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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

Djibouti

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

The Republic of Djibouti signed the United Nations Convention against Corruption on 17 June 2004. The National Assembly ratified it on 8 January 2005 and the President of the Republic signed it on 8 February 2005. Djibouti deposited its instrument of ratification with the Secretary-General on 20 April 2005.

In accordance with article 37 of the Constitution, the Convention has become an integral part of the domestic law of Djibouti.

The legislation implementing the Convention is contained in the Criminal Code, the Code of Criminal Procedure, Act No. 196/AN/02/4 L of 29 December 2002 on Money-Laundering, Confiscation and International Cooperation with regard to the Proceeds of Crime (hereinafter “the Money-Laundering Act”) and Act No. 111/AN/11/6 L of 25 May 2011 on Combating Terrorism and Other Serious Offences (hereinafter “the Terrorism and Other Serious Offences Act”).

Djibouti has set up a number of bodies whose work relates to the combating of corruption and related offences:

- The General State Inspectorate, established by Act No. 56/AN/09/6 L of 19 July 2009. The mandate of the Inspectorate is to ensure good governance and combat corruption in the public sector.
- The Court of Audit, established by Act No. 17/AN/13/7 L of 14 December 2013. The Court is the supreme audit institution.
- The Independent National Commission for Preventing and Combating Corruption (CNIPLC), established by Act No. 03/AN/13/7 L of 16 July 2013 on Preventing and Combating Corruption (hereinafter the “2013 Act”) and its implementing decree of 7 October 2014. The Commission is the central institution for preventing and combating corruption. The Commission began operating in December 2015.
- The Financial Intelligence Unit (FIU), established by the Money-Laundering Act. The Unit is responsible for receiving, analysing and processing suspicious transaction reports.

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)

Bribery of national public officials is partially covered by article 200 (passive bribery) and article 212 (active bribery) of the Criminal Code. There is no reference to the concepts of undue advantage and third-party beneficiaries in article 212 of the Code. Bribery is also broadly covered by article 9 (1) of the Terrorism and Other Serious Offences Act.

There is no general definition of “public official” in the legislation of Djibouti. Only article 200 of the Criminal Code refers to specific categories of officials in relation to passive bribery. Bribery of foreign public officials and international civil servants and bribery in the private sector are established as offences under articles 9 (paras. 2 and 3) and 12 of the Terrorism and Other Serious Offences Act, respectively.

Trading in influence is not established as an offence in the same way as in the Convention (art. 201 of the Criminal Code).

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

Money-laundering is a criminal offence (arts. 1-1-1 and 4-2-1 of the Money-Laundering Act). Any serious crime (*crime*) or ordinary offence (*délit*) may constitute a predicate offence (art. 1-1-2 (F) of the Money-Laundering Act). However, not all the offences under the Convention have yet been criminalized in Djibouti.

The legislation of Djibouti lacks clarity regarding the possibility of applying the offence of money-laundering to the person who has committed the predicate offence.

The offence of money-laundering may be applied even if the predicate offence was committed abroad (art. 1-1-2 (F) of the Money-Laundering Act).

Concealment is adequately covered by articles 533 and 534 of the Criminal Code, article 1-1-1 of the Money-Laundering Act and article 14 of the Terrorism and Other Serious Offences Act. However, it would be beneficial to harmonize those provisions.

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

The legislation of Djibouti partially covers the embezzlement of public property and the embezzlement of private property (art. 206 of the Criminal Code and art. 13 of the Terrorism and Other Serious Offences Act, respectively). The concepts of third-party beneficiary and diversion are not reflected. The public officials referred to in article 206 of the Criminal Code are not the same as those referred to in article 200 of the Code.

Abuse of functions is covered by article 10 of the Terrorism and Other Serious Offences Act, but the element of failure to perform an act is not addressed.

Illicit enrichment is an offence under article 11 of the same Act. Any increase in assets is assessed on the basis of the declaration of assets that must be filed with CNIPLC (2013 Act and 2014 Decree). However, as at the day of the joint meeting, CNIPLC had not yet proceeded to receive such declarations.

Obstruction of justice (art. 25)

Obstruction of justice is partially criminalized (arts. 200, 233 and 239 of the Criminal Code). No reference is made, in the provisions for the protection of experts, witnesses and victims, to interference in the giving of testimony or the use of physical force. The concept of undue advantage is not addressed in the article on protection of members of the judiciary.

Only members of the judiciary, jurors, experts, witnesses and lawyers are protected (arts. 200 and 233 of the Criminal Code), which does not cover all the officials referred to in the Convention. CNIPLC members, among others, are not protected.

The established penalties are not severe enough to be dissuasive.

Liability of legal persons (art. 26)

Djibouti recognizes the principle of criminal liability of legal persons (art. 21 of the Criminal Code), but excludes the State and territorial authorities from its application. Such liability applies to offences established in accordance with the Convention (art. 224 of the Criminal Code and art. 15 of the Terrorism and Other Serious Offences Act). The criminal liability of legal persons is independent of the criminal liability of natural persons involved in an offence (art. 21 of the Criminal Code and art. 4-2-3 of the Money-Laundering Act), and the applicable fine is equivalent to five times the

amount applicable to such natural persons (art. 46 of the Criminal Code and art. 4-2-3 of the Money-Laundering Act).

Participation and attempt (art. 27)

Djibouti has partially implemented the provisions of the Convention relating to participation and attempt (arts. 23 (commission), 24 (attempt), 25 (participation) and 26 (aiding and abetting and preparation) of the Criminal Code). The provisions on the instigator of an offence (art. 25 of the Criminal Code) do not include the concept of collusion.

The provisions on attempt are not applicable to corruption offences owing to the fact that they are “conduct” offences.

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

Through articles 199 to 207 of the Criminal Code and article 9 of the Terrorism and Other Serious Offences Act, Djibouti provides for sanctions ranging from 5 to 15 years’ imprisonment. Most of the offences are classed as serious offences.

Under the Constitution, members of the National Assembly enjoy parliamentary immunity while the National Assembly is in session. That immunity may be lifted with the authorization of the Bureau of the National Assembly in cases of flagrante delicto or a final conviction (art. 51). Prosecution may be suspended if requested by the National Assembly (art. 51). The President of the Republic is liable for acts committed in the performance of his or her functions only in the case of high treason (art. 84). In any such case, the High Court of Justice has jurisdiction (art. 83). To date, the Court has never been convened. Members of the Government are criminally liable for acts committed during the performance of their functions (art. 84). The law of Djibouti does not provide for the lifting of immunity of protected officials who have committed an offence revealed by their declaration of assets. The 2013 Act establishes the immunity of CNIPLC commissioners (arts. 15 and 16). However, the Act does not extend that protection to other members or premises of the Commission.

Djibouti applies the principle of prosecutorial discretion (art. 37 of the Code of Criminal Procedure). Nevertheless, the initiation of civil proceedings (art. 6 of the Code of Criminal Procedure) triggers the initiation of a public action. Although CNIPLC has not yet submitted any cases, facts communicated to the prosecutor by the Commission should, in principle, entail the obligation to prosecute (art. 5 of the 2013 Act).

The Code of Criminal Procedure allows the investigating judge to place the accused person in pretrial detention or under court supervision (art. 146 of the Code).

The judge responsible for enforcing sentences may grant early release or parole (arts. 598 to 601 of the Code of Criminal Procedure) if the person concerned satisfies the conditions referred to in article 598 of the Code.

Djibouti has established measures for the removal from office, suspension and reassignment of public officials suspected of corruption (Act No. 48/AN/83/1 L on the general civil service regulations and Organic Act No. 9/AN/01/4 L on the regulations governing the judiciary).

Djibouti has also established additional penalties relating to the prohibition of the sentenced person from performing certain functions (art. 44 of the Criminal Code).

Djibouti does not have specific legislative measures for the reintegration of sentenced persons. However, Act No. 178/AN/12/6 L of 17 October 2012 on the reorganization of the Ministry of Justice addresses the reintegration of sentenced persons as a

fundamental principle and establishes a department responsible for social reintegration (art. 17).

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

Djibouti has not yet adopted provisions on the protection of witnesses and reporting persons.

Article 2 of the Code of Criminal Procedure grants any person who has personally suffered harm as a direct result of an offence the right to bring a civil suit to obtain compensation. The victim thus becomes a party to the proceedings.

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

Legal provisions relating to freezing, seizure and confiscation are incorporated into articles 44 (7), 47 (9), 211 and 225 of the Criminal Code, articles 92 and 93 of the Code of Criminal Procedure, articles 4-2-9 to 4-2-11 of the Money-Laundering Act and article 28 of the 2013 Act.

Article 44 (7) of the Criminal Code provides a general framework for confiscation and states that the measure applies when it is imposed by “the law or regulation that establishes the offence”.

In the context of corruption, confiscation is limited to “sums and objects unlawfully received by the offender” (arts. 211 and 225 of the Criminal Code). In the context of money-laundering, confiscation extends to any income and property of illicit origin belonging to the offender or his or her relatives (art. 4-2-9 of the Money-Laundering Act).

The Money-Laundering Act provides for reversal of the burden of proof through the requirement that the perpetrator of a money-laundering offence demonstrate the lawful origin of property liable to confiscation (art. 4-2-9).

Freezing is provided for by article 28 of the 2013 Act. However, the Money-Laundering Act does not grant FIU any administrative powers relating to freezing.

Djibouti does not have a dedicated body for the management of seized, frozen and confiscated assets.

The legislation of Djibouti does not contain any provisions relating to the protection of bona fide third parties.

Bank secrecy may be invoked, except in money-laundering cases (art. 3-4-1 of the Money-Laundering Act).

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

The Code of Criminal Procedure provides for a statute of limitations period for prosecution of 10 years for serious crimes (art. 3), 3 years for ordinary offences (art. 4) and 1 year for minor offences (*contraventions*) (art. 5).

Djibouti indicated that continuing offences were not subject to a statute of limitations period owing to the application of article 3 of the Criminal Code.

The statute of limitations is suspended when investigative actions or criminal proceedings are undertaken. However, it is not suspended for the duration of a person’s immunity.

Djibouti does not have sufficient resources to check foreign criminal records.

Jurisdiction (art. 42)

Djibouti has established its jurisdiction over the offences set out in the Convention (arts. 10 to 16 of the Criminal Code), with the exception of those committed abroad by stateless persons residing in its territory (art. 16 of the Criminal Code).

The courts of Djibouti have jurisdiction, including in money-laundering cases, when one or more elements of the offence are committed abroad (art. 11 of the Criminal Code).

Djibouti has established the principle of *aut dedere aut judicare* only in respect of money-laundering (art. 5-3-5 of the Money-Laundering Act).

Djibouti has no specific measures relating to the coordination of actions. However, article 5-1-1 of the Money-Laundering Act requires the authorities to cooperate with other States with respect to money-laundering offences to the maximum extent possible.

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

Article 29 of the 2013 Act provides for the annulment of any legal instrument approved or obtained as a result of commission of a corruption offence.

Civil proceedings trigger the initiation of a public action. Any such civil proceedings may be initiated by bodies and associations, especially those working to combat corruption.

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

Since December 2015, the central body for combating corruption has been CNIPLC. The Commission is not yet fully operational, but according to the 2013 Act it is intended to become the coordinating body in the fight against corruption. Accordingly, it is responsible for strengthening cooperation with other national authorities and the private sector (art. 11).

The specialized authority for combating money-laundering is FIU. However, that body is not fully operational owing to a lack of operational independence and resources. Nevertheless, the Money-Laundering Act provides for close collaboration between the private sector, including the financial institutions in particular, and FIU through the transmission of suspicious transactions reports (art. 3-1-5).

Djibouti does not have specialized investigative and prosecutorial authorities; there are only three investigating judges in total.

Djibouti does not have a database common to investigative and prosecutorial authorities for information-sharing, except in relation to terrorism.

2.2. Successes and good practices

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

- Continuing offences are not subject to a statute of limitations period in Djibouti (art. 29)
- The Money-Laundering Act provides for reversal of the burden of proof through the requirement that the perpetrator of a money-laundering offence demonstrate the lawful origin of property liable to confiscation (art. 31 (8))
- Civil proceedings oblige the prosecutor to initiate a public action (art. 30 (3))

- Associations and other public interest bodies have the right to bring a civil suit (art. 35).

2.3. Challenges in implementation

In order to further strengthen existing anti-corruption measures, it is recommended that Djibouti:

- Harmonize the different concepts of national public officials and consider establishing a general definition (arts. 15 and 17)
- Harmonize and consolidate the various legislative provisions establishing offences and penalties (arts. 15 and 24)
- Adopt the measures necessary to ensure that the offence of bribery of national public officials covers the concepts of undue advantage, indirect bribery and benefit for another person or entity (art. 15)
- Consider establishing specific definitions for the concepts of “foreign public official” and “official of a public international organization” (art. 16)
- Adopt the measures necessary to ensure that the offence of embezzlement of property in the public sector covers the concepts of diversion and benefit for another person or entity (art. 17)
- Consider criminalizing trading in influence (art. 18)
- Consider extending its provisions relating to the offence of abuse of functions to cover the element of failure to perform an act (art. 19)
- Ensure the effectiveness of the new provisions establishing criminal liability for illicit enrichment, of the declaration of assets and of the power of CNIPLC to impose fines in the event of failure to submit a declaration or the submission of a false declaration; and ensure that the immunity of the official concerned can be lifted (art. 20)
- Consider extending the provisions establishing the offence of embezzlement of property in the private sector to include the concepts of diversion and third-party beneficiary (art. 22)
- Examine the possibility of applying the offence of money-laundering to the person who has committed the predicate offence (art. 23 (2) (e))
- Adopt the measures necessary to ensure that the provisions on obstruction of justice cover interference in the giving of testimony, the concept of undue advantage and the use of physical force; expand the scope of application of article 233 of the Criminal Code to all law enforcement officials; and ensure that penalties are sufficiently dissuasive (art. 25)
- Consider removing the exemption of the State and territorial authorities from liability (art. 26)
- Consider increasing the maximum fine applicable to legal persons (art. 26)
- Extend the provisions relating to the instigator of an offence to cover the concept of collusion (art. 27)
- Consider extending the statute of limitations period for offences that are subject to the statute of limitations and that are established in accordance with the Convention (art. 29)
- Take the measures necessary to enable the statute of limitations period to be suspended for the duration of a person’s immunity (art. 29)

- Review its provisions relating to the various immunities and jurisdictional privileges to ensure that they do not constitute an obstacle to investigation or prosecution (art. 30 (2))
- Strengthen the protection of members and premises of CNIPLC in accordance with the Convention (art. 30 (2))
- Ensure that cases relating to corruption offences that are submitted to the prosecutor by CNIPLC result in a public action (art. 30(3))
- Endeavour to extend the confiscation measures that follow conviction under ordinary law, in line with the applicable provisions on money-laundering (art. 31 (1), (4), (5) and (6))
- Consider granting FIU and CNIPLC administrative powers relating to freezing (art. 31 (2))
- Establish an authority to manage seized, frozen and confiscated property (art. 31 (3))
- Extend measures to overcome obstacles arising out of bank secrecy in areas other than money-laundering (arts. 31 (7) and 40)
- Consider extending the provisions of the Money-Laundering Act relating to demonstration of the lawful origin of property liable to confiscation (art. 31 (8))
- Adopt measures for the protection of bona fide third parties (art. 31 (9))
- Establish a legal framework to ensure the effective protection of witnesses, experts, victims and any persons, regardless of whether they have participated in the commission of an offence, who provide the competent authorities with information on any of the offences established by the Convention (arts. 32, 33 and 37 (4))
- Grant the bodies responsible for preventing and combating the offences under the Convention the necessary independence to perform their functions effectively and without any undue influence, and provide them with the appropriate training and resources to carry out their tasks (art. 36)
- Take appropriate measures to encourage persons who participate or who have participated in the commission of an offence to cooperate with the authorities (art. 37)
- Strengthen inter-agency cooperation between the authorities responsible for combating corruption and related offences, and strengthen cooperation between those agencies and the private sector (arts. 38 and 39)
- Consider extending the jurisdiction of the courts of Djibouti to cover all the circumstances referred to in the Convention (art. 42 (2) and (3))
- Extend application of the principle of *aut dedere aut judicare* (art. 42 (3))
- Extend the scope of the provisions relating to transmission of information to areas other than money-laundering (art. 42 (5)).

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

- Legal advice (arts. 15, 16, 17, 18, 19, 24, 25, 26, 30, 31, 32, 33, 37 and 42)
- Capacity-building for the anti-corruption institutions, especially CNIPLC, with regard to their independence, the training necessary to enable them to carry out their functions, the legal framework and the delineation of their powers (arts. 17, 20, 25, 30, 31, 33, 36, 38, 39 and 40)

- Capacity-building for the financial intelligence unit (arts. 31 and 36)
- Support in modernizing, consolidating and codifying the criminal legislation relating to the offences under the Convention (arts. 15, 16, 17, 18, 19, 24 and 26)
- Strengthening of coordination among the relevant institutions (arts. 17, 31, 33, 38 and 40)
- Capacity-building for the prosecutorial authorities and the courts (arts. 17, 31, 32, 33, 37 and 41)
- Assistance with the establishment of a specialized prosecution service (arts. 15, 16, 20, 21 and 23)
- On-site assistance provided by a qualified expert (arts. 20, 30, 31, 32, 33, 36, 38, 39 and 40)
- Assistance with the computerization and sharing of inter-agency criminal files (arts. 38 and 41)
- Assistance with receiving and handling reports of corruption offences (art. 39).

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 partially governed by the provisions of the Code of Criminal Procedure (arts. 533 to 558) and by the Money-Laundering Act (part V).

Djibouti makes extradition conditional on the existence of a treaty. However, the domestic provisions set out in the Code of Criminal Procedure and the Money-Laundering Act provide for the possibility of an extradition procedure in the absence of a treaty. Furthermore, Djibouti considers the Convention to be a legal basis for extradition in accordance with article 37 of its Constitution, but has not yet notified the Secretary-General of that fact.

The dual criminality requirement must be met in order for extradition to be granted (art. 536 of the Code of Criminal Procedure and art. 5-3-2 of the Money-Laundering Act).

All offences established in accordance with the Convention are extraditable, as the law provides for a custodial sentence of at least two years (art. 536 of the Code of Criminal Procedure). However, only the Money-Laundering Act expressly states that specific offences are extraditable (art. 5-3-1).

Extradition may be granted for several separate offences when, according to the requesting State, the minimum applicable penalty for each of those offences is equal to or greater than two years' imprisonment (art. 536 of the Code of Criminal Procedure).

Article 5-4-1 of the Money-Laundering Act is the only provision that expressly states that certain offences may not be considered political offences.

The procedures for the execution of an extradition request are mainly governed by the Code of Criminal Procedure. Simplified measures in urgent cases are provided for by articles 550 and 551 of that Code, as well as by the various bilateral agreements to which Djibouti is a party.

A foreign person whose extradition is sought may be taken into custody (art. 550 of the Code of Criminal Procedure).

Djibouti does not extradite its nationals, even in the case of temporary surrender (art. 536 of the Code of Criminal Procedure).

The general principle of *aut dedere aut judicare* is reflected only in the Money-Laundering Act (art. 5-3-5).

Djibouti considers the presumption of innocence to be a constitutional right that applies to any person in its territory (art. 10 of the Constitution), and applies the procedural safeguards provided for by the Code of Criminal Procedure to any person present in its territory.

Djibouti reserves the right to refuse an extradition request submitted for discriminatory reasons (art. 537 of the Code of Criminal Procedure and art. 5-3-3 of the Money-Laundering Act).

All categories of offences, including fiscal offences, are extraditable under the law of Djibouti.

All extradition requests are subject to proceedings before the indictments chamber to which the requesting State is a party, which gives the requesting State the opportunity to submit any additional information to support its request.

Djibouti has concluded extradition agreements with France, Ethiopia, Yemen and Somalia. It is also a party to the Convention on Extradition of the Intergovernmental Authority on Development (IGAD).

Only the Agreement between France and Djibouti on the Transfer of Sentenced Persons establishes a legal framework for the transfer of sentenced persons.

The transfer of criminal proceedings is provided for only with regard to money-laundering (art. 5-1-1 of the Money-Laundering Act), and there is no provision regarding the possibility of extending those provisions to other offences established in accordance with the Convention.

Mutual legal assistance (art. 46)

Djibouti has not adopted a general law on mutual legal assistance. Only the Money-Laundering Act contains provisions on mutual legal assistance applicable to money-laundering offences (arts. 5-2-1 to 5-2-6).

As in the case of extradition, Djibouti makes mutual legal assistance conditional upon the existence of a treaty. However, it considers the Convention to be a legal basis for mutual legal assistance.

Djibouti has concluded treaties on international cooperation with France, Ethiopia, Somalia and Yemen. It is also a party to the IGAD Convention on Mutual Legal Assistance in Criminal Matters and the Riyadh Arab Agreement for Judicial Cooperation.

The Ministry of Justice is the central authority designated to receive requests for assistance relating to money-laundering. However, there are no further provisions on the central authority responsible for receiving requests for mutual assistance in other areas, nor is the role of CNIPLC clearly established in respect of requests relating to corruption and asset recovery.

Djibouti has not notified the Secretary-General of the United Nations of its central authority for international cooperation or the acceptable language(s) for requests for mutual assistance.

Article 5-2-1 of the Money-Laundering Act details the various forms of legal assistance in the area of money-laundering that may be sought.

Article 3-4-1 of the Money-Laundering Act also states that bank secrecy cannot be invoked as a ground for refusal to provide national authorities with information that they have requested as part of an investigation relating to money-laundering. That article does not, however, specify whether bank secrecy may be invoked in the context of international cooperation.

There are no domestic provisions governing the possibility of transferring detained persons or persons serving a sentence in another State Party for the purposes of investigation, identification or evidence. Nevertheless, such provisions are established in the Agreement on Mutual Legal Assistance between France and Djibouti (arts. 10 and 11), the Riyadh Arab Agreement for Judicial Cooperation (art. 24) and the IGAD Convention on Mutual Legal Assistance (art. 17).

Article 5-4-2 of the Money-Laundering Act provides for the possibility of transmitting requests through the International Criminal Police Organization (INTERPOL) or directly to the competent judicial authorities in urgent circumstances. The Agreement between Djibouti and France on mutual legal assistance also provides for a similar procedure in urgent circumstances (art. 14).

Article 5-4-3 of the Money-Laundering Act sets out the requirements regarding the content of requests for mutual legal assistance in relation to money-laundering offences.

Since Djibouti considers the Convention to be a legal basis for mutual legal assistance (art. 37 of the Constitution), it may, in principle, directly apply article 46, paragraphs 9 to 29, of the Convention (art. 46 (7) of the Convention). Therefore, in principle, Djibouti may accept requests in the absence of dual criminality and refer to those paragraphs of the Convention to settle the details relating to any request for assistance made by a State Party to the Convention. However, the specific circumstances of Djibouti and its lack of certain resources do not always allow it to automatically apply the “self-executing” provisions of the Convention.

Videoconferences, for example, cannot be held, owing to a lack of resources.

The lack of relevant domestic provisions means that neither issues relating to the confidentiality of requests for mutual legal assistance and the use of information obtained in that context nor issues relating to the time frame for executing requests are clearly addressed. However, it appears that, to date, requests have been processed relatively quickly, although the time frame depends on the complexity of the request.

The Money-Laundering Act contains some provisions on confidentiality and the use of information obtained in the context of international cooperation requests (arts. 5-4-6 and 5-4-9).

Article 5-4-10 of the same Act states that the costs relating to a request for mutual legal assistance are borne by the requesting State, unless otherwise agreed with that country.

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

The Money-Laundering Act provides for the possibility of direct cooperation between FIU and foreign financial intelligence units (art. 3-1-3). However, FIU does not yet appear to have forged many relationships with foreign financial intelligence units and has not yet participated in exchange forums such as the Egmont Group of Financial Intelligence Units. Djibouti is not a member of the Financial Action Task Force or the Eastern and Southern Africa Anti-Money-Laundering Group.

CNIPLC does not yet have any direct agreements with other foreign authorities involved in preventing and combating corruption. Nevertheless, part of the Commission's mandate is to maintain cooperative relations, in accordance with the provisions of its founding text (art. 12 of the 2013 Act).

Djibouti is a member of INTERPOL. There is an INTERPOL bureau in Djibouti, and Djiboutian police officers are seconded to the Organization's headquarters in Lyon (France). Djibouti indicated that it regularly exchanges staff with INTERPOL.

Djibouti has not yet concluded agreements with other countries to enable and facilitate direct cooperation between law enforcement authorities with regard to the offences established in accordance with the Convention.

Djibouti indicated, however, that in respect of law enforcement and in the present context, the direct exchange of information is possible even in the absence of a specific agreement. In addition, within the framework of implementation of the instruments on international cooperation to which Djibouti is a party, the organization of joint commissions is planned. The establishment of those commissions will facilitate the exchange of information. One such commission has been set up within the framework of bilateral treaties concluded with the United States of America, the European Union and Ethiopia.

Djibouti has concluded agreements with Ethiopia and Somalia to enable joint investigations to be carried out. An agreement was recently signed with the Ethiopian army and the Somali army in the context of the fight against terrorism.

Djibouti has incorporated provisions relating to special investigative techniques and, in particular, undercover operations and controlled deliveries into the Money-Laundering Act (art. 3-3-2). Djibouti indicated that those provisions were also applicable to offences established by the Terrorism and Other Serious Offences Act owing to the fact that the latter referred to the Money-Laundering Act. However, the provisions could not be extended to cover the other offences established by the Convention.

The IGAD Convention contains provisions on intercepting correspondence (arts. 21 et seq.)

3.2. Successes and good practices

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

- Djibouti considers the Convention as a legal basis for extradition and mutual legal assistance. Under article 37 of the Constitution, the Convention takes precedence over national legislation (arts. 44 (5) and 46 (7)).

3.3. Challenges in implementation

In order to further strengthen existing anti-corruption measures, it is recommended that Djibouti:

- Consider adopting a law on international cooperation in criminal and law enforcement matters in order to comprehensively establish the applicable procedure for such cooperation and to facilitate the exchange of information and the execution of cooperation requests (arts. 44, 46, 47, 48, 49 and 50)
- Consider concluding further bilateral and multilateral agreements on international cooperation in criminal matters and on the transfer of sentenced persons (arts. 44, 45 and 46)

- Notify the Secretary-General that it considers the Convention as a legal basis for extradition and mutual legal assistance, and specify the acceptable language(s) for requests for mutual legal assistance (arts. 44 (6), 46 (7) and 46 (14))
- Consider the possibility of waiving the dual criminality requirement with regard to extradition, particularly in respect of other States Parties to the Convention (art. 44 (2))
- Ensure that none of the offences established in accordance with the Convention are considered to be political offences (art. 44 (4))
- Incorporate the provisions of article 5-3-1 of the Money-Laundering Act into legislation relating to the other offences established by the Convention (art. 44 (7))
- Consider granting extradition in the absence of a treaty (art. 44 (7))
- Apply the principle of *aut dedere aut judicare* when an extradition request is refused solely on the ground that the alleged offender is a Djiboutian national (art. 44 (11))
- Extend its provisions on mutual legal assistance beyond money-laundering offences (art. 46), particularly the provisions on bank secrecy (art. 46 (8)), the procedure in urgent circumstances (art. 46 (13)) and confidentiality (art. 46 (19))
- Consider measures to facilitate direct exchange with foreign competent authorities without prior request (art. 46 (4))
- Notify the Secretary-General of the United Nations of the central authority responsible for receiving cooperation requests, and clarify the role of CNIPLC with regard to requests relating to corruption and asset recovery (art. 46 (13))
- Consider extending the scope of its provisions relating to the transfer of criminal proceedings beyond money-laundering (art. 47)
- Strengthen and expand cooperation between the law enforcement authorities in respect of the offences established by the Convention (art. 48 (1))
- Consider concluding further agreements enabling the conduct of joint investigations, and extend the scope of those agreements to cover the offences established in accordance with the Convention (art. 49)
- Expand its provisions on special investigative techniques, ensure that those provisions apply to all the offences established in accordance with the Convention and consider concluding more agreements with other countries in that regard (art. 50).

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

- Legal advice on the drafting of a law on international cooperation in criminal and law enforcement matters (arts. 44, 46, 47, 48, 49 and 50)
- Capacity-building for the law enforcement authorities with regard to the offences established in accordance with the Convention, particularly for FIU and CNIPLC, with a view to the conclusion of agreements relating to cooperation and the direct exchange of information (art. 48)
- On-site assistance provided by a qualified expert (arts. 48 and 50)
- Model agreement(s) or arrangement(s) (arts. 44, 45, 46, 49 and 50)
- Capacity-building programmes for the authorities responsible for designing and managing the use of special investigative techniques (art. 50).