



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
4 August 2016

Original: English

Implementation Review Group
Resumed seventh session
Vienna, 14-16 November 2016
Item 2 of the provisional agenda*
**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
I. Executive summary	2
Islamic Republic of Afghanistan	2

* CAC/COSP/IRG/2016/1/Add.1



II. Executive summary

Islamic Republic of Afghanistan

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

The Islamic Republic of Afghanistan signed the Convention on 20 February 2004 and ratified it on 25 August 2008.

The legal system of Afghanistan is civil law based with a notable role of sharia law. According to article 3 of the Constitution of Afghanistan no law can contrive the principles of sharia.

The Convention is placed high in the hierarchy of the sources of law in Afghanistan. International law conventions are ranked as the third source of law below the Constitution and sharia law.

During the review process Afghanistan reported that many identified challenges related to the implementation of chapter III and chapter IV of the Convention were being addressed in newly developed draft legislation, as referenced in the country report, which was positively noted by the reviewing experts.

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)

Afghanistan law does not contain a comprehensive definition of the term “public official” in line with article 2 of the Convention.

Passive bribery of public officials is criminalized in articles 254, 255 (1), 258, 259 PC.

Under article 258 PC the crime is limited to soliciting undue benefits, and does not cover actually receiving them; similar conduct is also covered in Arts. 254, 255(1). Yet, the applicable penalty for the commission of the offence under article 258 is lower than under Arts. 254, 255(1).

Article 261 criminalizes passive bribery under articles 254, 258 and 259 PC when such is conducted via an intermediary.

Active bribery of public officials is only indirectly criminalized in article 255(2) by reference to article 254 stating that the bribe-giver and intermediary in bribery shall be sentenced to the same punishment as the bribe-taker. Additionally, the bribe-giver is punished by a lesser penalty under article 260 compared to the penalty under article 255(2) *where his offering of a bribe was not accepted*.

Article 264 absolves the person from whom a bribe has been demanded of criminal liability when he or she informs the competent authorities and the corrupt demand is proven. Article 265 absolves the person to whom a bribe was offered if he or she informs the competent authorities before taking the bribe and as a result the bribe giver is caught red-handed. The absence of any specification in the law as to the

relevant time period during which the offence must be reported may lead to abuses of this provision. Further, the automatic exemption from liability also creates difficulties in assessing the motives of a person reporting the conduct to the authorities.

Bribery of foreign public officials and officials of public international organizations, bribery in the private sector and trading in influence are not criminalized in the Afghan legislation.

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

Money-laundering is criminalized in article 4 the Anti-Money Laundering and Proceeds of Crime Law (AML Law).

All crimes can be considered as predicate offences for the purposes of money-laundering (art. 3(1)(m)) of AML Law).

The AML law does not distinguish between predicate offences committed within and outside of Afghanistan.

Self-laundering can be prosecuted; however, only the heaviest punishment (either for the predicate offence or for the money-laundering) may be enforced (art. 156 PC).

Concealment of proceeds of crime is criminalized in article 474 PC.

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

Embezzlement is partially criminalized in articles 268 and 269 PC (with regard to the embezzlement of money, priced documents, goods and other articles which is understood as all kinds of assets *including real estate*).

Misappropriation of property is covered to some extent in articles 269, 270 and 271 PC. Additionally, Article 271 punishes the conduct of gaining a profit from the administration of matters of the State.

Afghanistan does not criminalize embezzlement in the private sector.

The abuse of functions is criminalized to some extent *where the public official stops the performance of laws* (art. 285 PC).

Illicit enrichment is not criminalized in the Afghan legislation. According to article 154 of the Constitution and the Decree of the President of Afghanistan regarding Effective and Practical Fight against Corruption No. 61, the wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court and the Attorney General shall be registered, reviewed and published prior to and after their term of office by the High Office of Oversight and Anti-Corruption (HOA). HOA is tasked with the verification and publishing of the declarations of assets of public officials and referring for prosecution the cases of officials whose standards of living “logically do not match with their legal income” to the Attorney General Office (AGO). An illicit enrichment offence is included in article 25 of the new draft Penal Code which was reported to be under development at the time of the review.

Obstruction of justice (art. 25)

Obstruction of justice is criminalized in articles 384 and 385 PC. However, those provisions do not explicitly cover the *interference in the production of evidence*.

Article 25(b) is criminalized in articles 257, 290, 291, 292 PC.

Liability of legal persons (art. 26)

Afghanistan established the criminal liability of legal persons in article 96 of PC. The liability, however, is *not applicable to state institutions, departments and enterprises*.

Article 50 of AML Law establishes a separate liability for money-laundering offences applicable to a “corporate entity”. It is not clear whether the term “corporate entity” under the AML Law is equivalent to “legal person” under PC. Notably, the AML Law also uses the term “legal persons” in its article 51.

Sanctions against legal persons include fines (art. 96 (2), (3) PC, art. 50 AML Law), the discontinuation of activities (arts. 135, 136 PC, art. 50 (2)(a) AML Law) and dissolution (art. 136 PC, art. 50 (2)(b) AML Law). The AML Law in its article 50 (2)(c) establishes a penalty in the form of a requirement for a convicted corporate entity *to publicize the judgment in the press*. Confiscation may be applicable to legal persons for corruption offences per article 39 of AML Law. Discontinuation and dissolution of legal persons per articles 135 and 136 PC is applicable only under the condition *that the president, director, representatives or legal attorney of the legal person are sentenced to imprisonment for six months or more*. Imposition of liability on a legal person does not preclude the criminal liability of natural persons who have committed the offences (art. 96(4) PC, art. 50(4) AML Law).

Civil liability of legal persons is also possible under article 1 of the Acquirement Law and article 3 of the Civil Procedure Law.

Participation and attempt (art. 27)

Articles 39, 41 PC criminalize participation in criminal offences.

Attempt is criminalized under articles 29, 30 PC.

Afghanistan does not criminalize the preparation of an offence.

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

Corruption crimes are classified as *felonies or misdemeanours* in the PC. Felony is a more serious crime whose perpetrator is sentenced, inter alia, to imprisonment of 5-15 years (arts. 24, 100 PC). Misdemeanour is a crime whose perpetrator is sentenced to imprisonment for a period of not less than 3 months and not more than 5 years or cash fine (art. 24 PC). Corruption crimes may be punished by imprisonment from 6 months to 10 years; therefore, it is not always possible to determine whether a particular corruption crime is a felony or a misdemeanour.

Afghan authorities stated that there are no immunities applicable to public officials for the performance of their functions. However, jurisdictional privileges are applicable to parliamentarians, high ranking officials and judges.

Prosecutors have limited discretion in their decision whether or not to prosecute per articles 71, 169 and 171 of the Criminal Procedure Code (CPC).

Release pending trial is possible with or without bail under article 105 CPC. Article 110 CPC includes conditions ensuring the presence of the defendant at subsequent criminal proceedings during the release on bail.

Current legislative provisions do not require the gravity of the offence to be taken into account when considering early release or parole.

According to articles 11(4), 12(1), 13(1) of the Law on the Structure and Authority of the AGO, the AGO has power to propose to the court that accused persons be suspended from their duties. Yet, the actual procedure for the suspension, as well as removal from office or reassignment, does not appear to be specified.

Article 15 of the Law on Monitoring the Implementation of the Anti-Administrative Corruption Strategy provides for the sanction of disqualification for 2 years from government employment or running for elective positions for those sentenced from 3 to 10 years of imprisonment for corruption crimes. Article 113 of PC prohibits state employment for persons sentenced to imprisonment of more than ten years. It is unclear whether such prohibition is also applicable to holding positions in state-owned enterprises. Additionally, persons convicted of embezzlement and sentenced to imprisonment for more than 3 years shall be disqualified from their profession (art. 113 PC).

Disciplinary measures can be applied to public officials in addition to applicable criminal sanctions.

Article 268 of PC establishes a principle that public officials disqualified from their profession or separated from service may be accepted to a new position in government employment after having served their sentences (arts. 362-364 CPC).

Cooperation with law enforcement authorities shall be taken into account as a factor exempting offenders from criminal liability under article 52 of PC, but only if such cooperation takes place before the commission of the crime. Courts have broad powers to consider “extenuating excuses” and are required to list them in sentencing verdicts (art. 141 PC). As mentioned above, arts. 264 and 265 PC further exempt reporting persons from criminal liability.

Complete immunity from prosecution is not possible under the fundamental principles of the criminal law of Afghanistan.

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

Afghanistan has established measures under articles 53, 54 and 55 of CPC to protect witnesses. Victims, as long as they are witnesses, but not experts are also covered by these provisions. Available protection measures include identity and physical protection, as well as the possibility of giving testimony using communications technology such as videoconferencing (art. 53.3 (3, 4) CPC). The possibility of relocating witnesses is not clearly specified (art. 54(1-5) CPC).

The views and concerns of victims may be considered during criminal proceedings (art. 6 of CPC).

Article 14 of the Decree of the President of the Islamic Republic of Afghanistan concerning the Endorsement of the Law on Monitoring the Implementation of Anti-Corruption Strategy No. 63 (Decree No. 63) states that informants and witnesses in corruption cases *shall be immune from any type of pressure, intimidation and ill-treatment*. The provision aims to provide protection to persons reporting corruption. The authorities also indicated that a comprehensive law on the protection of reporting persons was under consideration.

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

Articles 117, 119 and 132 of PC regulate conviction-based confiscation of the proceeds and instrumentalities used or “destined for use” in crimes.

Detailed provisions on confiscation are also contained in the AML Law. Article 39 of the AML Law addresses the confiscation of illicit proceeds not only of money-laundering offences but of all predicate offences, *which include all criminal offences under the Afghan criminal legislation* (art. 3 (1)(a), 3(1)(m) AML Law).

Article 39 (2,3) of the AML Law addresses the confiscation of funds or property intermingled with or derived from illicit proceeds, and provides for value-based confiscation of criminal offences.

Article 40 AML Law also allows non-conviction based confiscation when the underlying offence cannot be prosecuted because the perpetrators are unknown, have absconded, or there is a legal impediment to prosecute that offence.

Articles 37, 38 (1, 2) AML Law provide for a wide range of investigative measures for the identification, tracing, freezing, or seizure of proceeds and instrumentalities of crimes.

Article 66 AML Law mandates the establishment of a fund for asset recovery and for asset-sharing. However, there are no detailed measures in place on the management or administration of frozen, seized and confiscated assets.

The rights of bona fide third parties are protected per article 31(1)(b), 44 of the AML Law, and article 119(2) of PC.

Bank secrecy is not an obstacle to criminal investigations and prosecutions in accordance with article 8 of the AML Law.

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

Article 10 of the CPC provides for a statute of limitations of ten years in felony cases, three years in misdemeanour cases, and one year in cases of petty offences. Due to difficulties in precisely classifying corruption offences as felonies or misdemeanours, as noted under article 30 above, applicable periods of limitations may vary widely.

There is no suspension of the statute of limitations in cases where a person has evaded the administration of justice.

Pursuant to article 154 PC, Afghanistan cannot take into account previous convictions in other States.

Jurisdiction (art. 42)

Afghanistan established the following types of jurisdiction in the PC: territorial jurisdiction (art. 14(1)), jurisdiction aboard Afghan airplanes and ships (art. 14(2)), passive personal jurisdiction (art. 17(1)). Active personal jurisdiction exists where Afghan nationals commit acts abroad and where dual criminality is present (art. 18). In relation to money-laundering Afghanistan has jurisdiction over offences connected to its territory (art. 15 (1)). Afghanistan also has jurisdiction where an offence is committed against its interests (art. 17(1) PC).

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

There are limited statutory measures to address the consequences of corruption in Afghanistan. Contracts concluded by illegal means including corruption are void (arts. 404, 590, 592, 613-619 of the Civil Law).

Entities or persons who have suffered damage as a result of corruption may apply for compensation of damage under article 6(2) of PC.

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

Afghanistan has a number of specialized authorities to combat corruption. The HOA is an independent authority under the president of the country with its own budget line. It receives corruption complaints, is responsible for administering the asset declaration system, prevention of corruption and simplification of anti-corruption procedures. The main law enforcement agency tasked with fighting corruption in Afghanistan is the AGO. There is a special corruption prosecution unit established within the AGO consisting of 2 departments focusing on general corruption issues and corruption in the military. Police and national security bodies are obliged to transfer corruption cases that come to their attention to the AGO. Afghanistan also has a special anti-corruption court system. There are general anti-corruption courts located in all provinces of the country and there is also an anti-corruption division within the Supreme Court of Afghanistan. The Afghan financial intelligence unit (FIU) is an administrative-type agency located within the Central Bank of Afghanistan. During the review problems with general capacity and coordination of the relevant institutions were reported.

According to article 57 CPC, all citizens of Afghanistan are obliged to report criminal acts including corruption to relevant authorities. Article 11 of the Decree of the President of the Islamic Republic of Afghanistan concerning the endorsement of Decree No. 63 requires all government agencies to cooperate with HOA.

Financial institutions are required to report suspicious conduct to the FIU (arts. 17, 18 AML Law). Awareness-raising activities are carried out by government agencies targeting the general public and the private sector. HOA and law enforcement agencies have hotlines where instances of corruption can be reported.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

The comprehensive legal regulation of freezing, seizure and confiscation of illicit assets including non-conviction based confiscation in the AML Law, as a measure conducive to the implementation of article 31 of the Convention.

The establishment of a specialized anti-corruption unit within the AGO and the specialized anti-corruption court system (art. 36 of the Convention).

2.3. Challenges in implementation

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

- Adopt a comprehensive definition of “public official” in line with article 2 of the Convention.
- Explicitly criminalize active bribery of public officials (art. 15(a)).
- Consider harmonizing sanctions applicable to different forms of bribery regardless of whether or not the agreement was achieved or the undue advantage was transferred between the subjects of the offence (art. 15).
- Revise article 264 and 265 PC by stipulating that the remittance of criminal liability may be applied only after the examination of the motives of reporting persons and before the authorities learn about the relevant criminal conduct (arts. 15, 37).
- Criminalize the active bribery of foreign public officials and officials of public international organizations and consider criminalizing the passive bribery of such persons (art. 16).
- More fully criminalize the misappropriation, embezzlement and other diversion of property by a public official, in particular to cover intangible property, in line with article 17 of the Convention.
- Consider criminalizing trading in influence in line with article 18 of the Convention.
- Consider criminalizing abuse of functions in line with article 19 of the Convention.
- Consider introducing an asset declaration system *for all public officials* (art. 20).
- Continue efforts to criminalize illicit enrichment (art. 20).
- Consider criminalizing bribery and embezzlement in the private sector in line with articles 21 and 22 of the Convention.
- Explicitly criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage *to interfere in the production of evidence* in line with article 25(a) of the Convention.

- Ensure that liability for UNCAC offences may be applied to *all types of legal persons* including *state institutions, departments and enterprises* as well as legal persons that are not corporate entities (art. 26).
- Ensure that the provisions on criminal liability are applied effectively, proportionally and dissuasively to legal persons and *regardless of the conviction of natural persons* (art. 26).
- Consider adopting legislative and other measures to criminalize the preparation of criminal offences (art. 27(3)).
- Provide a clear classification of corruption offences to ensure that appropriate limitation periods are applied to corruption offences and establish a longer statute of limitations period or provide for its suspension where the alleged offender has evaded the administration of justice (art. 29).
- Provide a clear classification of corruption crimes; particularly, consider designating corruption crimes committed by public officials as *felonies* due to their seriousness (art. 30(1)).
- Continue to ensure an appropriate balance between jurisdictional privileges afforded to Afghan public officials and the possibility of effectively investigating, prosecuting and adjudicating corruption offences (art. 30(2)).
- Ensure that the gravity of the offences is taken into account when considering the eventuality of early release or parole of persons convicted of corruption crimes (art. 30(5)).
- Consider specifying the procedure for the suspension of public officials accused of corruption offences and introducing the procedure for their removal from office or reassignment (art. 30(6)).
- Consider clearly stipulating a disqualification from holding positions in state-owned enterprises for persons convicted of corruption crimes (art. 30(7)(b)).
- Adopt detailed legislative and other measures to regulate the administration by the competent authorities of frozen, seized or confiscated property (art. 31(3)).
- Consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime liable to confiscation in line with art. 31(8) of the Convention.
- Ensure that the protection measures envisioned in articles 53 and 54 CPC also cover experts (art. 32).
- Consider clearly stipulating the possibility of relocating witnesses and experts (art. 32(2)(a)).
- Consider entering into agreements or arrangement with other States for the relocation of protected persons (art. 32(3)).
- Continue efforts on the adoption and implementation of comprehensive legislation on the protection of reporting persons (art. 33).
- Take appropriate measures to address the consequences of corruption in line with article 34 of the Convention.

- Continue efforts on the strengthening of independent specialized anti-corruption bodies and ensure that they have appropriate training and resources to carry out their tasks and coordinate their efforts effectively (arts. 36, 38).
- Take additional measures to encourage persons who participate in the commission of corruption offences to supply information useful to competent authorities in line with article 37(1) of the Convention.
- Consider providing for the possibility of mitigating punishment of accused persons who provide substantial cooperation in investigations or prosecutions of corruption offences (art. 37(2)).

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

Afghanistan indicated the following technical assistance needs:

- Assistance in addressing specific challenges identified as a result of the review process and more generally in improving awareness-raising, training in investigations and detection of crime (including through the use of modern technology), legal advice and capacity-building, sharing of best practices and inter-agency coordination.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition and mutual legal assistance (MLA) are governed by the Law on Extradition of the Accused, Convicted Individual and Legal Cooperation of 2013 (Extradition and MLA Law). In addition, Chapter IX of the AML Law is applicable to MLA involving all criminal offences that generate illicit proceeds, *including corruption and money-laundering*.

Article 4 of the Extradition and MLA Law states that extradition and legal assistance is to be provided based on treaties and conventions to which Afghanistan is a party; this presumes that the self-executing provisions of the Convention can be directly applied.

Extradition can be carried out only *if there is an existing treaty between Afghanistan and the foreign country* (art. 8 Extradition and MLA Law). The underlying crime *shall be mentioned in the extradition treaty* (art. 11(1)(a) Extradition Law). On the other hand, for MLA no bilateral treaty is required. According to article 55(3) of AML Law, assistance can be also provided based on reciprocity.

Dual criminality *in the form of punishment by imprisonment for a minimum term of 1 year* is a required condition for both the provision of extradition and MLA per articles 27 and 11(1)(b) Extradition and MLA Law. By contrast, the AML Law does not contain any conditions with regard to the minimum punishment, but requires the flexible application of dual criminality restrictions (art. 55 AML Law) and states that assistance *shall still be provided in the absence of dual criminality if it does not involve coercive measures* (art. 57 AML Law).

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

As noted above, dual criminality is a requirement for extradition. Not all Convention offences are fully criminalized; some of them are also punishable by a prison term of less than 1 year.

Accessory extradition for connected offences punishable by less than one year is not possible.

Afghanistan has not provided a notification to the United Nations on whether it considers the Convention as a basis for extradition.

The Extradition and MLA Law does not provide for the possibility of simplified or expedited extradition procedures.

Extradition requests are received by the Ministry of Foreign Affairs (MFA), which transmits them to the AGO. The AGO conducts an initial assessment, after which it refers the request with a recommendation to the High Council of the Supreme Court, which takes the final decision (arts. 9(1), 11 Extradition and MLA Law).

Pursuant to article 28 of the Constitution of Afghanistan, Afghan citizens can be extradited only based on reciprocal arrangements, as well as international treaties to which Afghanistan is party. No such arrangements were reported at the time of the review.

Based on article 18 of PC, Afghanistan will establish jurisdiction in cases where the extradition of Afghan nationals is denied, as long as dual criminality for the offence is present.

Afghanistan can take temporary precautionary measures to take into custody a person whose extradition is sought (art. 16 Extradition and MLA Law).

The enforcement of a foreign sentence in the case where extradition of nationals is refused is possible based on article 42 of Extradition and MLA Law.

Some limited fair treatment measures are provided in articles 14 and 18 of Extradition and MLA Law.

Extradition may not be refused on the ground that the offence involves fiscal matters (arts. 24, 25 Extradition and MLA Law).

The Extradition and MLA Law does not require Afghanistan to consult with requesting States before refusing extradition.

Afghanistan has concluded 8 bilateral extradition treaties.

Transfer of sentenced persons to and from Afghanistan is regulated in articles 9 and 20 of the Extradition and MLA Law and is decided by the Minister of Justice.

Mutual legal assistance (art. 46)

The provision of MLA is regulated in articles 26-50 of the Extradition and MLA Law and articles 55-68 of the AML Law. There are no restrictions regarding MLA for offences involving legal persons.

Afghanistan can afford all the forms of legal assistance listed in article 46(3) of the Convention based on articles 26(1), 31 of the Extradition and MLA Law and article 56(2) of the AML Law.

Afghanistan has concluded 2 bilateral treaties which contain MLA provisions.

The spontaneous transmission of information to competent authorities of other States in corruption cases is possible based on article 68 of the AML Law.

The temporary transfer of a person serving a sentence but not a person being detained for the purpose of testimony is possible pursuant to article 40 of Extradition and MLA Law.

Afghanistan has not designated a central authority for the purposes of article 46 of the Convention and did not notify the United Nations which languages are required for MLA requests. Various entities for legal cooperation are designated by article 29 of the Extradition and MLA Act, including the Ministry of Interior (MOI), the Central Bank, the Police (in the detection stage), the AGO (in the investigation stage) and the Supreme Court (in the trial stage). Normally, requests are submitted to the MFA via diplomatic channels (art. 29 Extradition and MLA Law, art. 59 AML Law). In emergency cases MLA requests can be submitted through INTERPOL, or directly to the competent authorities. However, an official submission would be required later. The MFA is required to transfer the request to competent authorities within 14 days after it is received. The MOI, the AGO and the Supreme Court are required to process it within 60 days (art. 26 Extradition and MLA Law).

The form and content of requests for MLA are regulated in articles 28 and 10(1) of Extradition and MLA Law and article 60 of AML Law.

Assistance will be provided in the manner requested so long as it does not violate domestic law (art. 38 Extradition and MLA Law). Afghanistan preserves the confidentiality of MLA requests and is required to inform the requesting authorities as soon as possible where it is not possible to maintain confidentiality (arts. 44 Extradition and MLA Law, 62 AML Law).

The hearing of testimony by videoconference is possible based on article 53(3) of CPC. Afghanistan's legislation addresses a limitation on the use of information obtained through MLA (art. 46 Extradition and MLA Law).

The grounds for the refusal of MLA requests are in line with article 46(21) of the Convention (arts. 38 Extradition and MLA Law and 57 AML Law). Bank secrecy is not a ground for refusal to provide MLA (arts. 38(2) Extradition and MLA Law and 57(3) AML Law). A request cannot be refused solely on the ground that the offence involves fiscal matters (art. 57(4) AML Law). Reasons for refusal shall be given to the requesting country per articles 38 Extradition and MLA Law and 57 AML Law.

There are no provisions requiring Afghanistan to consult with the requesting State prior to refusing or postponing a request.

The safe conduct of witnesses and experts who consented to give evidence or assist in an investigation based on the request of Afghanistan is provided via article 39 of Extradition and MLA Law.

The ordinary costs of executing a request shall be borne by the requesting State (arts. 50, Extradition and MLA Law, 64 AML Law).

Afghanistan does not have specific rules with regard to the provision of public records through MLA.

There is no law on the transfer of criminal proceedings.

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

No comprehensive domestic framework for law enforcement cooperation exists in Afghanistan. According to article 5 of the Police Law, the Afghan police is tasked with maintaining contacts with its counterparts in foreign countries. Afghan police also has a number of liaison officers abroad who mainly focus on drug trafficking. The Afghan FIU has been a member of the Egmont Group since 2010.

Afghanistan indicated that it could establish joint investigation teams as stipulated in article 49 of the Convention if such a need arises. At the time of review, there was one reported case where a joint investigation team had been formed relevant to a transnational drug trafficking investigation.

Afghanistan may employ special investigative techniques in corruption cases (Chapter 7 of CPC, arts. 47, 48 AML Law). However, no experience was reported of their use in transnational investigations.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- The comprehensive range of allowing for identifying, tracing and freezing of the proceeds of crime and their confiscation for the purposes of MLA in the AML Law.

3.3. Challenges in implementation

To further strengthen existing measures, it is recommended that Afghanistan:

- Adopt guidelines for extradition and MLA procedures based on UNCAC *clearly indicating, inter alia, the role of the Convention as a basis for legal assistance*, i.e. whether it can be applied directly to ensure that such procedures may be conducted in the most efficient way.
- Ensure that all UNCAC offences are extraditable in light of the dual criminality requirement and applicable punishment for certain corruption offences by imprisonment of less than 1 year (art. 44).
- Consider allowing accessory extradition (art. 44(3)).
- Consider designating the Convention as the legal basis for extradition in respect of corruption offences or ensure that all the Convention offences are extraditable in all the bilateral extradition treaties with other States parties (art. 44(5), 44(7)).
- Inform the Secretary-General of the United Nations whether Afghanistan considers the Convention as the legal basis for extradition (art. 44(6)(a)).
- Take measures to simplify and expedite extradition procedures (art. 44(3)).

- Ensure that the same fair treatment protections that are applicable domestically to Afghan nationals are provided to persons whose extradition is sought (art. 44(14)).
- Take necessary measures to ensure that Afghan authorities consult with the requesting State Party before refusing extradition (art. 44(17)).
- Take necessary measures to address contradictions between the Extradition and MLA Law and the AML Law with regard to the dual criminality requirement for the purposes of MLA (art. 46).
- Consider adopting such measures as may be necessary to enable the provision of a wider scope of assistance pursuant to article 46 in the absence of dual criminality (art. 46(9)(c)).
- Ensure that the temporary transfer of detained persons for the purpose of testimony is possible (art. 46(10)).
- Designate the central authority for the purposes of article 46 of the Convention and notify the Secretary-General of the United Nations of the required languages for MLA requests (arts. 46(13), (14)).
- Strengthen measures to ensure the expedited execution of MLA requests (art. 46(24)).
- Take necessary measures to ensure that Afghan authorities consult with the requesting State Party before refusing or postponing the request (art. 46(26)).
- Take necessary measures to regulate the ordinary costs of executing MLA requests in line with article 46(28) of the Convention.
- Take necessary measure to ensure that public information can be provided to the requesting State Party as required by article 46(29).
- Consider adopting measures to allow for the possibility of transferring criminal proceedings to and from other States Parties (art. 47).
- Take appropriate measure to enhance direct law enforcement cooperation and consider recognizing the Convention as a basis for mutual law enforcement cooperation with other States parties (art. 48).

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

Afghanistan requested technical assistance in addressing challenges in international cooperation identified as the result of the review process.