



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

Distr.: General
12 April 2016

Original: English

Implementation Review Group

Seventh session

Vienna, 20-24 June 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>
II. Executive summary.....	2
Swaziland.....	2

* Reissued for technical reasons on 4 May 2016.

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



II. Executive summary

Swaziland

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

The Convention was signed by the King of Swaziland on 15 September 2005 (C.N.821.2005.TREATIES-30) and subsequently ratified by the Government. Swaziland deposited its instrument of ratification with the United Nations on 24 September 2012 (C.N.500.2012.TREATIES-XVIII.14).

Accepted international agreements, once ratified by the Government, form an integral part of Swaziland's domestic law only when enacted into law by Parliament (article 238 (1) of the Constitution).

Swaziland operates a dual legal system of customary and Roman Dutch law. Corruption is criminalized under the Prevention of Corruption Act (No. 3) of 2006 (POCA) which criminalizes and punishes corrupt practices, including bribery, money-laundering, conflict of interest and cheating of the public revenue. The recovery of proceeds generated through corrupt activities is a concern and requires a conviction before any confiscation can take place.

Key institutions in the fight against corruption include: the Anti-Corruption Commission (ACC), Commission on Human Rights and Public Administration, Royal Swaziland Police Service, financial intelligence unit, Auditor General's office, Attorney General, Swaziland Public Procurement Authority, office of the Director of Public Prosecutions (DPP), Parliamentary Public Accounts Committee, National Anti-Corruption Forum and the judiciary.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Section 2 of POCA provides a non-exhaustive definition of "public officer" and "public office", although there are some limitations: officials who are unpaid are not covered. Further, Article 254 of the Constitution excludes a number of persons from the scope of the definition, including members of Parliament and members of the Constitutional commissions.

A lack of statistics evidencing implementation is noted.

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Section 21 of POCA provides for the offence of active and passive bribery of public officers. Sections 23 and 42 of POCA cover promises of bribery and the giving of bribes. There are some discrepancies among the bribery offences in sections 21, 23 and 42 of POCA. Notably, section 21(1) covers offers, but not the promise or exchange of bribes. However, promises of bribes are covered in section 23 and the giving of bribes in section 42. Further, third party beneficiaries are not addressed in section 21, although they are covered in sections 23 and 42; and indirect acts of

bribery are covered in section 42, but not in section 21. These measures should be harmonized in the legislation.

Swaziland has not adopted a specific offence of bribery of foreign public officials and officials of public international organizations.

Swaziland has not criminalized trading in influence.

Swaziland has criminalized bribery in the private sector (section 23, POCA).

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

Section 41 of POCA and section 4 of the Money Laundering and Financing of Terrorism (Prevention) Act 2011 (MLFPA) criminalize money-laundering. Participatory acts, including performing any act in connection with the proceeds of crime, whether independently or in concert with others, are covered (sections 41(1)(b) POCA, 4(d) MLFPA). Predicate offences are offences committed either: in Swaziland and punishable under Swaziland law by imprisonment for at least 12 months or a fine of at least E15,000; or outside Swaziland which, had they occurred in Swaziland, would have constituted offences against Swaziland law punishable by the same penalty (section 4, MLFPA), and a conviction is required. However, it is not clear how the list of predicate offences in MLFPA (Schedule 1) is read in conjunction with section 4, which provides for an all crimes approach to predicate offences. Self-laundering is not precluded (section 4, MLFPA). Swaziland has not furnished copies of its AML laws to the United Nations.

Concealment is criminalized (sections 41(1)(b) and 41(2)(a), POCA; section 4(1)(b), MLFPA; section 191 Criminal Procedure and Evidence Act 1938 (CP&E)).

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

In addition to the common law offences of embezzlement and theft, the statutory offence of cheating the public revenue (section 24, POCA) partly covers the embezzlement, misappropriation or other diversion of property. While the diversion of money or Government property is addressed, acts of misappropriation or embezzlement more generally are not.

Swaziland has not criminalized abuse of functions, apart from the general offence of corruption (section 42, POCA).

Section 34 of POCA criminalizes the possession of unexplained wealth. Swaziland has also established a declaration of assets and liabilities regime in article 241 of the Constitution.

Swaziland has not criminalized embezzlement of property in the private sector, apart from the common law offences of embezzlement and theft.

Obstruction of justice (art. 25)

Section 29(3) of POCA covers obstruction of witnesses to interfere in the giving of testimony or the production of evidence.

Section 16 of POCA, section 86 of MLFPA, and section 23 (1) (c) of CP&E further address obstruction or interference with justice or law enforcement officials in accordance with the requirements of the Convention.

Liability of legal persons (art. 26)

Swaziland's law provides for criminal, civil and administrative liability of legal persons, which is established (despite the absence of case law) irrespective of the liability of the natural persons involved. The main legal provisions are sections 35 and 36 of POCA, sections 338 and 8 of CP&E, as well as section 76 read together with section 89 of MLFPA. Penalties against legal entities under POCA amount to fines up to E500,000. Administrative penalties, including endorsement of the conviction on a register, which may lead to debarment, contract rescission, disqualification from the tender process, and other penalties, are provided (section 38, POCA). Consideration should be given to whether the established penalties against legal persons are sufficiently dissuasive.

Participation and attempt (art. 27)

Swaziland has not criminalized the preparation of an offence, but provisions on attempt, conspiracy and complicity in various forms are in place (principally, sections 39 of POCA and 181 of CP&E).

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

Sections 35 and 36 of POCA and section 89 of MLFPA provide for penalties and additional penalties for Convention offences. Consideration should be given to enhancing the penalties for corruption-related offences, taking into account the gravity of the offences. Swaziland may also wish to consider adopting minimum penalties for corruption offences, as it was explained that this could provide for greater consistency in sentencing.

Swaziland law gives absolute immunity to the King and the Queen mother, which extends to testifying both in civil and criminal proceedings. While judges enjoy functional immunity for acts within the exercise of their functions, no other public officials enjoy criminal immunity. However, certain officials are excluded from the definition of public officer, pursuant to article 254 of the Constitution.

The DPP, in executing its mandate, prosecutes in the public interest and the interest of the administration of justice and has regard to the need to prevent abuse of the legal process. Moreover, the DPP shall be independent and not subject to the direction or control of any person or authority (article 162(6) of the Constitution). Section 28(3) of POCA further criminalizes corrupt activities relating to public prosecutors, including accepting bribes, showing favour or disfavour or exerting improper influence in connection with any civil or criminal proceedings. All corruption cases brought to the DPP have reportedly been indicted.

Section 95(3) of CP&E addresses the powers of the High Court regarding bail. Section 96(4) regulates conditions for bail to ensure the presence of the defendant at subsequent criminal proceedings; relevant case law was provided.

Section 329 of CP&E provides for the authority of the King to remit or commute a sentence either free or subject to lawful conditions. Article 78 of the Constitution further provides for the King's prerogative of mercy. The law does not provide for consideration of the gravity of offences before release on parole. There have been no corruption cases where the prerogative of mercy was applied or the sentence was remitted.

The law provides for suspension of public officials in articles 158(6), 162 and 187 of the Constitution and section 6 of POCA. Regulation 38 of the Civil Service Board (CSB) Regulations further allows for disciplinary action to be taken against public officers if a preliminary investigation or disciplinary inquiry discloses a possible criminal offence. Disciplinary punishments may include dismissal, termination and reassignment/demotion in rank. Interdiction is provided for, if disciplinary proceedings are being taken or about to be taken or if criminal proceedings are being instituted (Regulation 39, CSB Regulations).

There are no specific laws or procedures for the disqualification of convicted persons from holding positions in public offices or public enterprises.

The Constitution provides for the protection, holding and rehabilitation of prisoners (article 190(1)). An ongoing programme to rehabilitate and integrate offenders into society is administered by the Swaziland Correctional Services.

Section 234 of CP&E encourages accomplices to testify on behalf of the State. Section 235 does not give immunity to accomplices but provides that their testimony may not be used against them. The law does not provide mitigating punishment; however, the courts may take the cooperation of offenders into account as a mitigating factor during sentencing. A Witness Protection Bill would protect offenders who cooperate with law enforcement insofar as they are treated as witnesses.

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

CP&E section 96 provides limited protections to witnesses by holding suspects who may interfere with such witnesses in custody. Swaziland does not have a witness protection programme, and a 2010 Bill on Witness Protection is pending.

POCA provides for the protection of informers in terms of not disclosing their identity. The law does not give protection against unjustified treatment to reporting persons.

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

Relevant provisions are found in POCA, the Serious Offences (Confiscation of Proceeds) Act, 2001 (SOCPA), MLFTPA and the Suppression of Terrorism Act, 2008. Forfeiture is conviction-based. Forfeiture under SOCPA is of a general nature and applies to proceeds derived from all serious offences (section 4), including offences against POCA (Schedule). Forfeiture provisions in MLFTPA relate to property, proceeds or instruments of any unlawful activity or money-laundering offence. The confiscation or forfeiture of property of corresponding value is also provided for (section 9 SOCPA; section 57(3) MLFTPA). Asset tracing provisions are found in sections 11 and 16-18 SOCPA and sections 49 and 71 MLFTPA.

The confiscation of instrumentalities used or intended to be used in the commission of offences is provided for (section 57(2)(d)) MLFPTA). However, the definition of “proceeds of serious offence” in section 2, SOCPA covers only instrumentalities “used” in the commission of offences.

Section 19 of SOCPA addresses the management of seized property and section 11(7) deals with vesting seized property in a trustee to take control and custody of the property or for property to be disposed of or dealt with as specified in the court order. Confiscated property is sold and proceeds are deposited in the Consolidated Fund.

The law empowers the court or competent authorities to access or seize bank or financial records, which are routinely obtained for investigative purposes (e.g., section 12, POCA, sections 49 and 49 bis, CP&E). The ACC can obtain records through the Financial Intelligence Unit or request them directly by letter from the Commissioner. Section 35 of POCA provides for the additional penalty of forfeiture, where a person has been convicted of the possession of unexplained wealth (section 34, POCA). Section 11(2) of the POCA and section 17(3) of MLFPTA also provide for access to financial records.

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

Swaziland has adopted a 20-year statute of limitations for corruption-related offences (section 20, CP&E), which runs from the time of commission of the offence and is not interrupted if the offender evades the administration of justice.

There is no legislative basis for judicial authorities to take into account previous foreign convictions.

Jurisdiction (art. 42)

Jurisdiction over certain POCA offences extends to acts within and outside Swaziland (sections 21 to 23, POCA). However, there is no general provision on the jurisdictional reach of the Act, which would also cover offences on board of vessels or aeroplanes. Acts by or against nationals and stateless persons; offences against the State, and cases where extradition is refused and the offender is present in its territory are not specifically regulated. Participatory acts to money-laundering committed outside Swaziland are partly covered (section 39, POCA; sections 4 (a)-(d) and 5, MLFPTA).

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

Relevant measures to address the consequences of corruption are found in sections 35 to 38 of POCA. Section 36 provides for penalties that take into account restitution of property to the lawful owner. The law also provides for forfeiture to the State where the lawful owner cannot be ascertained or is implicated in the offence. Debarment, contract rescission, disqualification from the tender process, and other penalties, are provided for (section 38, POCA).

Compensation for damages may be obtained under common-law principles.

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

Section 3 of POCA establishes the ACC as an independent Commission. Section 4(4) provides that, in the performance of their functions, the Commissioner and Deputy Commissioners shall be independent and shall not be subject to the direction or control of any person or authority. Sections 8 and 9 of POCA address staff selection and training.

The ACC produces annual reports as required by Section 20 of POCA; however, these are often published with significant delay and cannot be accessed electronically, because the ACC's website has not been updated since 2012.

Other relevant institutions include the DPP, Royal Swaziland Police Service and the Financial Intelligence Unit. Steps were being taken to establish a specialist anti-corruption prosecution unit in the DPP at the time of review.

Investigating and prosecuting agencies (DPP, ACC, police) and the Financial Intelligence Unit face challenges of limited capacity in investigations and detecting crimes. Capacity-building in the judiciary, in particular for magistrates, is needed and a specialization in the judiciary on corruption cases would be useful to address the backlog of cases.

There is an obligation by persons holding positions of authority (as defined in section 49(2) of POCA) to report corruption offences to the competent authorities. These also cover other offences such as fraud, extortion and forgery (section 49(1)(b), POCA), for which a duty to report is established, and the obligation to report also extends to certain officials in the private sector. However, no other measures are in place to encourage or require the cooperation of public authorities with law enforcement.

Cooperation between investigating and prosecuting authorities and entities of the private sector is established, in limited measure, principally through a memorandum of understanding between the ACC and the Central Bank, as well as a memorandum of understanding between the Financial Intelligence Unit, the ACC, Police and the Swaziland Revenue Authority (SRA). A Bank Liaising Committee comprising officers from the ACC, the banking sector, Financial Services Regulatory Authority (FSRA), SRA, Police, Financial Intelligence Unit and the DPP meets monthly to discuss issues of fraud in the banking sector.

Swaziland has adopted measures and reporting channels to allow for reporting (including anonymously) of corruption related offences.

2.2. Successes and good practices

The following are highlights of the successful experiences and good practices in the implementation of Chapter III of the Convention:

- Existence of a task team on corruption, which consists of the ACC, DPP and police and chaired by the DPP, as well as a National Task Force on Money-Laundering.

2.3. Challenges in implementation

To further enhance existing anti-corruption measures it is recommended that Swaziland:

- Strengthen data-collection systems to allow for the identification and tracking of corruption and money-laundering cases that are investigated, prosecuted and adjudicated across agencies. Swaziland should consider publishing these data regularly in annual reports and on the ACC website.
- Amend the definition of public officer to cover officials who do not receive payment, parliamentarians and other persons listed in article 2 of the Convention (see also, art. 30(2)).
- Amend POCA to ensure that, for all relevant offences, promises and exchanges of bribery are covered, in addition to the offering of bribes, and to cover third party beneficiaries and indirect acts of bribery (art. 15).
- Criminalize active bribery of foreign public officials and officials of public international organizations and consider criminalizing passive foreign bribery (art. 16).
- Criminalize embezzlement, misappropriation and other diversion of all types of property, including public or private funds, securities or other things of value entrusted to public officials (art. 17).
- Consider adopting a specific offence of trading in influence (art. 18).
- Consider criminalizing abuse of functions (art. 19).
- Consider establishing an offence of embezzlement of property in the private sector (art. 22).
- Amend the MLFPA to: consider eliminating the schedule of predicate offences; eliminate the threshold requirement of imprisonment of at least 12 months or a fine of at least E15,000 for predicate offences; and remove the requirement for a conviction on the predicate offence (art. 23(2)(c)).
- Furnish copies of its AML laws to the United Nations (art. 23(2)(d)).
- Review and consider amending its legislation to ensure that penalties for legal entities engaged in corruption are sufficiently dissuasive (art. 26(4)).
- Consider amending its legislation to provide that the limitations period runs from the time of discovery of the offence and provide for its interruption if the offender evades the administration of justice (art. 29).
- Consider enhancing the penalties for corruption-related offences, taking into account the gravity of the offences, and consider adopting minimum penalties for corruption offences (art. 30(1)).
- Amend its legislation to take into account the gravity of offences when considering early release or parole of convicted persons (art. 30(5)).
- Consider adopting procedures for the disqualification of convicted persons from holding positions in a public office or public enterprise (art. 30(7)).

- Amend SOCPA to ensure that instrumentalities “destined for use” in offences are covered (art. 31).
- Consider strengthening the management of seized and confiscated assets building on the provisions in SOCPA (art. 31(3)).
- Provide effective protection, including physical and evidentiary, from retaliation or intimidation for witnesses, experts, victims and, as appropriate, their relatives or associates, including through the swift adoption and implementation of the 2010 Bill on Witness Protection (art. 32).
- Consider adopting measures to provide effective protection against unjustified treatment for reporting persons (art. 33).
- Strengthen the legal and operational independence of law enforcement institutions (ACC, police, DPP) and the Financial Intelligence Unit, and provide for capacity-building of the judiciary (art. 36).
- Swaziland’s ACC take steps to produce annual reports and report regularly on its activities, including updating its website, as a matter of priority (art. 36).
- Take steps to accelerate the creation of a specialist anti-corruption prosecution unit in the DPP (art. 36).
- In consultation with development and technical assistance partners, undertake a comprehensive technical assistance needs assessment, using as a baseline the results of the present review, in order to develop a country-led and prioritized technical assistance action plan, to address the identified needs.
- Adopt measures to provide effective protection to cooperating defendants (art. 37(4)).
- Adopt measures to encourage or require the cooperation of public authorities with law enforcement (art. 38).
- Continue to strengthen cooperation and invest attention and resources to outreach, awareness-raising and education on matters of corruption among the public (art. 39).
- Consider adopting measures to allow for previous foreign convictions to be taken into account in criminal proceedings (art. 41).
- Adopt a general provision on the jurisdictional reach of POCA (art. 42(1)), which could also cover acts by or against nationals and stateless persons (art. 42(2)(a) and (b)); offences against the State (art. 42(2)(d)); and cases where extradition is refused and the offender is present in its territory (art. 42(2)(e)).
- Provide for jurisdiction in respect of participatory acts to money-laundering committed outside Swaziland (art. 42(4)).

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

- Summary of good practices/lessons learned (arts. 22, 23, 31, 37, 39, 41)
- Model legislation, agreements or arrangements (arts. 22, 23, 26, 39, 41)

- Legislative drafting/legal advice (arts. 17, 22, 23, 26, 37, 39)
- Development of an action plan for implementation (arts. 22, 41)
- Capacity-building programmes (arts. 37, 39).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

The reviewing experts note the absence of cases and data on any extradition and requests for mutual legal assistance Swaziland has received, and, more generally, the absence of a specific system for collecting data.

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

The primary legislation governing extradition is the Extradition Act 1968 (EA). Extradition is rendered on the basis of an agreement and on conditions of reciprocity (section 3, EA), although Swaziland may also engage in extradition relations on the basis of reciprocity in cases where no treaty is in place. Section 4, EA refers to Swaziland's extradition treaties for determining extraditable offences. Swaziland has not applied this Convention as the legal basis for extradition, although it could do so in principle. Swaziland is party to two bilateral treaties (South Africa and United States of America) and multilateral treaties through the Southern African Development Community (SADC) and the African Union. Under the Commonwealth, Swaziland can extradite through the London Scheme on Extradition.

Issues of dual criminality are considered according to the terms of the treaties (sections 3 and 4, EA). Dual criminality is not a condition precedent for extradition under EA (section 4), but is required under the terms of Swaziland's extradition treaty with South Africa. Extradition is limited to the extent that not all Convention offences are criminalized.

The conditions and grounds for refusal are found in the extradition treaties and section 5, EA. Swaziland refuses extradition where the offence is an offence of a political character (section 5, EA). The fact that the offence involves fiscal matters is not a ground for refusal under EA; however, there are some restrictions on extradition for fiscal offences under Swaziland's treaties.

Subject to any extradition agreement, a request for extradition shall be made to the Prime Minister (section 6, EA). In practice, requests are normally sent through the Ministry of Foreign Affairs or Ministry of Justice and forwarded to the DPP's Office to consider the request in the light of the requirements of the Act and the applicable treaty, until the request is considered by the courts. The legislation does not address simplified procedures relating to extradition.

Swaziland does not restrict the extradition, or recognize the conditional surrender, of its nationals. Swaziland would grant extradition for the purposes of enforcing a foreign sentence, as provided for in the treaty with South Africa. It would not deny extradition requests on grounds of nationality, although there have been no cases to date.

Fair treatment guarantees enshrined in the Constitution, which provides in for a fair and timely hearing (article 21), and domestic legislation (sections 9 and 10, EA). Non-discrimination and fair treatment protections are further contained in article 20(3) of the Constitution and sections 5 (b) and (c) and 14 of EA.

Swaziland has not established a duty to consult before refusing extradition.

There was only one reported incoming extradition request in the last four years in a fraud matter from South Africa, which was pending as of July 2015, and none related to corruption.

The Transfer of Convicted Offenders Act, No. 10 of 2001 provides for the transfer of convicted offenders to and from Swaziland. Swaziland has not entered into any treaties on the transfer of prisoners and there have been no transfers in corruption cases.

Swaziland's legislation does not address the transfer of criminal proceedings, and there is no law or practice on the matter.

Mutual legal assistance (art. 46)

The Criminal Matters (Mutual Assistance) Act 2001 (CMMAA) provides the legal framework for mutual legal assistance. Mutual legal assistance under CMMAA is limited to countries designated in terms of the provisions of the Act (currently only South Africa) by the Minister of Justice, who under the same Act is also the competent authority for making or receiving requests. In practice, however, requests are received through the Ministry of Foreign Affairs.

Swaziland has no bilateral mutual legal assistance treaties, but is party to multilateral treaties under the African Union, the SADC Protocol and the Commonwealth Scheme Relating to Mutual Assistance in Criminal Matters (Harare Scheme). Swaziland is not precluded from considering the Convention as a legal basis for mutual legal assistance, although there has been no experience in its application.

In the last 3 years, there have been 9 outgoing and 4 incoming requests for mutual legal assistance (from South Africa, Lesotho, Zambia and OSCE, all of which were pending at the time of the country visit). All incoming requests related to fraud, corruption and money-laundering. No requests have been refused by Swaziland to date.

Dual criminality is an optional requirement for mutual legal assistance (Section 18, CMMAA) and hence the provision of mutual legal assistance may be limited to the extent that Swaziland has not criminalized all Convention offences. Dual criminality is flexibly interpreted, considering the underlying conduct of the offence. The law does not provide that non-coercive assistance will be provided in the absence of dual criminality.

Swaziland has not adopted any guidelines, regulations, operating procedures or time frames for handling requests for mutual legal assistance and could take steps to streamline mutual legal assistance procedures, including the institutional setup.

Swaziland has not notified the United Nations of its central authority for mutual legal assistance.

Section 17, CMMA sets out the format requirement for requests for mutual legal assistance. Requests must be made in English, although this is not specified in the CMMA and the United Nations has not been notified.

Grounds for refusal are established in section 18, CMMAA. Swaziland has not provided that reasons shall be given for any refusal of mutual legal assistance.

Swaziland can share information spontaneously (section 4, CMMAA) and would honour a request to keep such information confidential.

The transfer of prisoners for mutual legal assistance is regulated in section 21(3) CMMAA, although the obligation to keep such persons in custody and ensure their swift return is not addressed.

Swaziland's legislation does not preclude the examination of witnesses by videoconference, although there have been no such cases.

A limitation of use of information is addressed (sections 32 and 11, CMMLAA). The confidentiality of requests and their content is provided for (section 30, CMMLAA). However, there is no law or practice addressing the issue of costs of mutual legal assistance.

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

Swaziland is party to a variety of arrangements and networks to facilitate law enforcement cooperation and there has been some experience of such cooperation with the authorities in South Africa in money-laundering cases.

Swaziland is not precluded from considering the Convention as a legal basis for law enforcement cooperation; however, there has been no experience in its application.

Swaziland could take steps to further strengthen its cooperation in the area of law enforcement cooperation at the international level.

Joint investigations may be conducted on a case-by-case basis on the basis of specific agreements or arrangements and through the International Criminal Police Organization (INTERPOL). Swaziland's legislation does not preclude the formation of joint investigation teams. There have been no joint investigations with other countries in corruption-related cases.

Investigating authorities are empowered to conduct special investigative techniques, although the matter is not addressed in the legislation. Section 6(2) of the Electronic Records (Evidence) Act 2009 provides for the admissibility of evidence obtained by electronic means. Swaziland police have conducted surveillance and controlled delivery in matters not involving Convention offences.

3.2. Challenges in implementation

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

- Improve systems to collect data on the types of international cooperation requests (e.g., underlying offences), the time frame for responding to these requests, and the response provided, including any grounds for refusal.

- Undertake capacity-building for authorities responsible for international cooperation (extradition and mutual legal assistance), including in the application of domestic laws and the bilateral and multilateral treaties Swaziland is party to.
- Take steps to expedite extradition procedures and simplify evidentiary requirements in respect of Convention offences, including simplifying the institutional setup (art. 44(9)).
- Ensure that extradition will not be refused on the ground that the request involves fiscal matters, by amending its legislation and ensuring that the matter is addressed in its extradition agreements (art. 44(16)).
- Adopt a legal provision or regulation addressing the duty to consult before refusing extradition (art. 44(17)).
- In the light of the limited number of extradition treaties, ensure that the Convention can be recognized as a legal basis for extradition in respect of Convention offences (art. 44(18)).
- Ensure, where assistance is refused on grounds of dual criminality, that non-coercive assistance is provided (art. 46(9)(b)).
- For prisoner transfers for mutual legal assistance, adopt a provision to provide for the obligation to keep the person in custody and to return that person swiftly (art. 46(11)(a) and (b)).
- Take steps to streamline mutual legal assistance procedures in respect of Convention offences, including the institutional setup, and consider adopting mutual legal assistance guidelines, regulations or operating procedures to spell out the procedure for handling requests and time frames for execution; further, Swaziland should ensure that requests are executed expeditiously (art. 46(13), arts. 46(24) to (26)).
- Notify the United Nations of its central authority (art. 46(13) and acceptable language for mutual legal assistance (art. 46(14)).
- Provide that reasons shall be given for any refusal of mutual legal assistance (this could be done through mutual legal assistance regulations) (art. 46(23)).
- Clarify the issue of costs of mutual legal assistance in its legislation (art. 46(28)).
- Consider establishing a legal or procedural framework for the transfer of criminal proceedings (art. 47).
- Take steps to further strengthen its cooperation in the area of law enforcement cooperation at the international level (art. 48).

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

- Summary of good practices/lessons learned (arts. 44, 47, 49)
- Model agreement(s)/arrangement(s) (art. 49)
- Capacity-building programmes (arts. 44, 47, 49)
- Development of an action plan for implementation (art. 44).