provides for the creation of a system whereby a person who reports suspicious facts incurs no civil, criminal or official responsibility based on his or her statement. His identity is also protected. Furthermore, any person who discriminates against, intimidates, harasses or harms a person who has made such a disclosure is punishable.

However, there is no specific protection for other witnesses or experts apart from the possibility, in very specific circumstances, of holding hearings in private. Criminal law applies generally in relation to threats, intimidation and other assault. Videoconferencing is possible only in cases concerning sexual attacks.

Mauritius has not adopted any specific mechanisms ensuring the participation of victims at the different stages of criminal proceedings.

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

Seizure and confiscation are provided for by the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) and, more generally, since the Asset Recovery Act came into force in February 2012. The latter, which is also applicable to corruption offences, has the advantage of making confiscation possible both on the basis of a conviction and in its absence. Unlike the FIAMLA, it also allows profits and other income from the proceeds of crime to be confiscated. Both seizure and confiscation require a court decision. Confiscation is allowed in cases of processing of criminal proceeds as well as when criminal proceeds are intermingled with legally acquired assets.

The Banking Act of 2004 introduced a system to remove bank secrecy with regard to banks, while the Bank of Mauritius Act of 2004 introduced a system to remove banking secrecy with regard to the Central Bank.

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

Under Mauritian law, there is no defined limitation period for misdemeanours or crimes. Based on “common law”, it is up to the court to assess whether, in view of the time elapsed, it is reasonable to initiate a trial.

*Jurisdiction (art. 42)*

The 2002 Act and the Courts Act establish to an adequate degree the territorial and extraterritorial jurisdiction of Mauritius for the offences covered by the Convention. The principle *aut dedere aut judicare* applies.

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

Mauritian legislation does not provide for the enforcement of obligations based on a corrupt, illegal practice. The Public Procurement Act of 2006 includes a list of grounds, including corruption, on which tenderers and suppliers may be suspended or excluded from participation in procurement.

In addition, entities or persons who have suffered damage as a result of an act of corruption may bring a civil action to seek compensation.

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

The functions of the Independent Commission Against Corruption (ICAC) include educating the public against corruption; receiving and considering any allegation that a corruption offence has been committed; detecting or investigating any act of corruption; advising and assisting any public body on ways and means of eliminating acts of corruption; and detecting and investigating any matter that may involve the laundering of money or a suspicious transaction. The ICAC has, therefore, both a preventive and an enforcement role, given that it investigates any act of corruption. A parliamentary committee has also been established to supervise the ICAC.

With the consent of the DPP, the ICAC can bring cases it has investigated and which have been referred by the DPP before the Intermediate Court of Mauritius.

Mauritius has also adopted measures to encourage the exchange of information between the private sector (for example, financial institutions) and the authorities responsible for combating corruption and money-laundering. Citizens are also broadly encouraged to report acts of corruption. This may be done anonymously and either orally or in writing.

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

Mauritius has effective institutions for combating corruption. ICAC, in particular, is regarded as very active and effective. For example, it received first prize in the United Nations Public Service Awards in the category “Preventing and Combating Corruption in the Public Service”. Mauritius is regarded in Africa as one of the least corrupt countries. It should also be noted that Mauritius is at an advanced stage in the preparation of a draft law aimed at rectifying the existing shortcomings of the 2002 Act and that many of the recommendations below are currently being considered.

## **2.3. Challenges in implementation**

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

- (Article 15) With regard to the act of giving a bribe, it would be useful to consider amending the 2002 Act to make sure that a beneficiary could also be someone other than a public official.
- (Article 16) It is recommended that Mauritius adopt legislative or other necessary measures to criminalize bribe-giving by foreign public officials and officials of public international organizations. Mauritius is also encouraged to consider adopting such measures for the same offence relating to accepting or soliciting the bribe.
- (Article 20) It is recommended that Mauritius consider criminalizing illicit enrichment. It is recommended that Mauritius consider a substantial increase in a public official’s assets as a criminal offence if the public official cannot justify this increase in relation to his or her legitimate income.
- (Article 21) Although this article has already been partly implemented, the experts encourage Mauritius to consider amending its legislation so that the penalization of soliciting or accepting a benefit is not contingent upon the absence of consent of the official’s superior. Corruption in the private sector, particularly in economic, financial or commercial activities, must be addressed in a larger context.
- (Article 25) Mauritius is encouraged to implement this article. In particular, the experts note the usefulness of promptly applying article 280A of the Criminal Code, relating to interference with witnesses and potential witnesses. In addition, Mauritius should amend this article by extending it to the act of seeking to prevent the presentation of evidence during proceedings.

- (Article 26) The experts encourage Mauritius to consider amendments aimed at explicitly stating the application of the 2002 Act to legal persons, especially when imposing sentences.
- (Articles 32 and 33) It is recommended that Mauritius adopt a legal framework for the protection of witnesses, experts and other persons who cooperate with law enforcement agencies, as well as for their families. The legal framework should not only be adapted to the particular situation and needs of Mauritius but should also be within the limits of the country's resources. The experts encourage Mauritius to adopt a system in accordance with article 32 and article 37, paragraph 4, of the Convention as soon as possible. In this context, it is also suggested that the option of giving testimony via videoconference currently used in cases concerning sexual offences, be extended to witnesses and experts. In addition, it is recommended that Mauritius consider the adoption of other measures to facilitate victim participation.

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

- (Articles 20 and 21) While Mauritius is equipped with a certain legal arsenal to combat corruption in the private sector, it would like to receive further information on how the relevant article has been implemented by other States Parties. Mauritius has requested technical assistance because it thinks that the amendments to make unjustified enrichment a criminal offence will be subject to fierce legal challenges.
- (Article 23) Mauritius would like to receive technical assistance in order to assess whether international obligations under other instruments would allow it to amend its legislation in order to adopt a closer wording than that of article 23, paragraph (c), and to consider as a predicate offence only those acts constituting offences both in the State where they were committed and in Mauritius.
- (Article 35) Mauritius would like to receive technical assistance regarding what factors to take into consideration when creating a societal damages action, in the context of acts of corruption.

### **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)*

The Extradition Act constitutes the domestic legal framework regulating extradition matters in Mauritius. The Act, in section 2(1)(a), sets forth two distinct legal regimes depending on the status of the requesting State: If the request originates from a Commonwealth country, there is no need for a treaty and extradition can be granted on condition that (i) the offence carries the death penalty or a penalty of imprisonment of not less than 12 months; and (ii) the offence is described in the First Schedule of the Act (for the purposes of the Convention, the First Schedule lists the following offences: bribery; perjury or subornation of perjury or conspiring to defeat the course of justice; stealing, embezzlement, fraudulent conversion,

fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud; blackmail or extortion by means of threats or by abuse of authority; aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences listed [above]). It is noted that that the Schedule does not seem to cover all Convention offences.

If, instead, the requesting State is a non-Commonwealth country, extradition can only be granted on the basis of a treaty. Moreover, the First Schedule also applies. Currently, bilateral extradition treaties are in force with a number of countries, some of which are Commonwealth countries.

In all cases, extradition is subject to the requirement of dual criminality (sect. 2(1)(b)).

So far, the Convention cannot be used as a legal basis for cooperation on extradition.

Section 7 of the Extradition Act provides a list of grounds for rejecting an extradition request. For example, an offender shall not be surrendered to a foreign State where the offence in respect of which the request for his surrender is made is one of a political character. The mere fact that the request for extradition is in respect of a national does not constitute a ground for refusal.

Fair treatment guarantees are applicable throughout the extradition proceeding. Section 10 of the Constitution, which to a large extent replicates article 6 of the European Convention on human rights, represents the broad legal framework for the protection of human rights during criminal proceedings and is also applicable to extradition proceedings. More specific guarantees are set forth in section 12 of the Extradition Act (possibility for the sought person to apply for a writ of habeas corpus) and section 7 (no surrender if the request was made for the purpose of prosecuting or punishing the person on account of race, caste, place of origin, nationality, political opinions, colour or creed).

The evidentiary threshold required by the Magistrate at the extradition hearing is the one that would “justify the committal for trial of the person if the act or omission constituting that crime had taken place, in, or within the jurisdiction of Mauritius” (sect. 11(5)(b)(i)).

While there are no specific mechanisms to expedite extradition proceedings, the constitutional principle of “fair trial within a reasonable time” applies and is reviewed by the judiciary. Likewise, no set procedures exist in Mauritius to consult with other States before refusing extradition, but this would be done in practice.

It is to be noted that the Extradition Act, which dates back to 1970, is presently under review and Mauritius has indicated that it will solicit technical assistance to check the compatibility with the Convention, in the drafting of the new Bill.

The implementation of article 45 of the Convention is ensured by the Transfer of Prisoners Act of 2001 and subsequent regulations which reflect engagements with Commonwealth countries in general and treaties concluded with specific countries.

Mauritius does not have a legal framework for the transfer of criminal proceedings (art. 47 of the Convention).

*Mutual legal assistance (art. 46)*

The Mutual Assistance in Criminal and Related Matters Act of 2003 (MACRMA) provides the legal framework covering both outgoing and incoming requests.

The MACRMA also recognized the Harare Scheme (amended as of 2005). The Scheme constitutes a non-binding arrangement for the widest possible cooperation in criminal matters between Commonwealth countries. It is applied in a flexible manner in compliance with domestic and international law and does not preclude police-to-police cooperation.

Mauritius has also signed a bilateral agreement with India to facilitate investigation and the collection of evidence.

The provisions of MACRMA are also applicable to requests involving legal persons on the basis of section 2 of the Interpretation of General Clauses Act whereby "person" includes a group of persons, whether corporate or unincorporated.

Section 3(4) MACRMA provides that nothing shall prevent informal assistance between Mauritius and any other State. For the information sought to be able to be successfully used in a domestic criminal proceeding, however, a formal request is needed.

Pursuant to section 6(9) MACRMA, bank secrecy does not represent an obstacle for the purpose of executing a foreign request as long as the competent authority (a Judge in Chambers) is satisfied that: (a) the information is material and necessary to the proceedings in the foreign State; and (b) the law of the foreign State permits the disclosure of information to foreign States in circumstances similar to the one relating to the request.

The United Nations Secretary-General was notified that the Central Authority designated to receive MLA requests in the context of the Convention is the Attorney-General. Pursuant to section 5(2)(b) MACRMA, this latter may refuse a request inter alia on grounds of absence of dual criminality; if the request was made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions; or if the request relates to a political offence or an offence of a political character.

Furthermore, grounds for refusal cover situations where the request is contrary to the Constitution; where its execution would prejudice the sovereignty, international relations, security, public order or other public interest of Mauritius; where the request would be incompatible with laws of Mauritius on double jeopardy; or where it would require Mauritius to carry out measures that are inconsistent with its laws and practice. The fact that the offence is also considered to involve fiscal matters does not constitute a ground for refusal per se.

In case a request were to be refused, the foreign State is informed thereof. Any refusal would be preceded by consultations and a statement of reasons.

All requests are evaluated in their entirety, but given the country's limited resources, priority is given to those that involve serious criminal offences (including corruption and wide-scale fraud), or involving evidence which is at risk of being concealed or destroyed, or where the safety of witnesses or the public is at risk.

In order to expedite the exchange of information, the Central Authority in Mauritius has taken the initiative to gather all information following a phone call or an exchange of e-mails with the requesting State. By the time the official MLA request reaches it, the information can already be communicated to the foreign State. While normally an MLA request could have been answered within 8 to 12 months, this practice reduces the execution time to 2-3 months.

The hearings of witnesses by videoconference is explicitly set forth in sections 4(2)(b) and 7 MACRMA.

The rule of specialty (art. 46(19) of the Convention) is implemented in practice. The safe conduct guarantee is set forth under section 9 MACRMA for any person, including prisoners. All requests are kept confidential, based on section 20 MACRMA.

Usually, Mauritius bears the costs of executing MLA requests and reserves the right to claim extra costs after consultation with the requesting State, on a case-by-case basis.

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

Various domestic laws explicitly empower the Anti-Corruption Commission, the FIU and law enforcement authorities to collaborate and share information with foreign institutions. (cf., in particular, sect. 20(1)(l) of the Prevention of Corruption Act of 2002, sect. 10(2)(f) of the Financial Intelligence and Anti-Money Laundering Act of 2002 and sect. 53 of the Asset Recovery Act of 2011).

The Mauritius Police Force is a member of INTERPOL and has access to its I-24/7 secure global police network. The INTERPOL platform has assisted towards the exchange of public information in resolving a number of criminal cases, especially in the region, including the location of persons suspected of having committed offences.

Furthermore, Mauritius actively participates in the activities of SADCPOL, a regional police association set up within the Southern African Development Community (SADC). The activities of SADCPOL include meetings, training courses and joint operations.

Mauritius has entered into bilateral agreements in the field of security with several countries such as France, India, Mozambique, South Africa and Australia.

So far, Mauritius has not exchanged personnel and experts with other States relating to offences under the Convention. However, in order to enhance the effectiveness of law enforcement claim, selected ICAC officers have been trained by the International Enforcement Academy of Botswana (in cooperation with the United States Secret Service) on how to tackle electronic crimes. Also, Mauritius has received training on the setting up of a Mauritius Cyber Unit and how to make use of digital forensic software for investigation purposes.

Mauritius does not yet have in place a legal framework for joint investigations (art. 49 of the Convention).

Although specific legal texts do not always exist, special investigative techniques (art. 50 of the Convention) can be ordered and used in practice. In particular,

telephone tapping is regulated by section 32(6) of the Information and Communication Technologies Act. Evidence obtained during the course of such exercises is admissible in court. Controlled deliveries are carried out by the Anti-Drugs and Smuggling Unit (ADSU) of the Mauritius Police Force when the said unit has been tipped off as to the transport of drugs. The person is arrested and surveillance exercise is effected as to find to whom the drugs were destined.

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

Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the Convention:

- The possibility for hearings to take place by videoconference;
- The practice adopted by the Central Authority to expedite MLA requests.

### **3.3. Challenges in implementation**

The following points could serve as a framework to strengthen and consolidate the actions taken by Mauritius to combat corruption:

- Mauritius should ensure that all Convention offences are extraditable offences, as required by articles 44(4) and (7) of the Convention;
- Mauritius is encouraged to adopt the Bill providing for the Convention to be used as a legal basis for extradition requests (cf. art. 44(5) of the Convention);
- Mauritius should not make the lifting of bank secrecy subject to reciprocity (cf. art. 46(8) of the Convention);
- Mauritius should adopt legislation to explicitly enshrine the rule of specialty, as required by article 46(19) of the Convention;
- Mauritius should consider the possibility to put in place a legal framework for the transfer of criminal proceedings (cf. art. 47 of the Convention);
- Mauritius should consider introducing a legal framework for joint investigations (cf. art. 49 of the Convention);
- Mauritius should consider giving the ICAC powers to apply to the Judge in Chambers to enable it to intercept information or telecommunication messages as per s. 32(6) of its Information and Technology Act in order to effectively carry out investigations.

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

Mauritius will be seeking technical assistance in the drafting of the new Extradition Bill and the review of the MACRMA. Mauritius will also seek assistance in drafting other measures such as the transfer of proceedings, once a policy decision has been taken in that respect.

The need for technical assistance was further acknowledged with regard to article 49 of the Convention.