



UNODC

United Nations Office on Drugs and Crime

Country Review Report of the United Republic of Tanzania

Review by Sierra Leone and Australia of the implementation by the United Republic of Tanzania of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2012 - 2013

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the United Republic of Tanzania (hereinafter, Tanzania) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Tanzania, supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Sierra Leone, Australia and Tanzania, by means of telephone conferences and e-mail exchanges involving Mr. Joseph Kamara from Sierra Leone, Mr. Andrew Kiley, Ms. Mei-Lin Wang and Mr. Michael Petty from Australia and several officials, including Dr. Edward Hoseah and Ms. Janet Ishengoma, from Tanzania. The staff members from the Secretariat were Ms. Tanja Santucci and Mr. Tim Steele.
6. A country visit, agreed to by Tanzania, was conducted in Dar es Salaam, Tanzania from 22 to 25 April 2013. During the on-site visit, meetings were held with the Prevention and Combating of Corruption Bureau, the Director of Public Prosecutions, the Financial Intelligence Unit, the Public Service Commission, the Police Force, the Supreme Court, the Good Governance Coordination Unit, development assistance providers and donor agencies, as well as representatives from civil society.

III. Executive summary

1. Introduction

1.1. Overview of the legal and institutional framework against corruption of the United Republic of Tanzania in the context of implementation of the United Nations Convention against Corruption

7. *Tanzania signed the Convention on 9 December 2003 and ratified it on 25 May 2005. The implementing legislation includes the Prevention and Combating of Corruption Act (PCCA), the Penal Code, Criminal Procedure Code, Anti-Money Laundering Act,*

Proceeds of Crime Act (POCA), Economic and Organized Crime Act, Evidence Act, Prisons Act, Extradition Act, Mutual Assistance in Criminal Matters Act (MACMA) and Transfer of Prisoners Act. However, much of the legislation is not applicable in Zanzibar, where an anti-corruption body and separate anti-corruption and money laundering legislation exist. The implementation of the Convention in Zanzibar could not be reviewed and no meetings were held with Zanzibari authorities.

8. *Tanzania is a member of the Eastern and South African Anti-Money Laundering Group (ESAAMLG) and has observer status in the Egmont Group. Tanzanian law enforcement authorities cooperate through the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO). The Prevention and Combating of Corruption Bureau (PCCB) is a member of the East African Association of Anti-Corruption Authorities (EAAACA).*

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

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

9. *Tanzania has criminalized the bribery of national public officials (Section 15, PCCA). The offence is based on a principal-agent relationship and prohibits any “advantage” in relation to a principal’s affairs or business. The offence does not include gifts or benefits given to a public official without undue influence, but any advantage must be offered, given or received “corruptly”.*
10. *Tanzania has also criminalized the bribery of foreign public officials and officials of public international organizations (Section 21, PCCA) and trading in influence (Section 33, PCCA). However, no cases were reported.*
11. *Bribery in the private sector is also addressed by Section 15 of the PCCA. No cases have been prosecuted, though allegations have been received. Tanzanian officials reported that the penalties for bribery (public and private sectors) were considered to be lenient.*

Money-laundering, concealment (articles 23, 24)

12. *Money laundering is criminalized in Section 12, Anti-Money Laundering Act, Section 34, PCCA, Sections 71-72, POCA and Section 311, Penal Code in accordance with UNCAC article 23(1). However, not all UNCAC offences constitute predicate offences for money laundering. The FIU in mainland Tanzania is empowered to implement Zanzibar’s anti-money laundering legislation.*
13. *Concealment is legislatively addressed (Section 34, PCCA) and cases have been prosecuted under this section.*

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

14. *Embezzlement is partially criminalized in Sections 28 and 29, PCCA. Section 29 is limited to acts where property is diverted to another person or agent than the public official himself. Moreover, the third party benefit is not covered by Section 28.*

15. *Tanzania has criminalized the abuse of functions in Section 31, PCCA and Sections 94 and 96, Penal Code.*
16. *Tanzania has a range of legal measures to pursue unexplained wealth. Illicit enrichment is criminalized in Sections 26 and 27, PCCA and is a strict liability offence. Illicit enrichment cases were under investigation at the time of review. Asset declarations are required for public officials under the Public Leadership Code of Ethics Act and for PCCB officials under Regulation 28, PCCA Regulation 2009. At the time of the review, no declarations had been verified.*
17. *Embezzlement in the private sector is criminalized in Sections 28(2)-(4) and 29, PCCA and Section 314, Penal Code. There have been few cases under the PCCA because these cases are investigated under the Penal Code by the police and prosecuted by the Director of Public Prosecutions (DPP).*

Obstruction of justice (article 25)

18. *Measures penalizing obstruction of justice are Sections 108-111 and 114A, Penal Code and Sections 52 and 36, PCCA. These measures prohibit the use of force, threats or intimidation to prevent a witness from appearing and giving evidence but do not cover such acts where the witness appears but gives false testimony. Moreover, the cited laws are limited to interference with the service of a summons (Penal Code) and false pretence to be a PCCB officer (PCCA).*

Liability of legal persons (article 26)

19. *Criminal liability attaches to legal persons and is independent of the liability of natural persons; however, no cases have been reported. Limited information was available on penalties applicable to legal persons and their representatives.*

Participation and attempt (article 27)

20. *The liability of accomplices, assistants or instigators is addressed in Sections 22, 23, 384 and 390, Penal Code and Sections 30 and 32, PCCA. Penal Code measures on participation and attempt cannot be used to prosecute persons for PCCA offences.*
21. *The attempt to commit a crime is generally punishable as a misdemeanor in accordance with Sections 380-381, Penal Code. The preparation for an offence does not appear to be covered.*

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

22. *Tanzania has established sanctions for corruption offences that take into account the gravity of the offence. However, minimum penalties are only in place for Sections 15 and 16 of the PCCA. Most PCCA offences carry a maximum penalty of seven years imprisonment and are not eligible for parole. Section 4 of the Parole Board Act provides that a person must inter alia be sentenced to eight years or more imprisonment to be eligible for parole.*

23. *Cases are decided on the gravity of the offence, depending on circumstances, and can include additional penalties of asset forfeiture and prohibition from holding public office.*
24. *The President has immunity from all criminal and civil proceedings during his tenure but may be removed from office through impeachment by the National Assembly (Article 46, Constitution). Immunities exist for judicial officers and officers of the PCCB for acts or omissions in the bona fide exercise of their functions; however, these are not absolute. Magistrates have been convicted of corruption and can be removed from office by the Judicial Services Commission.*
25. *The PCCB has jurisdiction to prosecute cases under Section 15, PCCA without the consent of the DPP. For all other cases, the consent of the DPP is required. The decision to prosecute is taken by the DPP without external interference (Section 11, Prosecution Services Act). An aggrieved complainant may challenge a decision not to prosecute. Reviewers noted that if the prosecution powers of the PCCB were extended, some form of external oversight would be needed. Prosecution guidelines exist for State Attorneys, prosecutors and the PCCB.*
26. *Under the Public Service Regulations 2003, offences involving corruption are both criminal and disciplinary. Regulation 37 permits the disciplinary authority to remove any public servant suspected of a disciplinary offence, including corruption, pending the outcome of an investigation. A public servant charged with an offence may also be interdicted. Public servants convicted of criminal offences involving moral turpitude cannot be re-appointed without prior sanction of the Chief Secretary.*
27. *Legal measures are in place to protect those who have knowledge of the commission of an offence (Sections 51(3) and 39, PCCA). Officials reported that Section 52(1-4), PCCA could protect persons who provide substantial cooperation, though it does not specifically address cooperating defendants. Immunity from prosecution may be provided by the PCCB (Sections 45 and 51, PCCA) or the DPP to cooperating defendants and consultations are underway to adopt a plea bargaining system. Mitigated punishment is available at the courts' discretion to cooperators before they participate in a criminal act. The whistleblower legislation that is under consideration would provide protections to cooperating defendants.*

Protection of witnesses and reporting persons (articles 32, 33)

28. *The PCCA has limited legislative protections for witnesses and informants. However, a number of practical measures may be taken during court processes, including 'in camera' hearings and testimony by videoconference. Tanzania has no witness protection programme, although witness fees are paid by the PCCB. The PCCB has taken action in cases of reprisal against witnesses and whistleblowers.*
29. *Limited whistleblower protections exist under Section 52(2), PCCA and Section 7, Criminal Procedure Code. Efforts are underway to enact relevant legislation.*
30. *No specific measures protect victims of corruption. Enhanced protections for reporting persons, witnesses and victims are under consideration in Tanzania, subject to resource constraints.*

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

31. Tanzania has a comprehensive conviction-based forfeiture system. The confiscation of criminal proceeds is regulated by Section 40, PCCA and Sections 9 and 14, POCA. Provisions on pecuniary penalty orders (Part III, POCA) allow for property of an equivalent value to be forfeited. The definition of tainted property in the POCA, unlike the PCCA, includes instrumentalities used in or in connection with the commission of an offence. Measures are in place in the PCCA and POCA to enable the identification, tracing, freezing or seizure of proceeds and instrumentalities. The administration of frozen, seized or confiscated property is addressed in Section 35, POCA and Sections 41-43, PCCA.
32. A court order is not necessary for the PCCB to investigate and access bank records (Sections 8(5)(b) and 12, PCCA). The FIU can also obtain bank records at the request of law enforcement authorities. Bank secrecy does not impede investigations.

Statute of limitations; criminal record (articles 29, 41)

33. Tanzania has no statute of limitations for corruption offences.
34. There is no law addressing the admissibility of foreign criminal convictions.

Jurisdiction (article 42)

35. Tanzania has not extended jurisdiction over UNCAC offences to Zanzibar. The non-mandatory provisions of article 42 are not clearly addressed.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

36. A system of blacklisting and debarring companies convicted of corruption exists (Section 57, Public Procurement Act).
37. No measures were reported to ensure that persons who suffered damage as a result of corruption have the right to initiate legal proceedings.

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

38. The PCCB's mandate is defined in Section 7 of the PCCA and operational independence is established under Section 5(2). The Director-General has no security of tenure and there is no vetting of the position by parliament, as it is a Presidential appointment with reporting to the President. The PCCB adopts a three-prong approach of prevention, public awareness, investigation and prosecution of offenders. The PCCB has an independent scheme of service in recruitment and training of staff, as per Section 6(3), PCCA. Other relevant institutions include the DPP, police and the FIU.
39. Institutional cooperation is addressed in Sections 45 and 11(3), PCCA, and various measures are taken to enhance collaboration. The FIU executes requests for information from law enforcement agencies, including the PCCB, and refers matters for further investigation.

40. *Public officials and members of the public have a duty to report corruption (Section 39, PCCA). Reports can be made anonymously and rewards may be offered. Cooperation with the private sector is addressed in Section 46, PCCA.*

2.2. Successes and good practices

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

- *Extensive outreach and awareness raising by the PCCB and other institutions on anti-corruption in communities.*
- *The absence of a statute of limitations for corruption offences.*
- *The requirement that every public institution have an anti-corruption strategy as a condition to receiving public funds, and the existence of ethics committees in all institutions.*
- *The reviewers positively noted the blacklisting system and suggest adopting a monitoring mechanism to ensure consistent case referrals to licensing authorities.*
- *The reviewers positively noted the following practices:*
 - *Extensive consultations to develop the third National Anti-Corruption and Action Plan (NACSAP III).*
 - *The number of PCCB offices throughout the country, including presence in all districts and prosecutors operating in all 26 regions.*
 - *The use by the PCCB of lawyers or prosecutors as case controllers for all investigative teams to ensure that legal advice is obtained at an early stage of the investigative process.*
 - *PCCB's targets for grand and petty corruption cases.*
 - *Extensive training programmes for PCCB staff.*
 - *Police-instituted welfare reforms, including housing, health insurance and electricity allowances.*

2.3. Challenges in implementation

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

- *Review and amend legislation in relation to jurisdiction in accordance with UNCAC article 42 and extend jurisdiction over UNCAC offences to all territories of Tanzania, including Zanzibar.*

- *Consider legislative amendments or policy guidance to address the risk of jurisdictional and institutional overlap under the PCCA and Penal Code.*
- *Clarify the term “vested interest” in the definition of “public body” in the PCCA.*
- *Consider legislative amendments to remove the agency concept from the definition of bribery.*
- *Amend legislation on embezzlement in line with UNCAC article 17.*
- *Develop a system to review income and asset declarations in a structured manner and amend forms to ensure that any controlling or beneficial interests are recorded.*
- *Consider transferring responsibility for cases under UNCAC article 22 to the PCCB.*
- *Include all UNCAC offences as predicate offences for money laundering and consider simplifying the process for listing predicate offences.*
- *Explicitly cover predicate offences committed outside Tanzania and clarify whether a domestic predicate offence requires a conviction.*
- *Monitor the evidentiary standard required to prove intent in relation to both money laundering and predicate offences, and consider consolidating various legislative provisions.*
- *Furnish copies of money laundering legislation to the United Nations.*
- *Amend the legislation on obstruction of justice in line with UNCAC article 25.*
- *Consider clarifying the legislation in relation to acts of preparation, rather than attempts of corruption.*
- *Consider pursuing legal persons as well as their representatives in corruption cases.*
- *Review applicable penalties and fines to determine if sanctions and sentences are sufficient to deter natural and legal persons from engaging in acts of corruption, and consider necessary legal amendments in light of actual sentences imposed.*
- *Encourage closer collaboration between the PCCB and the DPP and enhance coordination between disciplinary bodies and the PCCB.*
- *Ensure consistency in disciplinary cases, taking into account the criminal case, and provide oversight over disciplinary cases outside the purview of the Public Service Commission.*
- *Review the system on re-integration of prisoners into society with a view to strengthening existing measures.*

- *Utilize existing legislation to pursue criminal cases to the fullest extent, while exploring the adoption of non-conviction based forfeiture legislation.*
- *Cover instrumentalities “destined for use” in criminal acts in the PCCA and consider expanding the use of compulsory hearing powers to freeze and trace assets.*
- *Strengthen operational measures to regulate the administration of frozen, seized or confiscated assets, and consider establishing a specialist department or team to manage such property.*
- *As a matter of priority for all criminal justice institutions, extend protections to all witnesses, experts, victims and whistleblowers and to the periods before, during and after proceedings; also, sensitize officials as to available protections and consider conducting regular, formal witness vulnerability assessments, building on international best practices. Application of protections to cooperating defendants should be ensured.*
- *Ensure that physical protection, anonymity and other measures are applied equally to victims, and that they are given opportunity to present their views during criminal proceedings.*
- *Enact whistleblower legislation that does not duplicate existing measures and takes into account the scope of covered offences; consider mechanisms to enable complaints to be made and for the review of such complaints.*
- *Strengthen the independence of the PCCB and consider establishing a ‘constitutional anchor’. Amend the PCCA to specify the appointment, removal and specific term of the Director-General and other senior executives.*
- *Although PCCB’s Code of Conduct is enforceable and an internal control unit has been established, strengthen internal controls and enforcement of the Code.*
- *Consider establishing a specialist court or unit in the judiciary for anti-corruption and possibly other complex crime, consider adopting sentencing guidelines for corruption cases, and explore the feasibility of a plea bargaining scheme.*
- *Further strengthen inter-agency coordination by developing guidelines and MOUs to clarify roles and develop mechanisms for information sharing. The PCCB should be informed of all investigations undertaken into police corruption.*
- *Undertake an outreach programme to the private sector to encourage increased reporting and community education on corruption in the private sector.*

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

43. *The following forms of technical assistance could assist Tanzania in more fully implementing the Convention:*

- *A comprehensive needs assessment, in coordination with relevant stakeholders and cooperation partners, to determine priority areas for law reform, capacity building, training, awareness raising and enhancement of inter-agency coordination.*
- *A quality assessment in respect of specific cases to identify key areas where investigative and prosecutorial capacity building is most needed, taking into account the resource capability and technical skills of judges, prosecutors and investigators. Capacity building should cover all relevant criminal justice institutions, including the judiciary, with a specific focus on institutions tasked with anti-money laundering, financial investigations, and prosecutions.*
- *A more comprehensive case planning and management system to facilitate case management, identify bottlenecks causing delays in prosecution, and support the collection and disaggregation of corruption statistics.*
- *Enhance interaction of the judiciary with all criminal justice officials (e.g., speaking engagements) and understanding of the DPP in corruption prosecutions.*
- *Consider developing a system to make case judgments available to the public in a timely manner.*
- *Article 15: legal advice; summary of good practices/lessons learned; on-site assistance by an anti-corruption expert.*
- *Articles 18, 21, 29, 35: summary of good practices/lessons learned.*
- *Articles 20, 22: on-site assistance by an anti-corruption expert and training.*
- *Article 23: summary of good practices/lessons learned; model legislation; legislative drafting; legal advice; on-site assistance by an anti-corruption expert; development of an action plan for implementation.*
- *Article 24: legal advice; on-site assistance by an anti-corruption expert.*
- *Article 30: summary of good practices/lessons learned; capacity building.*
- *Article 32: summary of good practices/lessons learned; capacity-building programmes; legal advice and financial assistance.*
- *Article 41: summary of good practices/lessons learned; model legislation; legislative drafting; legal advice; on-site assistance.*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition (article 44)

44. Tanzania's extradition scheme is governed by the Extradition Act 1965. Tanzania has entered into a number of bilateral extradition treaties; however, details of these treaties were not available to reviewers and a detailed assessment of Tanzania's implementation of this article was not possible. Tanzania's central authority is the Attorney-General's Office, though standard practice is for the Attorney-General to engage the DPP to review incoming requests to verify that core requirements are satisfied. If the necessary conditions are met, the DPP files an application with the court. Hearings are held on a prima facie standard and the suspect has the opportunity to raise objections.
45. Tanzania will consider an extradition request for offences listed in the schedule to the Extradition Act and where dual criminality is satisfied (s.6(1) Extradition Act). Tanzania does not consider the period of imprisonment in assessing an extradition request. It is not clear whether all offences covered by UNCAC are captured by the definition of "extradition crimes" in the Extradition Act.
46. It is unclear whether Tanzania can rely on UNCAC as a legal basis for extradition. Officials informed reviewers that Tanzania, in theory, recognizes UNCAC as a legal basis for extradition in addition to bilateral treaties. Tanzania has not notified the United Nations whether it considers UNCAC to be a legal basis for extradition.
47. Tanzania's treaties generally provide for extradition in respect of all offences that are punishable in Tanzania, with the exception of national security matters and political offences. The Extradition Act contains a discretionary ground of refusal for political offences (ss. 16(1) and 17). Officials explained that UNCAC offences would not be regarded as political offences, though no evidence of any measures in law or practice to formally implement this approach was provided.
48. The extent to which Tanzania has included UNCAC offences as extraditable offences in treaties concluded with other States could not be fully reviewed due to a lack of information. Reviewers noted, however, that the sample provided suggests that not all UNCAC offences are uniformly covered in Tanzania's treaties. Reviewers suggest a comprehensive review of all treaties to ensure compliance with UNCAC and coverage of all UNCAC offences.
49. Tanzania may, by published Ministerial order, make the extradition of an individual subject to conditions, exceptions or qualifications (s.3 Extradition Act). Tanzania indicated that there are no minimum penalty requirements under the Extradition Act; however, in practice officials take various factors into account to assess each case as a whole.
50. Provisions to expedite extradition procedures and simplify evidentiary requirements have been adopted (ss. 6(3), 6(4), 13, 19, 25 Extradition Act). A Magistrate may issue an arrest warrant for a fugitive suspected to be in Tanzania if the Magistrate is satisfied that dual criminality is established (s. 6(1) Extradition Act). Tanzanian officials explained that they can conduct provisional arrests in cases of flight risk, and the judiciary confirmed that an arrest order can be issued once an extradition request is received. It is unclear whether Tanzania can conduct a provisional arrest prior to the receipt of a formal extradition request.

51. *The extradition of Tanzanian nationals is not expressly addressed in the Extradition Act, though in practice Tanzania has previously extradited its own nationals. Reviewers were informed that, in certain situations, Tanzania would have jurisdiction to conduct a prosecution in lieu of extradition. However, prosecution in lieu of extradition is not directly addressed in the legislation. As Tanzania extradites its own nationals it does not have measures in place concerning conditional extradition or sentence enforcement in respect of nationals.*
52. *Tanzania has partially implemented fair treatment and non-discrimination provisions (ss. 5(2), 16(3), 17 Extradition Act). These provisions allow Tanzania to refuse extradition if a request is trivial, not made in good faith, relates to a political offence, or where extradition would be unjust, oppressive or too severe a punishment in the circumstances. Officials indicated that relevant provisions are also contained in Tanzania's bilateral treaties. Tanzania has previously refused an extradition request where it considered the offence in question was of a political character.*
53. *Although there is no legislated general approach to extradition for fiscal offences, the list of extraditable offences in the schedule to the Extradition Act includes fiscal offences. Further, officials explained that Tanzania would not refuse extradition on the grounds that the underlying offence involves fiscal matters.*
54. *Tanzania's Extradition Act does not address the matter of consultation between the requesting and requested States Parties. No information was provided on Tanzania's approach to consultation in practice.*

Transfer of sentenced persons; transfer of criminal proceedings (articles 45, 47)

55. *Tanzania has legislatively satisfied its UNCAC obligation in respect of the transfer of sentenced persons (s. 3, Transfer of Prisoners Act 2004, s. 26, MACMA). Reviewers note that no practical examples of implementation were available.*
56. *The transfer of criminal proceedings is not addressed in legislation. Officials indicated that, in principle, proceedings could be transferred in appropriate circumstances if the court is satisfied that justice would be rendered in another jurisdiction.*

Mutual legal assistance (article 46)

57. *The Attorney-General's Office operates as the central authority for MLA; however, this has not been formalized and communicated to the United Nations. Reviewers were unable to meet with representatives from the Attorney-General's Office and therefore conducted the review on the basis of information from the DPP. The Attorney-General may execute MLA requests directly or send them to executing agencies, or to the DPP. If the DPP is involved, the same process is followed as for extradition.*
58. *MACMA provides for mutual legal assistance between Tanzania, Commonwealth and other foreign countries and extends to matters related to or incidental to MLA in criminal matters. Tanzania has entered into several bilateral MLA treaties, though details of the number of treaties and the treaty texts were not available. Tanzania has experience using the Convention as a legal basis for MLA.*

59. Assistance in respect of legal persons may be provided so long as dual criminality is satisfied. A conduct-based approach is taken when assessing dual criminality. Although there have been no cases where assistance was rendered in the absence of dual criminality, officials explained that in theory, dual criminality can be applied flexibly and will not bar assistance in non-coercive matters.
60. Arrangements exist for information to be transmitted between some Tanzanian and international law enforcement bodies. However, it appears no formal measures are in place for information sharing between the Attorney-General's Office and other central authorities. Tanzania reported that, as a matter of practice, it would keep the existence and content of an MLA request confidential if requested to do so.
61. Mutual assistance may be provided in respect of requests for bank or financial records, including where bank secrecy exists. Assistance may not be refused on the sole ground that an offence involves fiscal matters (s. 6 MACMA, s. 4 Written Laws (Miscellaneous Amendments) Act 2006).
62. A prisoner being detained in Tanzania may be transferred for pursuant to an MLA request (ss. 14, 15, 24(1) MACMA). The procedural requirements surrounding the transfer of an individual are addressed in the MACMA (ss. 14(3), 15, 16, 21, 24(3), 25(3), 26). Protective measures in respect of prisoners transferred to provide MLA have also been legislated (ss. 17, 19, 24(3), 25(3) MACMA).
63. The MACMA makes provision for the execution of MLA requests in accordance with Tanzania's domestic laws and, to the extent possible, in accordance with procedures specified in the request (ss. 6, 9(2)(d)-(f), 11(6)). The rule of specialty and limits on the use of information provided in MLA requests are not addressed.
64. Tanzania's grounds for refusing assistance align with the Convention (ss. 6, 9(2)(i) MACMA). There is no legislated requirement to provide reasons if a request is refused, though officials indicated reasons would be provided as a matter of practice.
65. Under s. 9 of the MACMA, MLA requests should include desired timeframes for processing the request. Officials indicated that the average time for responding to MLA requests in corruption and other criminal cases is 3-6 months. There is no provision for responding to requests for status updates. The MACMA also does not address postponing assistance to avoid interfering with an ongoing investigation, prosecution or judicial proceeding.
66. The requirement to consult before refusing or postponing assistance is not implemented, though officials indicated related provisions are included in the treaties.
67. The MACMA does not address the transfer of persons who are not in custody for purposes of providing testimony or evidence, and no case examples were cited.
68. There is no general provision on costs in the MACMA, though officials indicated that under Tanzania's treaties, costs are borne by the requested State.

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

69. Tanzania has implemented legislation to enable international law enforcement cooperation to detect and combat corruption (ss. 4(1), 4(2)(c), 54(c) PCCA) and facilitate the exchange of information with international FIUs (s.6(i) Anti-Money Laundering Act 2006).
70. Tanzania cooperates closely with regional and international law enforcement authorities through INTERPOL and has an MOU with Rwandan police. There has been no experience using the Convention as a legal basis for law enforcement cooperation, though officials confirmed there is no legal impediment to using the Convention in this manner. Law enforcement authorities participate in several regional fora and cooperate regionally through informal bilateral arrangements. Officials provided several examples of regional cooperation and coordination which facilitated successful investigations.
71. Tanzania participates in joint investigations at the international level on a case-by-case basis in the absence of formal legal or administrative measures. Examples include the USA and India.
72. Officials indicated that evidence obtained through undercover operations, electronic evidence and audio or video recordings is legislatively deemed admissible. However, judicial discretion and lack of resources render the admissibility of these types of evidence difficult in practice.

3.2. Challenges in implementation

73. The following steps could further strengthen existing anti-corruption measures:
- As a matter of priority, undertake a full review of existing treaties for MLA, extradition and the transfer of prisoners to ensure compliance with UNCAC and coverage of all UNCAC offences.
 - Develop guidelines for MLA and extradition to describe modalities of how it accepts and processes requests and what the requirements are.
 - Clarify the status of the Convention as a legal basis for extradition in respect of Convention offences and notify the United Nations accordingly.
 - Implement an awareness raising scheme to ensure a common understanding of extradition law and practice among relevant officials.
 - Adapt information systems to enable the collection of data on the origin of extradition and MLA requests, the timeframes for executing these requests, and the response, including the offences involved and any grounds for refusal.
 - Consider adopting a flexible definition of “extradition crimes” to enable ongoing coverage of all UNCAC offences over time.

- *Take steps to explicitly exclude UNCAC offences from being considered political offences.*
- *Consider introducing legislative measures in respect of extraditing Tanzanian nationals, including conditional extradition and sentence enforcement, and monitor these elements of extradition policy should nationality grounds for refusing extradition be used in the future.*
- *Legislatively provide for consultations throughout the extradition process and adopt guidelines to aid this process.*
- *Clarify in the Extradition Act whether Tanzania can conduct a provisional arrest prior to the receipt of a formal extradition request.*
- *Adopt appropriate measures to formalise prisoner transfer practices.*
- *Notify the United Nations of the central authority for MLA and also the acceptable language for executing such a request.*
- *Legislate suitable provisions on speciality and confidentiality requirements for the execution of MLA requests.*
- *Address the issue of transfer of persons who are not in custody for the purposes of providing testimony or evidence.*
- *Introduce MACMA provisions on postponing assistance, consulting before refusing or postponing assistance, providing reasons where assistance is refused and responding to requests for status updates.*

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

74. *The following forms of technical assistance could assist Tanzania in more fully implementing the Convention:*

- *Article 46: legal advice; capacity building programmes.*
- *Article 50: capacity building programmes.*

IV. Implementation of the Convention

A. Ratification of the Convention

75. The Convention was signed by Tanzania on 9 December 2003 (C.N.1398.2003.TREATIES). It was subsequently ratified on 25 May 2005 (C.N.1398.2003.TREATIES-13). To enhance implementation of the Convention, Tanzania passed the Prevention and Combating of Corruption Act on 16 April 2007, which was published in the official Gazette on 22 June 2007.

76. The implementing legislation includes:

- Prevention and Combating of Corruption Act (hereinafter also referred to as PCCA)
- Penal Code
- Criminal Procedure Code
- Anti-Money Laundering Act
- Proceeds of Crime Act
- Constitution
- Public Service Act
- Economic and Organized Crime Act
- Public Procurement Act
- Banking and Financial Institution Act
- Extradition Act
- Mutual Assistance in Criminal Matters Act
- Transfer of Prisoners Act
- Evidence Act
- Election Expenses Act
- Parole Board Act
- Prisons Act.

77. The issue that much of the legislation cited is not applicable in Zanzibar should be addressed. It is acknowledged that in January 2010, legislation mirroring the mainland Anti-Money Laundering Act came into force in Zanzibar, though the Zanzibar legislation does not recognize the jurisdiction of the mainland Financial Intelligence Unit (FIU) and the National Anti-Money Laundering Committee. Zanzibar has established an anti-corruption body, the Zanzibar Anti-Corruption and Economic Offences Authority, and has enacted its own anti-corruption legislation, the Zanzibar Anti-Corruption and Economic Crimes Act 2012. However, Tanzanian officials reports that the body is newly established and measures are being taken in Zanzibar to harmonize legislation. During the review no Zanzibari documentation was reviewed and no meetings were held with Zanzibari authorities.

B. Legal system of Tanzania

78. Tanzania's legal system is based on the English common law system. The first source of law is the 1977 Constitution, and other sources of law include the statutes or Acts of Parliament, case law, received laws as well as customary law.

C. Previous assessments of anti-corruption measures

79. Tanzania participated in the pilot review programme for the implementation of the Convention. The pilot review covered nine provisions of the Convention and was based on the self-assessment report received from Tanzania as to its implementation of the Convention, the outcome of dialogue between the experts from the Netherlands and the United Kingdom, and an on-site visit from 30 August to 5 September 2008.

80. Tanzania is a member of the Eastern and South African Anti-Money Laundering Group (ESAAMLG). The most recent mutual evaluation can be found at

<http://www.esaamlg.org/reports/me.php>. The FIU has also applied to be a member of the Egmont Group of FIUs and held observer status as of the time of the review.

81. Tanzanian law enforcement authorities cooperate through the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and through the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO).
82. The Prevention and Combating of Corruption Bureau (PCCB) is a member of the East African Association of Anti-Corruption Authorities (EAAACA).

D. Implementation of selected articles

General observations

83. Tanzanian officials explained that the Constitution is the supreme law. All laws derive their legitimacy from the Constitution. The PCCA and Penal Code are laws of equal footing and apply per scope and jurisdiction as stated in the respective laws. However, on corruption matters, it was explained by Tanzanian officials that as a matter of practice, the PCCA is the principal legislation and where there is a lacuna, other laws related to corruption are referred to. The experts recommended that Tanzania examine the potential overlap and interaction in these two pieces of legislation when it comes to corruption matters and consider making legislative amendments or providing policy guidance to resolve this legislative uncertainty.
84. In the area of international cooperation, Tanzanian officials advised reviewers during the country visit that bilateral and multilateral treaties can be applied directly by Tanzania once ratified and gazetted (i.e., domesticated by Act of Parliament), both for extradition and mutual legal assistance in criminal matters (MLA). It was not possible for reviewers to assess Tanzania's bilateral treaties on extradition and mutual assistance in criminal matters as part of this review.
85. As noted in greater detail throughout the report, the reviewing experts observe that there is a need for a comprehensive needs assessment, in coordination with relevant stakeholders and cooperation partners, to determine priority areas for law reform, capacity building, training, awareness raising and enhancement of inter-agency coordination in order to more fully implement the measures in the chapters under review.

Chapter III. Criminalization and law enforcement

General observations

86. It was explained by officials that Tanzania could only provide aggregate level statistics on corruption. The PCCB provided the following statistics:

PCCB CORRUPTION CASES STATISTICS (2005 – 2011)

Year	Allegations Received	Cases Investigated	Ongoing Investigations	Closed Investigations	Files sent to DPP	Files returned from the DPP with Consent	Transferred Investigations	Completed Investigations	Administration Actions taken	New cases filled into Courts	Ongoing cases into Courts	Conviction Cases recorded	Acquitted Cases recorded	Total cases prosecuted	Saved Money / Asset Recovered
2005	3,121	677	1893	336	20	5	2	540	111	50	202	6	10	218	2,500,600,000
2006	6320	1528	2255	983	22	6	496	1781	209	71	205	18	28	251	1,301,492,528
2007	8235	1266	1976	1041	38	27	460	1966	280	196	272	35	45	352	1,580,099,081
2008	6137	928	2101	486	147	51	184	1038	74	147	308	37	71	416	13,203,459,357
2009	5930	884	2160	616	156	64	152	1188	40	222	369	46	73	463	436,132,336
2010	5685	870	2356	416	120	58	135	924	29	224	403	64	98	587	10,123,258,300
2011	4765	819	2546	323	143	34	84	681	30	193	435	52	61	709	4,638,939,558
TOTAL	40,193	6,972	4,201	646	245	1,513	8,118	773	1,103	258	386	33,783,981,160			

Interim statistics from the PCCB for the period January to August 2013 are included in Annex 1.

87. The reviewers observed that there seems to be a high and growing number of allegations reported. However, this does not translate into a high number of criminal convictions. Officials gave the following reasons for this:

- The quality of the prosecution briefs prepared;
- Insufficient evidence;
- Complex legal requirements that need to be met to successfully prosecute complex anti-corruption and anti-money laundering cases; and
- The overall workload of institutions in the criminal justice system.

88. The reviewers observed that there was need for a more comprehensive case planning and management system. It was observed that such a system would not only facilitate better management of individual cases, but would also help in the identification of more general bottlenecks which were causing delays and preventing progress in the prosecution of cases.

89. It was explained by officials that the PCCA under the definition of the term ‘public official’ does not explicitly refer to appointed officials or unpaid officials, such as volunteers. It was further explained that these categories of officials could be covered by section (a) of the definition in the act (Section 21 supra) - ‘any person performing a public function or providing a public service’.

90. Notwithstanding the comments above, members of Parliament are public officials, as defined under Section 3 of the PCCA, which states:

“public official” means any person holding a legislative, executive, judicial, administrative, political, military, security, law enforcement, and local government authority or any other statutory office and includes-

- (a) any person performing a public function or providing a public service; and
- (b) any other person natural or legal so defined in any other written laws.

91. An example was cited of a pending case at Kisutu Resident Magistrate Court, where a member of Parliament, Hon. OMARY AHMED BADWEL, is charged for contravening Section 15 of the PCCA. It was alleged that in his capacity as an MP of BAHU Constituency and member of Parliament of the Local Authorities Accounting Committee (LAAC), he solicited a sum of Eight Million Shillings (8,000,000 Tshs) from one SIPORA JONATHAN LIANA, a District Executive Director of Mkuranga District Council, as an inducement to influence members of the Parliament LAAC to approve the Mkuranga District Council's Financial Report of 2011/2012, a matter which is in relation to his principal's affairs.
92. Officials explained that the definition of "public body" in the PCCA includes the term 'vested interest'; they were not clear whether this includes, for instance, effective control of an entity, which may differ from ownership. The reviewers recommend that the term 'vested interest' be more clearly defined.
93. Reviewers observed that there is no clear guidance on the resolution of potential inconsistencies and overlaps in the legislation on corruption, specifically the PCCA and the Penal Code, which creates the risk of jurisdictional and institutional overlap. This in turn creates a risk of duplicate investigations being conducted. Officials explained that various steps have been taken to strengthen coordination amongst institutions and share information. The reviewers recommend that Tanzania consider developing a mechanism to mitigate against the risk of duplicate investigations.
94. During the country visit officials from all the criminal justice institutions which the reviewers met expressed the need for further tailored investigative, prosecutorial, and judicial capacity building. The reviewers recommend that, as part of the needs assessment recommended in the introduction above, a quality assessment review be conducted in respect of specific cases to identify the key areas where investigative and prosecutorial capacity building is most needed. The reviewers further recommend that this capacity building should be made available to all relevant criminal justice institutions, including the judiciary, to ensure that identified priority needs for capacity building are fully addressed.
95. Another priority area consistently identified by officials during the country visit was the need for the development of anti-corruption specialists in all parts of the criminal justice system. Officials explained that this specialization would improve outcomes. Expanding on the recommendation made above, reviewers recommend that in undertaking the needs assessment the resource capability and technical skills requirements of judges, prosecutors and investigators who are likely to work on anti-corruption cases are taken into consideration.
96. The reviewers further recommend that the judiciary be encouraged to provide their perspective on the prosecution and adjudication of cases, together with an explanation of the current jurisprudence relevant to those cases to all criminal justice officials. This could be achieved through speaking engagements. This interaction is viewed as especially important in the early phases of investigations, but should also be used to encourage greater cooperation between the bench and the bar.
97. The reviewers further recommended that Tanzania should consider developing a system to make case judgments available to the public in a timely manner, as this would improve

understanding of why anti-corruption cases have succeeded or failed. It would also establish a body of jurisprudence which the judiciary and legal practitioners can draw upon in future corruption cases. This will improve prosecutorial outcomes and improve consistency in the judicial handling of corruption cases. It will also provide for greater transparency in the judicial process which can have a positive impact on the perceived level of corruption within the judiciary and law enforcement bodies.

98. The reviewers observed that the PCCB and other law enforcement institutions had engaged in extensive outreach and awareness raising on anti-corruption issues in communities throughout Tanzania. The reviewers recommend that this outreach should continue and that specific community education on corruption in the private sector should be included.

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

99. Tanzania has cited the following measure.

Section 15, Tanzania Prevention and Combating of Corruption Act (2007)

100. Tanzania provided the following examples of cases and statistics on the implementation of the provision.

i) Republic vs. Fredrick Wilfred Mwakalebela; Criminal Case No. 12/2012

Facts: The accused person was a candidate for the *Chama Cha Mapinduzi* (CCM) party in the nomination process contesting for Iringa Municipal constituency. The accused person did corruptly give Tshs. 100,000 to Hamis Hassan Luhanga, a Chairman for Mkoga Village, to be distributed to 30 CCM members gathered in the Chairman's premises, as an inducement to vote for him during the CCM nomination election.

ii) Republic v. Joseph James Mungai & 2 Others, Criminal Case No. 11/2012

Facts: Joseph James Mungai, who was a member of Parliament for Mufindi and a CCM candidate in the nomination process while contesting for Mufindi North Constituency, in conjunction with Moses James Masasi and Fidel Boniface Cholela, did corruptly give Tshs. 10,000 to Obadia Lumuliko, a CCM Chairman for Vikula Village, as an inducement to vote for Joseph Mungai during the CCM nomination election.

iii) Republic vs. Abubakari Abshiri Jinyetu and Omari Ally, Criminal Case No. 22/2012

Facts: It was charged that the second accused person, one Omary Ally, who is a driver, on 1 February 2012, while at Horohoro Weigh Bridge Station within Mkinga District in the Tanga Region, had been a driver of a lorry with the registration Number T755 and gave an advantage of Tshs. 20,000 as inducement to one Abubakarjinyevu, a weigh bridge

operator at Hororhoro, so that he could allow his over-loaded lorry to continue with the journey, contrary to Section 15 (1) (b) of the PCCA.

iv) Republic vs. Zainabu David Musiba, Criminal Case No. 271/2010

Facts: It was charged that Zainabu David Msiba, on the 28 July 2010, within Musoma Municipality/Mara Region, did by herself corruptly give the sum of Tshs. 10,000 to Perucy Ndaru Jumanne, as an inducement for the latter to vote for Nancy Msafiri Jumanne, as a member of Parliament with special seats for CCM.

101. Regarding the availability of statistics, Tanzania indicated that statistics on corruption are collected on an aggregate level and not by type of corruption offence. Assistance would be needed in this area.

(b) Observations on the implementation of the article

102. It was explained by officials that the term “agent” as it is used in Section 15 of the PCCA is derived from the principal-agent relationship. It must be understood that an agent is an employee and a principal is the employer in a public institution. This is why, as per the wording of Section 15(1)(a)(b), the person must either solicit, accept, obtain, give, promise, or offer any ‘advantage’ that is in relation to his principal’s affairs or business.

Section 3 of the PCCA defines “agent” as follows:

“agent” includes-

- (a) any person in the employment of whether under a contract of service, a contract for services or otherwise, whether permanent or temporary, whether paid or unpaid, and whether full-time or part-time and whether such person is a natural person or body of persons or acting for another;
- (b) a trustee;
- (c) an administrator or an executor;
- (d) a public official;

For example, the case of **Republic v Jamila Nzota-Criminal Case No. 1090/2009-Kisutu Resident Magistrate Court** was cited (as summarized under UNCAC article 15(b) below).

103. It was recommended that the outcome of bribery cases where there is no agency and or employment context should be monitored closely and that Tanzania should consider legislative amendments to remove the agency concept from the definition of bribery or introducing a separate provision to address cases of bribery where there is no agency relationship.

104. Tanzanian officials explained that the offence does not include gifts and benefits given to a public official without undue influence. The public official who received any gift “worth” more than Tshs 50,000 is required to declare it or to inform the immediate supervisor, as stipulated by Leadership Code of Ethics, 1995 (as amended). It was further clarified that the advantage included in the definition is qualified by the mental element. The benefit must be given corruptly. As part of this review, reviewers were not able to ascertain whether the exception for gifts also applies to Parliamentarians and other elected or appointed officials.

105. The term “person” includes companies and other legal entities, so long as there is clear evidence to connect the individual in the company who committed the offence under the PCCA and the third party. A company is deemed to be a person (judicial).
106. It was explained by officials that the penalties for bribery are considered to be lenient, as further discussed under UNCAC article 30, paragraph 1 below. The reviewers were informed by Tanzania that there are non-monetary penalties that can apply to companies that have been convicted of a corruption offence. For example, under Section 57 of the Public Procurement Act No. 21 of 2004, companies convicted of corruption offences can be blacklisted and debarred from public tender processes, as described further under UNCAC article 34.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

107. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 15(1)(a), Tanzania Prevention and Combating of Corruption Act (2007)
Sections 21-23 of the Election Expenses Act No 6 of 2010

108. Tanzania provided the following examples of cases on the implementation of the provision.

i) Republic v. Jamila Nzota; Criminal Case No 1090/2009

Facts: The accused person was the Presiding Magistrate in Temeke District Court in Dar es Salaam, Tanzania. She in her position solicited a bribe of 5,000,000 Tshs and received a bribe of Tshs 700,000 Tshs, and therefore committed the offence contrary to Section 15(1) of the Prevention and Combating of Corruption Act No. 11 of 2007. The complainant in this case was one Richard Eliphaz Mollel, who was the representative of Amanas Enterprises. This company had a civil case before the said magistrate and she solicited a bribe in order to execute an attachment before judgment in favor of the complainant. The accused was arraigned for committing the offence contrary to Section 15(1) of the PCCA.

ii) Republic v. Paulo Ndomba Case No. 295/2010

Facts: The accused person was a laboratory technician in Kingosera Village, Mbinga, Ruvuma Region. The said accused person applied for a loan of 1,200,000 Tshs. He solicited from the loan officer of the said bank 60,000 Tshs, so that his application would be favoured and attended in priority. The accused was arraigned with the money that he wanted to solicit from the bank loan officer. He was convicted for committing the offence contrary to Section 15(1) of the Prevention and Combating of Corruption Act No. 11 of 2007.

iii) Republic v. Daniel Mwamburuku & 2 others Case No. 42/2010

Facts: The first accused person was a driver employed by the Tanzania Revenue Authority. The second accused person was a driver employed by the Immigration Office, while the third was an office attendant employed by the Immigration Office. The three accused solicited a bribe of 400,000 Tshs from the complainant, who was caught with imported cell phones, and they portrayed themselves as officers of the Immigration Office, a fact which was not true. They received 150,000 Tshs and were arraigned and charged for committing the offence of Corrupt Transaction in violation of Section 15 of the PCCA.

iv) Republic v. Justine Basilo Shazi Case No 280/2009

Facts: The accused person was Secretary of Village Land Tribunal of Kinabo Village, Rukwa Region, Tanzania. The accused person solicited and received a bribe of 45,000 Tshs. in order to give a favour to one January Nguvu Mali, who was the complainant. The accused was arraigned for committing the offence contrary to Section 15(1) of the Prevention and Combating of Corruption Act No. 11 of 2007.

109. Regarding the availability of statistics, Tanzania indicated that statistics on corruption are collected on an aggregate level and not by type of corruption offence. Assistance would be needed in this area.

(b) Observations on the implementation of the article

110. The observations under paragraph (a) of article 15 and in the introduction above are repeated.

(c) Challenges related to article 15

111. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity: Financial investigations are complex.
2. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.).
3. There are issues of admissibility of electronic evidence in court.

(d) Technical assistance needs related to article 15

112. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legal advice concerning the admissibility of electronic evidence.
2. Summary of good practices/lessons learned concerning the admissibility of electronic evidence.
3. On-site assistance by an anti-corruption expert on the use of surveillance techniques and capacity building to conduct complex financial investigations, implement witness protection schemes and the development of a scheme for plea bargaining/charge bargaining.
4. Other assistance: Statistics on corruption are collected on an aggregate level and not by type of corruption offence. Assistance would be needed in this area.

Tanzania has received the following form of technical assistance:

The Stolen Asset Recovery Initiative (StAR) has provided four workshops on financial investigations linked to asset recovery. The extension and/or expansion of such assistance would help Tanzania adopt the measures described in the article under review.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

113. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 21(1), Tanzania Prevention and Combating of Corruption Act (2007)

(b) Observations on the implementation of the article

114. This provision is legislatively implemented, although no cases have been reported.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

115. Tanzania has cited the following measure.

Section 21(2), Tanzania Prevention and Combating of Corruption Act (2007)

116. There have been no cases of bribery of foreign public officials or officials of public international organizations.

(b) Observations on the implementation of the article

117. This provision is legislatively implemented, although no cases have been reported.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

118. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 28, Tanzania Prevention and Combating of Corruption Act (2007)

Section 29, Tanzania Prevention and Combating of Corruption Act (2007)

119. Tanzania provided the following examples of cases on the implementation of the provision.

i) Republic v. John Kinyaki Tembo Criminal Case No 09/2010

Facts: The accused was a head teacher of WASO Primary School located in Loliondo, Ngorongoro, Arusha, Tanzania. The said school received a capitation grant from the Ministry of Education and Vocational Training. This money was embezzled and misappropriated by the accused and used by him for his own benefit. The accused was convicted and sentenced to three years/without a fine.

ii) Republic v. Jacob Likanda George & 2 others Ecc. 01/2010 (s.28)

Facts: Bukombe Ward office obtained an area for the purpose of building a school. The said area was pre-occupied by villagers, and therefore there was an operation that was handed down to move them and compensate them for the disturbance and inconvenience. The accused person, who was the ward executive officer of Bukombe, was given custody to collect the money from the villagers in order to build the school and, at the same time, he was given the mandate to compensate the villagers who were shifted from the area. He in his position used documents and added three fictitious people in order to collect money to pay their compensation. He managed to collect and obtain an advantage of 2,100,000 Tshs. He was charged with committing an offence of embezzlement contrary to Section 28 of the PCCA and use of documents contrary to Section 22 of the PCCA.

iii) Republic v. Bernard Zabron Nsokola & 2 others Case No. 53/2010 (s.28)

Facts: The first accused person was the Chairperson of Kisanga Cooperative Society in Sikonge, Tabora, while the second accused person was a member of the said council. They are said to have embezzled a total amount of 7,300,000 Tshs and used the money for their own advantage. The case is still ongoing.

iv) Republic v. Charles M. Rweyemamu Case No. 248/2010 (s.28(1))

Facts: The accused person was the Director of Finance and Administration of the Shinyanga Water Authority. The Authority was engaged in a project of constructing a road from Shinyanga town to Old Shinyanga. The accused person embezzled the remaining funds and took equipment (pipes) for his own use.

v) Republic v. Robert Juma Lushanga Case No. 541/2010 (s.28)

Facts: The case is still ongoing. The accused person was the head teacher of a primary school in the Shinyanga Region. The school received money from Bukombe District Council for the purpose of buying text books and stationary. However, the school reported that the accused did not purchase the text books and stationary and used the

money for his own advantage. The school committee executed stocktaking and found that nothing was bought after the money was received by the accused.

vi) Republic v. Sijela Pagala Ecc. No. 01/2010 (s.29)

Facts: The accused person was Chairman of Iyovyvo Village in Chunya. He committed the offence of use of documents to mislead the principal contrary to Section 22 of the PCCA. Iyovyvo Village collected their money from the Chunya District Council and gave the money to the Chairman (accused). The Chairman, after collecting prepared receipts that contained false information, used his position to divert an amount of 559,000 Tshs. The case is still ongoing.

vii) Republic v. Mohammed Khalifa Mnyagani Case No. 04/2009 (s.29)

Facts: The accused person diverted 90 bags of maize from the Government. The maize was to be supplied in Malagali (Mfindi). Instead, the accused supplied the maize in Makambako. The Government suffered a loss of 40,000,000 Tshs. The accused was convicted to one year imprisonment and a fine of 1,000,000 Tshs for committing the offence of embezzlement.

(b) Observations on the implementation of the article

120. It seems that Section 29 of the PCCA is limited to acts where property is diverted to another person or agent and not, for example, into an account belonging to the public official himself. Moreover, the third party benefit is not covered by Section 28 of the PCCA. The reviewing experts recommend that Tanzania address these discrepancies.

121. Tanzania's self-assessment had cited a number of provisions, including Sections 120 and 319 of the Penal Code, as provisions that implemented article 17 of UNCAC. Tanzanian officials explained during the country visit that the Penal Code provisions, specifically Sections 120 and 319, were not relevant to this article.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

122. Tanzania has cited the following measure.

Section 33(1), Tanzania Prevention and Combating Corruption Act (2007)

123. Tanzania indicated that there have been no cases of trading in influence.

(b) Observations on the implementation of the article

124. This provision is legislatively implemented, although no cases have been reported.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

125. Tanzania has cited the following measure.

Section 33(2), Tanzania Prevention and Combating Corruption Act (2007)

126. Tanzania indicated that there have been no cases of trading in influence.

(b) Observations on the implementation of the article

127. This provision is legislatively implemented, although no cases have been reported.

(c) Challenges related to article 18

128. Tanzania has identified the following challenges and issues in fully implementing the article under review:

1. Limited capacity (e.g. human/technological/institution/other): Trading in influence are complex cases.

(d) Technical assistance needs related to article 18

129. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned: A summary of good practices from other countries would be useful.

None of the forms of technical assistance mentioned have been previously provided.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

130. Tanzania has cited the following measures.

Section 31, Tanzania Prevention and Combating of Corruption Act (2007)

Section 94, Penal Code

Section 96, Penal Code

131. Tanzania provided the following examples of cases on the implementation of the provision:

i) Republic v. Basil Mramba & 2 others Case No.1200/2008

Facts: The first accused person was the former Minister of Finance, while the second accused person was the Minister of Minerals and Energy. They are alleged to have abused their positions by entering into a contract with ASSEYER-Alex Stuart without approval from the Cabinet of Ministers. The act of the first accused person (Basil Mramba) exempting the company from paying tax for several years was also an act of abuse of position contrary to Section 31 of the PCCA. This case is still ongoing and is in the stage of defence.

ii) Republic v. Amatus Liyumba Case No.105/2009

Facts: There was a project to expand the new headquarters of the Bank of Tanzania (BOT) building in Dar es Salaam, Tanzania. A contract was entered into between BOT and the building company. It was discovered that there was a cost increase and there was a claim that the contractors had bribed bank staff to approve the increase. During the completion of the building, it was discovered that the construction expenses were excessively high and, as of 2008, the total approached US\$ 350 million. The accused person in this case was charged with the offence of abuse of office/position in violation of Section 31 of the PCCA and was convicted.

(b) Observations on the implementation of the article

132. This provision has been legislatively implemented and several cases have been cited to demonstrate the application of the relevant legislation.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

133. Tanzania has cited the following measures.

Section 27, Tanzania Prevention and Combating Corruption Act (2007)

Section 26, Tanzania Prevention and Combating of Corruption Act (2007)

134. Tanzania further reported that the mens rea of “corrupt intent” as in other sections of the PCCA is not required; a motive must, however, be established. It is a criminal strict liability standard under the PCCA.

135. Tanzania specified that there are illicit enrichment cases under investigation. The challenge is the complex financial reconstruction of the case.

136. For example, in **Republic v Justice Katiti & 3 others, Case No. 147/2010**, PCCB gave the accused person a notice to explain how they acquired their assets under Section 26 of the PCCA, 2007. The case is summarized under UNCAC article 23(1) below.

Another case is **Faraji Augustine Chambo & Kajala Masanja, Criminal Case No. 82 of 2012**.

137. The law on declaration of assets states clearly that public officials are to file their assets annually. The Public Leadership Code of Ethics Act requires “public officials” to file asset declarations annually, for PCCB officials as per Regulation 28 of the Prevention and Combating of Corruption Regulation of 2009.

138. In addition, the offence of ‘possession of unexplained property’ requires, under Section 27 of the PCCA, a suspect on notice to give an account of his/her assets.

27.-(1) A person commits an offence who, being or having been a public official-

- (a) maintains a standard of living above that which is commensurate with his present or past lawful income;
- (b) owns property disproportionate to his present or past lawful income, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such property came under his ownership.

139. Public officials are required to fill out an asset declaration form upon being given notice by PCCB officers. Section 26 of the PCCA further requires public officials to give accounts of their properties:

26.-(1) Any officer of the Bureau authorised in writing by the Director General may, by notice in writing addressed to any public official require such public official to give, within such time and in such manner as may be specified in the notice, a full and true account of all or any class of properties which such public official or his agent possess or which he or his agent had in possession at any time during which the public official held any public office, and such officer of the Bureau may, by the same or subsequent notice, require such public official to give a true account of how he acquired such property.

(b) Observations on the implementation of the article

140. Tanzania has a range of legal measures at hand to pursue unexplained wealth.

141. During the country visit it was explained that under the Public Leadership Code of Ethics Act asset declarations are filed annually with the Commissioner of Ethics. Declarations cover officials at the level of Assistant Director and upwards (including judges and the President), also extending to spouses and children. Conflicts of interest can be disclosed in a note to the form. Over 3,000 disclosures had been received at the time of the country visit. Tanzanian officials advised reviewers that Tanzania implemented a policy for the random verification of these disclosures in 2012. However, at the time of the review, no verifications had been carried out. No penalties had been imposed, although a failure to declare would be referred to the Council of Ethics (consisting of retired judges), and criminal penalties could also result from incorrect declarations.

142. It is recommended that a system be developed so that income and asset declarations can be reviewed and verified in a structured manner. In developing this system, consideration should be given to increasing public access to the income and asset declarations to enable public comment to be received as to their veracity. The review team understands that public officials above a certain position are currently required to make annual asset disclosures. The reviewers observed that this has led to a very high number of disclosures and a backlog for verification. The reviewers recommend that Tanzania consider whether there is benefit to requiring asset disclosures on a biennial basis or adopting a more targeted disclosure and verification scheme that focused on higher risk categories of public officials.

143. It is further recommended that the forms be amended to ensure that any controlling or beneficial interest in assets or businesses is recorded.

144. Following conversations with officials during the country visit, the experts were of the view that it would be useful if Tanzania could consider the possibility of enacting legislative provisions for PCCB to investigate illicit enrichment in the private sector, although not required by the Convention.

(c) Challenges related to article 20

145. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.)
3. Specificities in its legal system
4. Competing priorities
5. Limited capacity (e.g. human/technological/institution/other; please specify)
6. Limited resources for implementation (e.g. human/financial/other; please specify)

(d) Technical assistance needs related to article 20

146. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. On-site assistance by an anti-corruption expert.
2. Other: Additional support in the form of training may be useful.

None of the forms of technical assistance mentioned have been previously provided.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

147. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 15, Tanzania Prevention and Combating of Corruption Act (2007)

148. Tanzania reported that there have been no cases involving the private sector, as the law has only been in force since 2007. Allegations are received, but the cases take time to work through the system.

149. To more fully implement the provision, Tanzania specified that cases would need to be investigated and prosecuted under PCCA Section 15, which had not been fully operationalized in practice.

(b) Observations on the implementation of the article

150. It was explained by officials that the penalties for private sector bribery are lenient, as in the case of public sector bribery.

151. The same restrictions and observations related to the agent-principal concept as reported under UNCAC article 15 above apply here.

152. Officials further explained that the majority of cases brought involved public officials and that there were very few cases of private sector bribery. It is recommended that an outreach programme to the private sector be undertaken to encourage increased reporting on bribery cases.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

153. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 15, Tanzania Prevention and Combating of Corruption Act (2007)

(b) Observations on the implementation of the article

154. The observations under article 15 and in the introduction above are repeated.

155. No cases have been reported.

(c) Challenges related to article 21

156. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity: Investigative skills and prosecution techniques need strengthening. Training should involve the judiciary, DPP, PCCB and police. The PCCA is not well understood by judges.

(d) Technical assistance needs related to article 21

157. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned: Best practices, in particular from the UK and from high profile cases in the UK, would be useful.

Tanzania has received training from external providers, in particular Pakistan, but reported that the training has been unsuccessful. Resource persons who understand the anti-corruption law, not just the criminal laws, are needed.

Tanzania indicated that an extension of the assistance provided would help Tanzania to adopt the measures described in the article under review.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

158. Tanzania indicated that it has partially implemented the article and cited the following measures.

Section 28(2)-(4), Tanzania Prevention and Combating of Corruption Act (2007)
Section 29, Tanzania Prevention and Combating of Corruption Act (2007)
Section 314, Penal Code

159. Tanzania reported that embezzlement cases under the Penal Code when sent to DPP are referred to the police and not brought forward. There have been few cases under the PCCA because the DPP prefers to have cases brought under the Penal Code. While there was no specific explanation for this preference, Tanzania referred to the general prosecutorial discretion granted to the DPP pursuant to Section 90 of the Criminal Procedure Act and Section 95 of the National Prosecution Service Act of 2008 to prosecute all criminal matters in the courts of law and therefore to make a decision under which law to bring a charge.

160. Tanzania reported that institutional reform is needed to ensure the full implementation of the article under review. DPP should allow the institutions that conducted the investigations to complete them.

(b) Observations on the implementation of the article

161. While this article is legislatively implemented, the operational set-up is not ideal, with this category of corruption case being investigated by the police and prosecuted by the DPP rather than being dealt with by the specialist anti-corruption body. It is recommended that consideration be given to whether it may be appropriate to transfer responsibility for investigating and prosecuting cases under this article to the PCCB.

162. No case examples were provided.

(c) Challenges related to article 22

163. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination: Institutional issues; Tanzanian officials from the PCCB commented that the DPP should allow the institution that conducted the investigation to complete it. As an independent institution, PCCB should be allowed to complete the case.

(d) Technical assistance needs related to article 22

164. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. On-site assistance by an anti-corruption expert: Training is needed by someone with expertise in investigating and prosecuting private sector embezzlement cases.

Tanzania is receiving assistance under a framework agreement with DFID for several institutions. The agreement with DFID was reached to fund the DPP, PCCB, FIU and judiciary on criminal justice programmes and capacity building needs and to improve performance in an inter-agency manner (about to commence).

Tanzania indicated that the extension of such assistance would help Tanzania adopt the measures described in article 22.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

(a) Summary of information relevant to reviewing the implementation of the article

165. Tanzania has cited the following measures.

Section 12, Anti-Money Laundering Act

Section 34, Tanzania Prevention and Combating of Corruption Act (2007)

166. Tanzania provided the following examples of cases on the implementation of the provision.

i) Republic v. Marcus Masila & 6 others Case No. 146/2010

Facts: The first accused person was an assistant tax accountant at Tanzania Telecommunications Company Limited (TTCL). The second accused was a tax accountant at the Tanzania Revenue Authority (TRA). The third accused person was the Director of Ramos Technology. The fourth accused was the Director of Millennium Promotion, while the fifth was the cashier of the Trade Union Congress of Tanzania (TUCTA). These accused persons are alleged to have committed the offence of money laundering. They diverted money that was under the custody of TTCL. This money was allocated for the purpose of paying VAT tax to the TRA. Instead, the accused paid their personal companies and institutions, i.e. TUCTA, Millennium Promotion and Ramos Technology, for their own benefits and advantage. The money that is said to have been laundered was 671 million Tshs. This is an example of a current money laundering case which is still ongoing.

ii) Republic v. Justice L. Katiti & 3 others Case No.147/2010

Facts: The accused persons diverted money under the custody of TTCL. This money was to be paid to the TRA, but instead was paid to UEE Tanzania Limited. Justice Katiti (the first accused person) prepared monthly collection reports stating that TTCL money was paid to the TRA and prepared reconciliations that VAT tax was paid as expected, a fact which was not true. The money that is said to have been laundered was 3.4 billion Tshs. This is another example of a money laundering case that is still ongoing in court.

iii) Republic v. Justice L. Katiti & 5 others Case No.152/2010

Facts: TPST Company was to pay tax to the TRA. Instead, the accused persons knowingly and jointly diverted the money to a company named East Africa Procurement. This money was transferred to another company, Ramos Technology, and was later again transferred to Just Investment, a company that belonged to Justice Katiti. The money that is said to have been laundered was 338 million Tshs. This is another example of a money laundering case that is still ongoing in court. However, the accused persons were acquitted.

(b) Observations on the implementation of the article

167. Tanzanian officials explained that, while Zanzibar does not yet have broader anti-corruption legislation, it does have its own anti-money laundering law. The FIU in the mainland is empowered to implement the Zanzibari anti-money laundering legislation.

168. Tanzanian officials further explained that both the DPP and the PCCB are competent to bring anti-money laundering cases. Reviewers observed that there are a number of legislative provisions that would allow Tanzanian officials to prosecute the offence of money laundering. This includes separate provisions in the Anti-Money Laundering Act, PCCA and Proceeds of Crime Act. Reviewers observed that Tanzania may wish to consider consolidating these various legislative provisions to provide greater certainty and consistency to the investigation and prosecution of money laundering offences.

169. Tanzania provided the following statistics of money laundering cases that were prosecuted by PCCB prosecutors and the DPP from 2010 to 2013.

1. Republic v. Marcus Masila & 6 others Case No. 146/2010 (summarized above)
2. Republic v. Justice L. Katiti & 3 others Case No.147/2010 (summarized above)
3. Republic v. Justice L. Katiti & 5 others Case No.152/2010 (summarized above)
4. Republic v. Iddi Simba & 2 others Case No. 137/2012 (case summary not available)

Note: all of the above cases are still pending in court.

170. While this provision is legislatively implemented and cases have been prosecuted, there is a need going forward to monitor the evidentiary standard required to prove intent, in relation to both the money laundering offence itself and predicate offences, in anti-money laundering cases.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

(a) Summary of information relevant to reviewing the implementation of the article

171. Tanzania has cited the following measures.

Section 12(c), Anti-Money Laundering Act

Section 71, Proceeds of Crime Act

(b) Observations on the implementation of the article

172. This provision has been legislatively implemented, although no examples of implementation were provided.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (b) Subject to the basic concepts of its legal system:*

- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

(a) Summary of information relevant to reviewing the implementation of the article

173. Tanzania has cited the following measures.

Section 12(d), Anti-Money Laundering Act

Section 34, Tanzania Prevention and Combating of Corruption Act (2007)

Section 311, Penal Code

Section 72, Proceeds of Crime Act

(b) Observations on the implementation of the article

174. This provision has been legislatively implemented, although no examples of implementation were provided.

175. During the country visit, officials from the FIU explained that since the FIU had been established, it had received 29 reports of suspicious transactions from a total of 49 operating financial institutions. This figure seems unusually low considering the number of potential reporting entities, including banks and casinos; however, it may reflect the early development stage of the FIU. Education within the sector and enforcement of compliance with suspicious transaction reporting requirements should be a priority for the FIU. Reference is made to the observations on the FIU's operations included under UNCAC article 36.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

176. Tanzania has cited the following measure.

Section 12(e), Anti-Money Laundering Act

(b) Observations on the implementation of the article

177. This provision has been legislatively implemented, although no examples of implementation were provided.

Article 23 Laundering of proceeds of crime

Subparagraphs 2 (a) and (b)

2. for purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

178. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 3, Anti-Money Laundering Act

(b) Observations on the implementation of the article

179. While “all corruption and related offences stipulated under the Prevention and Combating of Corruption Act” are included in the schedule of predicate offences in Section 3(h) and (i) of the Anti-Money Laundering Act 2012, some relevant Penal Code offences, such as obstruction of justice, are excluded. In this context, Tanzanian officials explained during the country visit that it is extremely difficult to amend the schedule. It is recommended that all UNCAC offences be included in the Anti-Money Laundering Act as predicate offences for money laundering. Reviewers also observed that it may be beneficial for Tanzania to consider options within the Tanzanian legal system for simplifying the process for listing predicate offences.

180. The DPP explained that a foreign predicate offence does not require a conviction, whereas a domestic predicate offence may. The legislation here is not clear and has not been tested in court. It is recommended that consideration be given to amending Section 12(a) of the Anti-Money Laundering Act 2012. Reviewers observed that there may be benefit in Tanzania undertaking a comprehensive review of Tanzania’s money laundering laws. This review could examine the approach taken in relation to predicate offences and whether Tanzania’s various money laundering laws can be consolidated.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. for purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

181. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 2 (1), PCCA

(b) Observations on the implementation of the article

182. The Act applies in mainland Tanzania and Zanzibar (Section 2, Anti-Money Laundering Act), but it is not clear that it covers predicate offences committed outside Tanzania. While there was some indication during the country visit that it would extend to foreign predicate crimes (see the previous provision), it is recommended that consideration be given to amending the Act to make it clear that predicate offences committed outside of mainland Tanzania are included.

183. Reviewers observed that the legislative provisions cited by Tanzania did not directly relate to Article 23. It was not possible for reviewers to verify Tanzania's legislative implementation of this provision as part of this review.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. for purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

184. Tanzania indicated that it has not furnished copies of its laws to the Secretary-General of the United Nations as prescribed in subparagraph 2(d) of UNCAC article 23. Tanzania referred to the following laws.

1. Proceeds of Crime Act
2. Anti-Money Laundering Act
3. Prevention and Combating of Corruption Act
4. Penal Code, Cap 16.

(b) Observations on the implementation of the article

185. Tanzania is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. for purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

186. Tanzania indicated that its domestic system does not contain fundamental principles as referred to in subparagraph 2(e) of UNCAC article 23. A person can be convicted both of the predicate offence and the offence of money laundering under Tanzania's laws.

(b) Observations on the implementation of the article

187. Based on information provided by Tanzanian officials, this provision appears to have been legislatively implemented.

(c) Challenges related to article 23

188. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Inter-agency co-ordination
2. Inadequacy of existing normative measures (constitution, laws, regulations, etc.)
3. Specificities in its legal system
4. Competing priorities
5. Limited capacity (e.g. human/technological/institution/other; please specify)
6. Limited resources for implementation (e.g. human/financial/other; please specify)

(d) Technical assistance needs related to article 23

189. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned
2. Model legislation
3. Legislative drafting
4. Legal advice
5. On-site assistance by an anti-corruption expert
6. Development of an action plan for implementation

When the comprehensive training needs assessment referred to in the introduction is undertaken, the needs of the institutions tasked with implementing this article will require special consideration.

Tanzania indicated that some of these forms of technical assistance have been provided to Tanzania. StAR has provided four workshops on financial investigations linked to asset recovery.

Tanzania also indicated that the extension of such assistance would help it to more fully implement the article under review.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

190. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 12(c), Anti-Money Laundering Act

Section 71, Proceeds of Crime Act

Section 34 of the Prevention and Combating of Corruption Act

191. Tanzania provided the following statistics on investigations, prosecutions, acquittals and convictions for transfer of proceeds of corruption under Section 34 of the Prevention and Combating of Corruption Act 2007:

Two ongoing cases/prosecutions for transfer of proceeds of corruption under Section 34 of the Prevention and Combating of Corruption Act 2007

a) Criminal Case No 152/2010; Republic v. Justice Lumima Katiti & 5 Others (summarized under UNCAC article 23(1)(a)(i) above)

b) Criminal Case No 82/2012; Republic v. Kajala Masanja (cited under UNCAC article 20 above).

(b) Observations on the implementation of the article

192. This article is legislatively implemented under Section 34 of the PCCA and cases have been prosecuted under this legislation.

(c) Challenges related to article 24

193. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Specificities in its legal system: PCCB was the first institution to take a case of money laundering and concealment to court, and so there is limited experience with the enforcement of relevant legislation. Cases are complicated to investigate and prosecute.

(d) Technical assistance needs related to article 24

194. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review.

1. Legal advice
2. On-site assistance by an anti-corruption expert: Training on the enforcement of legislation.

The Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia's financial intelligence unit, has also worked with Tanzania over the past four years to build FIU capacity across money-laundering frameworks.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

195. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 108, Penal Code

Section 109, Penal Code

Section 110, Penal Code

Section 111, Penal Code

Section 52 of the Prevention and Combating of Corruption Act No 11/2007

196. Tanzania reported that there have been no cases because of difficulties in proving intimidation.

(b) Observations on the implementation of the article

197. Officials explained that, where evidence suffices to establish an offence under Section 108 of the Penal Code, the charges will be drawn accordingly rather than pursued under the PCCA.

198. They further explained that Section 110 of the Penal Code, which prohibits the use of force, threats or intimidation of a witness to prevent him or her from "appearing and giving evidence", does not cover such acts where the witness appears but gives false testimony (rather than not appearing at all).

199. Officials also explained that delays in bringing cases lead to a greater risk of interference with witnesses.

200. The provision has been partly legislatively implemented and two relevant cases are described under UNCAC article 32 *infra*.

201. It is recommended that consideration be given to introducing legislation to criminalize intimidating a witness to provide false testimony.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(b) Summary of information relevant to reviewing the implementation of the article

202. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 114A, Penal Code

Section 36, Prevention and Combating of Corruption Act (2007)

(c) Observations on the implementation of the article

203. The cited laws seem to be limited to interference with the service of a summons (Penal Code) and false pretence to be a PCCB officer (PCCA). No further information was available as to whether there are more general provisions that prohibit interference with an officer of PCCB or a justice or law enforcement official. It is recommended that Tanzania consider amending its legislation in this regard, to bring it more fully in line with the Convention.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

204. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 14, Anti-Money Laundering Act

Section 23, Proceeds of Crime Act

Section 73, Proceeds of Crime Act

Section 5, Penal Code (definition of person)

Section 4, Interpretation of Laws Act

205. Tanzania reported that there have been no cases.

(b) Observations on the implementation of the article

206. There is no definition of the term “person” in the PCCA, although the term “public official is defined to include legal persons. Officials explained that, as the Interpretation of Laws Act extends the PCCA offences to companies and entities, criminal liability of legal persons is established.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

207. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 14, Anti-Money Laundering Act

208. Tanzania reported that there have been no cases.

209. An example was cited of a pending court case where a natural person, rather than the company itself, was charged as the defendant.

Economic Case 10/2010, Republic v. Faith Mtambo

In this case, a company named Chemolab Diagnostic Ltd. supplied inadequate medical equipment and drugs to Murrad Saddiq Secondary School Laboratory and falsely justified that they supplied according to what was agreed. The case is pending in Morogoro Resident Magistrate Court. The Director of the company is charged for contravening Sections 22 and 32 of the PCCA. The accused person also had a company named Princess Textbooks, which supplied texts book to Murad Saddiq Secondary School. However, the company did not supply as it was agreed. The Director is charged for committing offences under Sections 22 and 32 of the PCCA. The case is still pending.

(b) Observations on the implementation of the article

210. Tanzanian officials explained during the country visit that there is a preference for pursuing the individuals rather than the legal persons who have committed corruption offences. The reviewers are concerned that this approach could lead to a risk of impunity for legal persons and recommend that consideration be given to pursuing the legal person as well as the natural persons involved in committing an offence.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

211. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 38 of the PCCA
Section 40 of the PCCA

212. Tanzania reported that there have been no cases.

(b) Observations on the implementation of the article

213. Officials explained that there was limited information available on penalties imposed against legal entities. It is recommended that consideration be given as to whether the sanctions against legal entities and their representatives are adequate.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

214. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 22, Penal Code
Section 23, Penal Code
Section 384, Penal Code
Section 390, Penal Code
Section 30, Tanzania Prevention and Combating of Corruption Act (2007)
Section 32, Tanzania Prevention and Combating of Corruption Act (2007)

215. Tanzania reported that there have been cases of joint liability involving corruption offences, but no cases or examples were provided.

(b) Observations on the implementation of the article

216. Officials explained that Penal Code measures on participation and attempt cannot be used to prosecute persons for PCCA offences.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

217. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 380, Penal Code

Section 12 (e) of the Anti-Money Laundering Act

218. Tanzania reported that there have been no cases.

(b) Observations on the implementation of the article

219. It was explained during the country visit that the attempt to commit a crime is punishable as a misdemeanor, unless there is a specific statement to the contrary within the legislation.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

220. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 380, Penal Code

221. Tanzania reported that there have been no cases.

(b) Observations on the implementation of the article

222. Reviewers observed that Tanzania may wish to consider conducting a review of the relevant legislation to consider whether it is necessary to amend the legislation to clarify that it also applies to the act of preparation. On the face of the legislation, reviewers were not confident that the Penal Code legislation would extend to preparation for an offence.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance

with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

223. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 9, PCCA

224. Tanzania indicated that, apart from asset forfeiture cases, Tanzania has no statute of limitation period in which to commence proceedings for offences established under the Convention because of the difficulties encountered in the collection of evidence in criminal investigations. In Tanzania, it is the obligation of the prosecution to prove a case beyond reasonable doubt; therefore, investigations do not carry time limits. Tanzania indicated that it is to its advantage that there are no limitations periods within which to commence criminal proceedings.

225. Tanzania reported that, in practice, PCCB applies to the DPP for an extension under Section 9(2) of the PCCA due to the ongoing investigation for continued retention of the property up to another 6 months. Section 9 of PCCA was reported to be somewhat of a limiting provision in asset forfeiture cases.

(b) Observations on the implementation of the article

226. The reviewers welcomed the extension of the period for which property could be retained in asset forfeiture cases.

(c) Successes and good practices

227. It is considered a good practice that Tanzania does not have a statute of limitations for corruption offences.

(d) Challenges related to article 29

228. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Specificities in Tanzania's legal system: Section 9 of PCCA is somewhat of a limiting provision in asset forfeiture cases.

(e) Technical assistance needs related to article 29

229. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned: Examples from other jurisdictions in asset forfeiture cases would be helpful.

Tanzania indicated that some technical assistance has previously been provided by the Basel Institute (International Centre for Asset Recovery), which has provided training on asset forfeiture cases.

Tanzania indicated that the extension and/or expansion of such assistance would help it more fully implement the article under review.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

230. Tanzania indicated that it has partially implemented the provision and cited the following measure.
Section 25, Penal Code

231. Regarding the applicable sanctions for corruption, Tanzania reported that each offence in the PCCA establishes maximum penalties; minimum penalties are only in place for Sections 15 and 16 of the PCCA. The maximum penalty under the PCCA is 7 years of imprisonment or a fine of up to 10 million shillings, for example for embezzlement (Section 28), although fines of up to 15 million shillings can be applied to corrupt transactions in procurement and auctions (Sections 17 and 18 of the PCCA). The lowest maximum penalty under the PCCA is a fine of up to 500,000 shillings (for example in Section 52(3)), or 100,000 shillings in the case of Section 37 of the PCCA, combined with possible prison terms. The sanctions are summarized below.

Table showing offences and penalties under the Prevention and Combating of Corruption Act (No. 11 of 2007)

S/N	SECTION	OFFENCE	PENALTIES
1.	15	Corrupt transactions (solicits, accepts, obtains or attempts to obtain, gives, promises or offers any advantage)	A fine of not less than five hundred thousand shillings but not more than one million shillings or to imprisonment for a term of not less than three years but not more than five years or to both.
2.	16	Corrupt transactions in contracts	A fine of not less than one million shillings but not more than three million shillings or to imprisonment for a term of not less than three years but not more than five years or to both.
3.	17	Corrupt transactions in procurement	A fine not exceeding fifteen million shillings or to imprisonment for a term not exceeding seven years or to both.
4.	18	Corrupt transactions in auctions	A fine of not exceeding fifteen million shillings or to imprisonment for a term not exceeding seven years or to both.
5.	20	Corrupt transactions in employment	A fine not exceeding five million or to imprisonment for a term not exceeding three years or to both.
6.	21	Bribery of foreign public official	A fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.
7.	22	Use of documents intended to mislead principal	A fine not exceeding seven million shillings or to imprisonment for a term not exceeding five years or to both.
8.	23	Person obtaining advantage	A fine not exceeding ten million shillings or to

			imprisonment for a term not exceeding seven years or to both.
9.	25	Sexual or any other favours	A fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.
10.	26(3)	Public officials to give accounts of properties	A fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.
11.	27	Possession of unexplained property	A fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.
12.	28	Embezzlement and misappropriation	A fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.
13.	29	Diversions	A fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.
14.	30	Aiding and abetting	A fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.
15.	31	Abuse of position	A fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.
16.	32	Conspiracy	A fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.
17.	33	Trading in influence	A fine not exceeding three million shillings or to imprisonment for a term not exceeding two years or to both.
18.	34(1)	Transfer of proceeds of corruption	A fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both.
19.	36	False pretence to be an officer	A fine not exceeding two million shillings or to imprisonment for a term not exceeding one year or to both.
20.	37	Offence of disclosure of identity	A fine of one hundred thousand shillings or to imprisonment for one year or to both.
21.	52(3)	Victimization of informer (a person discloses information on the commission of offences under PCCA (Act No.11 of 2007))	A fine not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding one year or to both.

232. Tanzania also provided information on criminal and non-criminal sanctions imposed. The judiciary indicated that cases are decided on the gravity of the case, depending on circumstances, and that available sanctions are sufficient to have a deterring effect.

233. Tanzania reported that the Expert Working Group charged with compiling the information for the UNCAC review had noted that the absence of minimum penalties for corruption offences under the PCCA allows judges to exercise discretion to impose minimal sanctions, which can lead to the impunity or a lack of deterrence in corruption cases. Furthermore, the judiciary indicated that minimum sanctions (e.g., 5 years) used to exist for corruption cases, but it was found better not to have minimum sentences because judges tended to impose the minimum sentence only and not deviate upwards. The judiciary indicated that fines are rarely imposed and that imprisonment is usually the sanction for corruption cases. Additional penalties are the possibility of forfeiture and prohibition from holding public office.

234. In 2008 and 2009, the Resident Magistrate Court nationwide disposed of a total of 55 corruption cases. Of these, various terms of imprisonment were imposed in 5 corruption cases, 4 cases ended up in acquittals, 26 cases were withdrawn and 20 cases were conditionally discharged. The judiciary indicated that the high number of withdrawals and acquittals was due to the difficulty of proving corruption cases, which are secretive and the required proof is high (beyond a reasonable doubt).

235. At the level of the district court (which is established in every district to exercise jurisdiction within the district and has original jurisdiction in criminal proceedings), corruption cases disposed of nationwide are as follows:

- The District Court in the 13th zones of the High Court disposed of a total of 55 corruption cases in 2008. This number fell to 33 cases in 2009. Out of the 55 corruption cases, 27 ended in acquittals and 12 ended up in withdrawals; only 13 cases out of 55 resulted in prison sentences.

- Out of 33 corruption cases which were disposed of by the district court in 2009, 20 ended up in acquittals, 9 were withdrawn and only 4 ended up in prison sentences.

236. During meetings with the private sector foundation, it emerged that sanctions for corruption were not exercised often enough and when they were exercised, appeared to be inadequate to have a deterrent effect.

237. Regarding the execution of sentences (e.g. time served, amount of money collected, etc.) for corruption offences, Tanzania reported that maximum and minimum sanctions are provided in each section of the PCCA that creates a particular offence. The sanctions are both imprisonment terms and fines, running together or in the alternative.

Sections 15 and 16 of the Prevention and Combating of Corruption Act provide for both maximum and minimum sanctions. With regard to imprisonment, the minimum imprisonment is 3 years and the maximum is 5 years, while fines range from a minimum of TZS 500,000 to a maximum of 10 million.

238. Tanzania observed that sanctions provided for in Sections 17 to 37 of the Act are very lenient. According to these sections, the maximum imprisonment is 7 years while the maximum fine is TZS 10 million (TZS 15 million for corrupt transactions in procurement and auctions). The available sanctions were also found to be too discretionary, as they provide for maximum sanctions only, while leaving the minimum sanctions in terms of both imprisonment and fines to be determined by the presiding magistrate or judge. When this discretion is abused, a convict can even be sentenced to six months imprisonment.

239. With regard to the steps or actions that domestic or other authorities would need to take to ensure the full implementation of the provision under review, Tanzania emphasized the necessity to introduce legal reforms that would establish minimum penalties in the PCCA.

(b) Observations on the implementation of the article

240. During the country visit officials explained that sanctions and sentences were insufficient to deter natural and legal persons from engaging in acts of corruption. The

reviewing experts recommend that Tanzania review the applicable penalties and fines in this regard and consider necessary legal amendments in light of actual sentences imposed in corruption cases.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

241. Tanzania has cited the following measures.

Section 50 of the PCCA

Section 16 of the Penal Code, Cap 16

The Constitution Section 46

242. Tanzania indicated that the immunities are not absolute, save in the case of a sitting President.

243. Tanzania further indicated that members of Parliament enjoy neither immunities nor privileges for offences alleged to have been committed under any law. Tanzania cited the case of **Omary Badwell** as an example. Here, a member of Parliament was charged for contravening Section 15 of the Prevention and Combating of Corruption Act 2007. It was alleged that in his capacity as an MP of BAHI Constituency and member of parliament of the local Authorities Accounting Committee (LAAC), he solicited a sum of eight million Tanzanian shillings (8,000,000 Tshs) from one Sipora Jonathan Liana, the former District Executive Director of Mkuranga District council, as an inducement to influence members of the parliamentary LAAC to approve the Mkuranga District Council's Financial Report of 2011/2012, a matter which is in relation to his principal's affairs. The case is still ongoing.

244. With regard to relevant official inquiries, the judiciary indicated that magistrates have been found guilty of corruption and have been prosecuted and convicted. The Judicial Services Commission decides whether these magistrates remain in office or not. There have been some cases involving judicial officers and magistrates.

(b) Observations on the implementation of the article

245. Based on the information provided, immunities and jurisdictional privileges do not appear to present an impediment to the effective investigation and prosecution of corruption cases. The provision is implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

246. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 11, Prosecution Services Act

Section 57, Tanzania Prevention and Combating of Corruption Act (2007)

Article 59B, Constitution

247. Tanzania indicated that the PCCB has jurisdiction to prosecute cases under Section 15 of the PCCA without the consent of DPP and can file these cases directly to the court. For all other cases, the consent of DPP is required. In practice, after an investigation the completed file is taken to DPP for final review. Once DPP consent is received, PCCB prosecutors can conduct the prosecution, although DPP may transfer the case to the police for investigation and DPP would then conduct the prosecution. Joint prosecutions by DPP and PCCB are also possible.

248. Tanzania provided the following examples of cases on the implementation of the provision.

PCCB CORRUPTION CASES STATISTICS (2010 – 2011)

Year	Allegations Received	Cases Investigated	Ongoing Investigations	Closed Investigations	Files sent to DPP	Files returned from DPP with consent	Transferred Investigations	Completed Investigations	Administration Actions taken	New cases filled into Courts	Ongoing cases into Courts	Conviction Cases recorded	Acquitted Cases recorded	Total cases prosecuted	Saved Money / Asset Recovered
2010	5685	870	2356	416	120	58	135	924	29	224	403	64	98	587	10,123,258,300
2011	4765	819	2546	323	143	34	84	681	30	193	435	52	61	709	4,638,939,558
TOTAL	10,450	1,689		739	143	92	219	1,605	59	417		116	159		14,762,197,858

Source: PCCB Head Office

249. Tanzania outlined the steps that domestic or other authorities would need to take to ensure the full implementation of the provision under review. The need for consent of DPP presents challenges in practice because of delays and the fact that DPP has a large workload involving all criminal matters. Pending receipt of consent to prosecute, suspects are out on bail. The DPP has assigned special officers to deal with corruption cases. There is a need to enhance understanding of the DPP to handle corruption prosecutions.

250. The judiciary indicated that discretionary prosecution is exercised to the fullest extent by the DPP and PCCB. There is sufficient public scrutiny that cases are prosecuted fully, although public awareness is not as high as it should be of corruption. Some judges believe that powers should remain with the DPP, which has experienced state attorneys.

(b) Observations on the implementation of the article

251. The DPP explained during the country visit that, in accordance with Section 11 of the Prosecution Services Act, the decision to prosecute is taken by the DPP independent of any external interference. The DPP further explained that approximately 25 percent of cases submitted by the PCCB are returned due to lack of evidence.
252. Cases brought under Section 15 of the PCCA can be prosecuted by the PCCB without the consent of the DPP. It was explained by officials that there is less delay in respect of these cases where consent is not required.
253. There is a discussion at the moment as to whether the PCCB should be granted prosecution powers. The PCCB currently employs over 200 lawyers, which is more than the DPP.
254. The reviewers were of the view that, if the PCCB were to be granted such powers, some form of external oversight and review would be needed. Officials explained that currently an aggrieved complainant may challenge a decision not to prosecute. During the country visit officials explained that there has been one case where this has happened, but the case was resolved before a formal complaint was laid.
255. Notwithstanding the outcome of the current debate, the reviewers encourage closer collaboration between the PCCB and the DPP.
256. The reviewers received copies of the Prosecution General Instructions for State Attorneys and Prosecutors (issued by the Attorney General's Chambers in 2011) and the PCCB Prosecution Manual (2002).

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

257. Tanzania indicated that it has partially implemented the provision and cited the following measures.
Part V, B, (c), Criminal Procedure Act 1985.
258. Tanzania indicated that there have been no cases.
259. During the country visit, Tanzanian officials explained that normally while the DPP's consent is awaited, the defendant is released on bail; however, a defendant considered a flight risk will be remanded in custody.

(b) Observations on the implementation of the article

260. This provision is partially implemented both legislatively and in practice.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

261. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 4 of the Parole Board Act

262. No examples were reported.

(b) Observations on the implementation of the article

263. Under Section 4 of the Parole Board Act, a prisoner who is serving a sentence of imprisonment for a period of eight years or more is eligible for parole if, among other conditions, he has served the longer of four years or one third of the sentence. Officials explained during the country visit that most PCCA offences carry a maximum penalty of seven years imprisonment and are thus not eligible for parole.

264. The provision is legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

265. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Regulation 50 (a) – (f) of the Public Service Act

Section 23(1) of the Public Service Act

266. Pursuant to Regulation 50 of the Public Service Regulations 2003, offences involving corruption are both criminal and disciplinary. A public official who has been criminally charged may also be charged and punished under the provisions of the Public Service Act 2002.

267. Regulation 37 permits the disciplinary authority to relieve any public servant suspected to have committed a disciplinary offence, including corruption, of his functions pending the outcome of the investigation. Relief of duty is done administratively without resorting to interdiction and does not affect the suspect's pay. The power to relieve a suspect of his duties is applicable only to disciplinary proceedings.
268. The power to interdict an accused public servant is discretionary with the disciplinary authority (Regulation 38). An interdicted public servant is temporarily removed from office on half pay. Similarly, a public servant charged with a criminal offence may also be interdicted; once charged, he can be interdicted pending the outcome of the case.
269. Dismissal, under Regulations 42(1), 48(8) and 50(e) after completion of the criminal or disciplinary process, once the public servant is convicted. A further possibility, suspension (Regulation 39(1)) is also available once the public servant has been convicted.
270. Tanzania provided the following examples of cases on the implementation of the provision. Previously, there was a procedure in Tanzania whereby in the event a public official was charged of an offence established by the Convention, her or she was automatically suspended, removed or reassigned by the appropriate authority. However, the recent reform in the Public Service Act has made it to be at the discretion of the employer to either remove or suspend such a public official. Disciplinary proceedings may be authorized once criminal proceedings have been instituted. Under Standing Order F (2), a public servant may be interdicted if he or she has been charged criminally, pending a final court determination. Interdiction in this case is discretionary.
271. In one case involving the Department of Teachers in 2010, 90 teachers who had been accused of exam cheating were interdicted until the verdict in the criminal case was rendered.
272. With regard to the steps or action that domestic or other authorities would need to take to ensure the full implementation of the provision under review, Tanzania specified that a system is needed whereby public officials accused of having committed crimes can be automatically suspended until a final court determination has been rendered, also to avoid possibilities of destruction of evidence. The challenge is that the period of interdiction/suspension is not fixed by law but at the discretion of the disciplinary authority; criminal cases take time to resolve, and during the period of suspension the public official receives half pay and the post remains vacant.

(b) Observations on the implementation of the article

273. It was explained during the country visit that the Public Service Commission (PSC) does not cover all public officials in Tanzania, specifically the police, other law enforcement officials, elected officials and contractors.
274. Officials explained that there was a need for coordination between the disciplinary bodies and the PCCB to ensure that PCCB cases involving public officials were being reported to the PSC and that corruption-related disciplinary cases were reported to the

PCCB. They also reported a need for a method to ensure consistent approaches in disciplinary cases, which also take into account the criminal case.

275. No examples of disciplinary cases were provided during the country visit, although one case involving the Department of Teaches is noted above.

276. The reviewers recommend closer collaboration between the PCCB and the PSC and all authorities in Tanzania responsible for disciplinary action against public officials. Moreover, some degree of oversight should be ensured over disciplinary cases involving public officials who do not fall within the scope of the PSC.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

277. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Regulation 32(3) of the Public Service Scheme

278. Under the Regulation 32(3), the sanction of the Chief Secretary is needed to appoint a person who has been removed or retired from public office in the public interest. The Office of Public Service Management handles these types of cases and makes an appropriate recommendation. If the previous removal or retirement is not disclosed at the time of rehire, the person can be dismissed (Regulation 17(4)).

(b) Observations on the implementation of the article

279. During the country visit the Public Service Commission provided written submissions in which they confirmed that a public servant who is convicted of a criminal offence involving moral turpitude is disqualified from holding any further public service post and cannot be re-appointed without prior sanction of the Chief Secretary.

280. Officials explained that the Ethics Code is attached to the Public Service Regulations and that violations of the code can lead to disciplinary and criminal sanctions.

(c) Successes and good practices

281. It was noted as a good practice that each public institution has an ethics committee.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

282. Tanzania indicated that it has partially implemented the provision. It reported that the Public Service Regulations only apply to public services (Regulation 2). Public companies have their own laws prescribing conditions of employment. For example, the Public Corporations Act precludes persons who have been dismissed from the corporation from being reappointed.

(b) Observations on the implementation of the article

283. There was no further information provided during the country visit.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

284. Tanzania indicated that it has partially implemented the provision and cited the following measure.
Public Service Act

(b) Observations on the implementation of the article

285. Government officials confirmed that all relevant disciplinary measures are contained in the Public Service Act and Public Service Regulations.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

286. Tanzania indicated that it has partially implemented the provision and cited the following measure.
Section 62 of the Prisons Act

287. Tanzania outlined the steps needed to be taken to ensure the full implementation of the provision under review.

1. In the criminal justice system, to establish rehabilitation/correction centres in order to have an effective and efficient reintegration of criminal offenders who are about to leave the Prison.

2. To remove the discretion of the Commissioner of Prisons to determine whether prisoners should be granted the opportunity of rehabilitation or not. This will ensure both sustainability of reintegration and the preservation of human rights.

(b) Observations on the implementation of the article

288. Following discussions during the country visit, the reviewers were of the view that more could be done to ensure the re-integration of prisoners into society. The reviewers recommend that Tanzania reviews its current system on re-integration with a view to strengthening existing measures.

(c) Challenges related to article 30

289. Tanzania has identified the following challenges and issues in fully implementing the provision under review

1. Limited capacity (e.g. human/technological/institution/other): the judiciary indicated that awareness and training of judges in applying the PCCA in corruption cases was sufficient, but that training in general for judges on all criminal cases would be useful. There is a need to enhance understanding of DPP to handle corruption prosecutions. There is also limited capacity to fully effectuate the rehabilitation of prisoners.

(d) Technical assistance needs related to article 30

290. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned: Good practices regarding the rehabilitation of offenders due to the discretion afforded to the Commissioner of Prisons as to whether to grant reintegration are needed.
2. Capacity building: as indicated above, training for judges and prosecutors is needed.

Tanzania indicated that these forms of technical assistance have not been provided.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

291. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 40, Tanzania Prevention and Combating of Corruption Act (2007)

Section 9, Proceeds of Crime Act

Section 14, Proceeds of Crime Act

292. Tanzania provided the following examples of cases on the implementation of the provision.

Money recovered by PCCB for the period 1995 to December 2011 is valued at Tshs. 93.535 billion. Specifically, the annual amounts were in 2011, Tshs. 4.639 billion; in 2010, Tshs. 10.123 billion; in 2009, Tshs. 436,132 million; and in 2008, Tshs. 13.204 billion.

(b) Observations on the implementation of the article

293. Proceeds of crime is defined in Section 40(3) of the PCCA as property derived or obtained from corruption. During the country visit, officials explained that the provisions on pecuniary penalty orders (Part III of the Proceeds of Crime Act) allowed property of an equivalent value to be forfeited.

294. During the country visit, officials explained that the PCCB has a choice of using either the PCCA or the Proceeds of Crime Act when applying for a forfeiture order. They further explained that, although Tanzania has a comprehensive conviction-based forfeiture system, the number of convictions and accordingly confiscations is low compared to the number of investigations. Officials also explained that they believed that a non-conviction based forfeiture system would be useful and advised that the PCCB was involved in a broader discussion on the adoption of a non-conviction based forfeiture system.

295. The reviewers recommend that Tanzania utilize its existing legislation to the fullest possible extent to pursue criminal cases while exploring the adoption of non-conviction based forfeiture legislation. They recommend further exploration and study of the issue by inviting Tanzania to learn from international experiences in adopting non-conviction based forfeiture. Reviewers noted that in their experience, non-conviction based asset confiscation schemes provide many advantages but are not necessarily a simpler alternative to criminal prosecution. Undertaking non-conviction based investigations and litigation will require a significant investment in both resource capacity and training in new skills for investigators, lawyers and judges.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

296. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 9, Proceeds of Crime Act
Section 23, Economic and Organized Crime Act
Section 351, Criminal Procedure Code

(b) Observations on the implementation of the article

297. Tainted property under the Proceeds of Crime Act, unlike the PCCA, covers instrumentalities used in or in connection with the commission of an offence. The reviewers recommend that Tanzania amend its legislation to also cover instrumentalities that are “destined for use” in criminal acts, as per the UNCAC article.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

298. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 12, Tanzania Prevention and Combating of Corruption Act (2007)
Section 13, Tanzania Prevention and Combating of Corruption Act (2007)
Section 38, Tanzania Prevention and Combating Corruption Act (2007)
Section 40, Tanzania Prevention and Combating Corruption Act (2007)
Sections 31-37, The Proceeds of Crime Act 1991
Section 39, The Proceeds of Crime Act 1991
Section 40, The Proceeds of Crime Act 1991
Section 58, The Proceeds of Crime Act 1991

(b) Observations on the implementation of the article

299. This provision has been legislatively implemented, although no examples that it had been implemented in practice were provided.

300. While outside the strict scope of the review, the reviewers suggest that Tanzania consider expanding or establishing the use of compulsory hearing powers to enhance its ability to freeze and trace assets.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

301. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 35, Proceeds of Crime Act

Section 41, Tanzania Prevention and Combating Corruption Act (2007)

Section 42, Tanzania Prevention and Combating Corruption Act (2007)

Section 43, Tanzania Prevention and Combating Corruption Act (2007)

(b) Observations on the implementation of the article

302. Representatives of the Tanzania Police advised that when assets are frozen or seized, the court can make an order as to how they are managed. They also advised that there was no specialist team responsible for the management and disposition of assets. The reviewers recommend that Tanzania strengthen measures at the operational level to regulate the administration of frozen, seized or confiscated assets. In doing so, consideration could be given to establishing a specialist department or team to manage frozen, seized and confiscated property.

Article 31 Freezing, seizure and confiscation

Paragraphs 4 to 6

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

303. Tanzania indicated that it has partially implemented the provisions and cited the following measures.

Section 351(1) and (5), Criminal Procedure Code

Sections 26, 27 and 34 of the Prevention and Combating of Corruption Act

Proceeds of Crime Act (definition of proceeds of crime)

(b) Observations on the implementation of the article

304. During the country visit officials explained that the provisions on pecuniary penalty orders (Part III of the Proceeds of Crime Act) could be used to obtain value-based confiscation orders in the case of transformed or converted proceeds, intermingled proceeds, and income or other benefits derived from criminal proceeds.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

305. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 10 (1) b of the Prevention and Combating of Corruption Act (2007)

Section 8 (4) of the Prevention and Combating of Corruption Act (2007)

Section 8 (5) of the Prevention and Combating of Corruption Act (2007)

Section 8(6) of the Prevention and Combating of Corruption Act (2007)

Section 42 of the Prevention and Combating of Corruption Act (2007)

Section 58(5) of the Proceeds of Crime Act

Section 63A of the Proceeds of Crime Act

Section 16 of the Public Procurement Act

Section 31 of the Banking and Financial Institutions Act

(b) Observations on the implementation of the article

306. Officials at the PCCB confirmed that a court order is not necessary for the PCCB to investigate and have access to bank records.

307. During the country visit it was further confirmed that the FIU could obtain bank records at the request of law enforcement authorities. Officials reported that the existing framework is working well.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

308. Tanzania indicated that it has implemented the provision and cited the following measures.

Sections 27 and 26 of the Prevention and Combating of Corruption Act

(b) Observations on the implementation of the article

309. This provision is legislatively implemented, although officials did not provide any examples of implementation.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

310. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 41, Tanzania Prevention and Combating of Corruption Act (2007)

Section 16, Proceeds of Crime Act

Section 43(3), Proceeds of Crime Act.

(b) Observations on the implementation of the article

311. This provision is legislatively implemented, although officials did not provide any examples of implementation.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

312. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 52, The Economic and Organized Crime Control Act 1984

Section 51, Tanzania Prevention and Combating of Corruption Act (2007)

Section 52(1), Tanzania Prevention and Combating of Corruption Act (2007)

313. Tanzania indicated that witnesses are reluctant to testify in practice and want assurances from the prosecution of personal safety. Some witnesses do not testify or turn hostile.

314. Tanzania has no witness protection programme. However, to encourage witnesses, witness fees are paid by the PCCB.

315. Tanzania indicated that awareness raising is needed to encourage increased cooperation. Witness relocation programmes are also needed.

(b) Observations on the implementation of the article

316. During the country visit Tanzanian officials reported that no practical measures are in place on the ground or could be taken to protect witnesses and experts who testify in criminal proceedings beyond the sections of the PCCA referred to above. It is noted in this regard that the scope of the protection offered to witnesses in Section 51 of the PCCA is non-disclosure of their identity. Section 52(2) of the PCCA is limited to persons who make complaints to the PCCB only.

317. However, during the country visit officials explained that in practice a variety of measures were taken to protect witnesses and others, especially during court processes, including ‘in camera’ hearings and separate proceedings or court rooms. Nonetheless, officials also reported that many witnesses failed to come to court.

318. During the country visit, officials from the PCCB reported two reprisal cases – one against a whistleblower and one against a witness. The first involved a public official in the Singida region in Tanzania, who had filed a complaint reporting wrongdoing and was terminated. In the case, the Director-General of the PCCB sent a letter notifying the responsible institution that the termination was in violation of Section 52 of the PCCA and gave the employer one month to reinstate the official. In the second case, a witness who was harassed by the police filed a complaint with the Inspector General of Police to take administration action against the officer, who was subsequently demoted.

319. Officials reported that they were considering enhanced protections for reporting persons, witnesses and victims. The reviewers recommend extending the existing protections: 1) to cover all categories of UNCAC persons (not just those reporting to PCCB) and 2) to the periods before, during and after proceedings; this should be a priority area to be explored by all criminal justice institutions. Two additional measures recommended by the reviewers were to:

- Sensitize officials as to what protections are available; and
- Consider conducting regular, formal witness vulnerability assessments, building on best practices in other countries.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

320. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 52, The Economic and Organised Crime Control Act 1984

Section 51, Tanzania Prevention and Combating of Corruption Act (2007)

321. Tanzania indicated that, despite the fact that provisions regarding the protection of witnesses exist, there are no measures providing for the relocation or non-disclosure/limitations on the disclosure of the identity and whereabouts of witnesses and experts.

322. Tanzania indicated that resources to protect witnesses and experts are limited. Witness relocation cannot be afforded.

(b) Observations on the implementation of the article

323. The observations under paragraph 1 of the article are repeated.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

324. Tanzania reported that the Written Laws Amendments Act allows for testimony to be taken by videoconference, which can be sent to a requesting State, and vice versa.

325. There have been no cases where testimony was taken by video conference in Tanzania. In one case, evidence was taken from three witnesses in Italy, which was admissible in court in Tanzania.

(b) Observations on the implementation of the article

326. Apart from video conferencing, it was explained during the country visit that other judicial measures can be taken, such as in camera hearings and separate proceedings or court rooms.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

327. Tanzania indicated that it has partially implemented the provision and cited Section 52(1-4) of the PCCA. There have been no cases where witnesses were relocated.

(b) Observations on the implementation of the article

328. Neither the cited provision nor Section 51 of the PCCA, which allows for “reasonable protection, compensation and assistance by the Government,” seem to address relocation agreements. It appears that no such agreements are in place.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

329. Tanzania indicated that it has not implemented the provision.

(b) Observations on the implementation of the article

330. It was explained during the country visit that no measures had been taken to protect victims.

331. The observations under paragraph 1 of this article are reiterated with respect to victims. Tanzania should ensure that the measures discussed above (including physical protection, anonymity and other measures) are applied equally to victims.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

332. Tanzania has cited the following measures.
Article 13 (6) (a) of the Constitution
Section 195 (2) of the Criminal Procedure Act

(b) Observations on the implementation of the article

333. The cited provisions seem to have limited applicability to the provision under review and no examples of implementation were provided.

334. It is recommended that Tanzania adopt appropriate measures to assure victims of corruption the opportunity to present their views during criminal proceedings.

(c) Challenges related to article 32

335. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Limited resources for implementation (e.g. human/financial/other): Witness relocation and protection measures are expensive.

(d) Technical assistance needs related to article 32

336. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned: There is limited experience with witness protection programmes.
2. Capacity-building programmes for authorities responsible for establishing and managing witness and expert protection programmes: Limited resources for witness protection programmes.
3. Other assistance: Technical assistance in reforming relevant laws and experience from jurisdictions which have implemented this article are necessary; financial assistance to facilitate the implementation of the article would be useful.

None of these forms of technical assistance has been provided to Tanzania to date.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

337. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 52(2), Tanzania Prevention and Combating of Corruption Act (2007)

Section 7, Criminal Procedure Code

338. Tanzania indicated that whistleblower legislation is needed and that efforts were underway to enact such legislation.

339. Public officials have a duty to report corruption, but protections are limited to Section 52 of the PCCA.

(b) Observations on the implementation of the article

340. During the country visit, officials reported that Section 51 of the PCCA could be applied to protect informers. It was further reported that these limited provisions in the PCCA have led to some resistance to enacting a stand-alone whistleblower protection law. It is anticipated that the protections afforded in any such legislation would be broader than the existing measures.
341. In light of the limited protection afforded in the PCCA, the reviewers would welcome more extensive legislation that does not duplicate existing measures and recommend that such legislation should expand to witnesses, experts and victims, in addition to whistleblowers. The reviewers further recommend that Tanzania should consider mechanisms to enable complaints to be made and for the review of such complaints. Consideration should also be given to the scope of covered offences in any such legislation.
342. No accurate statistics are available, though it was explained that PCCB intervened on behalf of whistleblowers in almost 20 cases. While some have succeeded, some are still being pursued. Reference is also made to the two case examples cited under article 32(1) of UNCAC above.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

343. Tanzania indicated that it has partially implemented the provision and cited the following measures.
- Section 41(1) of the PCCA
 - Section 41(2) of the PCCA
 - Section 42(1) of the PCCA
 - Section 4(2) of the PCCA
 - Section 43(1) of the PCCA
 - Section 43(2) of the PCCA
 - Section 43(3) of the PCCA
 - Section 57, Public Procurement Regulatory Act
 - Section 62 of the Public Procurement Act, 2011
 - Section 65 of the Public Procurement Act, 2011
 - Sections 83-87 of the Public Procurement Act, 2011.
344. Tanzania indicated that a system of blacklisting companies convicted of corruption exists. Once a company is found to have been involved in corruption under Section 57 of the Public Procurement Act No. 21 of 2004, the company will be blacklisted and debarred from further tenders. Examples of the following cases of companies blacklisted were provided:
- Oxford University Press East Africa Limited;

- Oxford University Press Tanzania Limited;
- China Communications Construction Company Limited; and
- China Geo-Engineering Corporation.

(b) Observations on the implementation of the article

345. The UNCAC provision seems to be implemented.

(c) Successes and good practices

346. The reviewers positively noted the blacklisting system and suggested that Tanzania could consider strengthening the system by adopting a monitoring mechanism to ensure that the PCCB and other law enforcement institutions consistently refer the outcomes of criminal cases to licensing and other appropriate authorities for relevant action.

347. The reviewers were of the view that such a monitoring and reporting system would also partly reduce the risk of impunity for companies created by the current practice of pursuing individuals and not companies, as discussed above under UNCAC article 26.

348. The measures referred to in this article should be considered in light of the reforms under consideration to adopt a non-conviction based forfeiture system, as they are equally applicable in cases where a conviction is not obtained.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

349. Tanzania indicated that it had not implemented the provision.

(b) Observations on the implementation of the article

350. No further information was provided during the country visit. This provision has not been implemented.

(c) Challenges related to article 35

351. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other): There is limited awareness of the civil protections available to victims.

(d) Technical assistance needs related to article 35

352. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned: Awareness raising.

None of these forms of technical assistance has been provided to Tanzania to date.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

353. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 5, Tanzania Prevention and Combating of Corruption Act (2007)

Section 7, Tanzania Prevention and Combating of Corruption Act (2007)

354. The Bureau has operational independence in the execution of its mandate of investigation of corruption cases under Section 5(2) of the PCCA. However, to prosecute offenders of corruption the consent must be obtained from the DPP as per Section 57 of the PCCA.

355. The PCCB's mandate is defined in Section 7 of the PCCA and allows the Bureau to:

- a. Examine and advise the practices and procedures of public, parastatal and private organizations, in order to facilitate the detection of the corruption or prevent corruption and secure the revision of the methods of the work or procedure which appear to add to the efficiency and transparency of the institution concerned;
- b. Advise public, private and parastatal bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public, private and parastatal bodies compatible with the effective performance of their duties, which the Bureau considers necessary to reduce the incidences of corrupt practices;
- c. Cooperate and collaborate with international institutions, agencies or organizations in the fight against corruption;
- d. Investigate and, subject to the directions of the Director of Public Prosecutions, prosecute offences under this Act and other offences involving corruption: and
- e. Investigate any alleged or suspected offence under this Act.

356. In the endeavor to combat corruption, the PCCB adopts the three-prong approach of prevention, public awareness, investigation and prosecution of offenders. There are four directorates in the PCCB, namely the Directorate of Investigation responsible for

detecting, investigating and prosecuting corruption offenders; the Directorate of Research, Control and Statistics responsible for prevention of corruption in public and private sectors; the Directorate of Community Education responsible for involving the community in fighting corruption; and the Directorate of Administration and Human Resources which supports the other three directorates. At the time of the review, the PCCB had 24 regional offices and a district office in every district in mainland Tanzania.

357. As described below, the PCCB has its own independent scheme of service in recruitment and training of its staff, in accordance with Section 6(3) of the PCCA.

358. With regard to information on how staff is selected and trained, Tanzania cited Section 6(3) of the Prevention and Combating of Corruption Act 2007, which provides for the mandate and that the Bureau has to recruit its own staff. Further, the Bureau has its own scheme of service which caters to both recruitment and training. The scheme of service specifies the procedure on how its staff are selected:

Recruitment process:

The number of staff to be recruited needs the approval of the Public Service Management Office, which has the overall function of the Government establishment. Identified staff needs and the request for approval are then submitted to the Commissioner for budget for funds allocation, because the Ministry of Finance has the overall responsibility to plan and budget for each government financial year. Upon receiving the approval, the recruitment process starts by advertisement, short listing, formation of a recruitment committee, interview, vetting, selection and training.

Training Programmes:

- i) Basic Investigation Course (3 months)
- ii) Intermediate Investigation Course (2 months)
- iii) Senior Investigation Course (1 month)
- iv) Command Investigation Course (2 weeks)
- v) Executives Management Course (2 weeks)

(b) Observations on the implementation of the article

359. It was explained by officials that currently the Director-General of the PCCB has no security of tenure and that there is no vetting of the Director-General by parliament; the position is a Presidential appointment and reporting is to the President. The officials further explained that Tanzania wanted to adhere to the “Jakarta Principles” which are aimed at ensuring the independence of anti-corruption bodies. To achieve this adherence the PCCA would need to be amended to include more specific articles in respect of the appointment, removal and specific term of the Director-General and other senior executives.

360. The reviewers agree that Tanzania should seek to strengthen the independence of the PCCB and suggested considering whether it is appropriate to create a ‘constitutional anchor’ for the PCCB during the ongoing constitutional review process.

361. While it is positively noted that PCCB’s Code of Conduct is enforceable and an internal control unit is established in the PCCB, the reviewers recommend that broader

internal control mechanisms and enforcement of the PCCB Code of Conduct be strengthened.

362. The Office of the Director Public Prosecutions (DPP) in Tanzania is mandated to prosecute or grant authority to prosecute all corruption cases, except those that fall under Section 15 of the PCCA. The Office of the DPP is also tasked with establishing an asset recovery agency. The independence of the DPP is guaranteed under Article 30(3) of the Constitution and under the National Prosecution Services Act. While administratively the DPP falls under the Office of the Attorney General, the DPP acts independently when deciding to prosecute.
363. Officials explained that the DPP was less well-resourced than some other agencies tasked with combating corruption. The reviewers recommended that careful consideration be given to the needs of the DPP when the comprehensive needs assessment referred to in the introduction is undertaken.
364. During the country visit, the police reported strong cooperation with other criminal justice agencies. They advised that that generally the police investigates alleged corruption involving any of its 43,000 members. The Internal Disciplinary tribunal which operates on a 'balance of probabilities' level of proof dismissed 35 members of the police force in 2012. The police officers met during the country visit advised that internal police corruption could be referred to the PCCB but was normally dealt with internally. The police proactively identify corruption in their ranks through integrity testing.
365. Tanzania police officials advised that Investigation Guidelines were due to be gazetted and they believed that these guidelines would help improve inter-agency coordination.
366. While not a law enforcement agency per se, the Financial Intelligence Unit (FIU) was established under Section 4 of the Anti-Money Laundering Act of 2006 (AMLA) to combat money laundering and the financing of terrorism. It is an extra-ministerial department under the Ministry of Finance. The FIU came into operation in September 2007. The head of the FIU is a Commissioner who is appointed by the President of Tanzania. The FIU is primarily responsible for receiving suspicious transaction reports from reporting persons in relation to suspected money laundering and terrorist financing activities, analyzing and disseminating intelligence to appropriate law enforcement agencies for investigation and further action and conducting related activities. The FIU implements the Zanzibari anti-money laundering legislation, as well as that of the mainland Tanzania.
367. While the FIU is still a new institution, it already executes requests from law enforcement agencies for information, and to date it has executed at least one request from the PCCB.
368. Officials explained that while the Tanzanian FIU has applied to be a member of the Egmont Group of Financial Intelligence Units, it has established relationships with FIUs in other jurisdictions though staff exchanges.
369. The FIU has already trained 14 law enforcement agencies (including the PCCB) and 56 reporting entities in 2012, including all banks, and has issued reporting guidelines, including on how reporting entities should deal with Politically Exposed Persons. The

next stage of evolution for the FIU will be development of a cash transaction reporting regime.

370. The reviewers encourage Tanzania to make adequate resources available to enable each of the-above referenced institutions to fulfill their role in combating corruption.

371. The reviewers further recommend that as part of the comprehensive needs assessment referred to in the introduction, financial investigation capacity should be a priority and other institutions should be further empowered to make full use of the suspicious transaction reports and cash transaction reports referred by the FIU.

372. During the country visit, the judiciary itself and other officials explained that a specialist anti-corruption unit within the judiciary would improve the outcome of anti-corruption cases and address a backlog of cases. The reviewers recommend that Tanzania consider establishing a specialist anti-corruption court or unit within the judiciary. The reviewers noted that the scope of this specialist capacity could also extend to other complex financial cases.

373. The FIU provided the following statistics of Suspicious Transaction Reports (STRs) received and referred to law enforcement authorities for further investigation.

Suspicious Transaction Reports (STR) Received by the FIU				
Financial Year	2009/10	2010/11	2011/12	2012/13
No. of STRs	11	15	20	37

STRs Disseminated to Law Enforcement Agencies (LEA)				
Financial Year	2009/10	2010/11	2011/12	2012/13
LEA				
Police	11	14	17	11
Prevention and Combating of Corruption Bureau (PCCB)		1		3
Tanzania Revenue Authority (TRA)			1	3
Drugs Control Commission (DCC)				1
National Counter Terrorism Centre (NCTC)				2
Bank of Tanzania (BOT)				1

(c) Successes and good practices

374. The reviewers positively noted the following practices:

- The extensive consultations undertaken to develop the third National Anti-Corruption and Action Plan (NACSAP III). The reviewers encourage the early adoption of NACSAP III.
- The PCCB offices throughout the country, including presence in all districts and prosecutors operating in all 26 regions.

- The use by the PCCB of a lawyer or prosecutor as case controller for all investigative teams to ensure that legal advice is obtained at an early stage of the investigative process.
- The targets which the PCCB sets itself for the number of grand and petty corruption cases.
- Extensive training programmes available for investigators and other staff, including PCCB's internal 3-month recruitment training and the probationary period for new recruits, as well as 3-month advanced training. Reference is made to the observations in the introduction regarding a comprehensive training needs assessment in this regard.
- Police-instituted welfare reforms, including, inter alia, housing, health insurance and electricity allowances.

(d) Challenges related to article 36

375. Tanzania has identified the following challenges and issues in fully implementing the provision under review.

1. Competing priorities: Reforms are needed to make sure that there exists security of tenure for the head of the PCCB. The current law does not provide for security of tenure nor is it anchored in the Constitution.
2. Limited resources for implementation (e.g. human/financial): In respect of financial independence, efforts are needed to make sure that there is enough budgeting and fund allocation to enable the PCCB to execute its mandated functions without any delay. There is a need to allocate a certain percentage of the total Government budget to the budget of the Bureau.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

376. Tanzania has partially implemented the provision. It has cited the following measures.
Section 51(3), Tanzania Prevention and Combating of Corruption Act (2007)
Section 39, Tanzania Prevention and Combating of Corruption Act (2007)

377. Tanzania indicated that the provisions above cover persons who have not participated in the commission of the offence but rather have knowledge of the commission of the offence. Tanzania further referred to Section 52(1-4) of the Prevention and Combating of Corruption Act (2007) as providing for the protection of persons who provide substantial cooperation, though the reviewers noted in this regard that Section 52 (entitled "Protection of witnesses, experts and victims") does not specifically address cooperating defendants. Tanzania also referred to ongoing efforts to enact a whistleblower law. The Tanzania

Police force further noted that the possibility of mitigated punishment is only available at the court's discretion to cooperators before they have participated in the criminal act, not afterwards.

(b) Observations on the implementation of the article

378. During the country visit, the DPP indicated support for a plea bargaining system. The DPP advised that at the moment the measures available were that the DPP can choose to drop the charges and the court can choose to take cooperation into account during sentencing.

379. Several measures are in place to implement the provision, and steps are being taken by Tanzania to enhance existing measures.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

380. Tanzania indicated that it has partially implemented the provision. According to the Tanzania Police Force, the possibility of mitigating punishment of an accused person who provides substantial cooperation in an investigation is at the discretion of the court before the person has participated in the criminal act.

381. Tanzania indicated that there is a need for a reform in the legal framework in Tanzania to have a provision for plea bargaining.

(b) Observations on the implementation of the article

382. During the country visit no case examples where mitigated punishment was given under these circumstances were provided.

383. During the country visit, Tanzanian officials expressed interest in exploring a plea bargaining scheme. Officials also commented that sentencing for corruption cases varied significantly. Reviewers observed that it would be useful for Tanzania to explore the feasibility of a plea bargaining scheme. Reviewers also observed that Tanzania may wish to consider whether it is appropriate to develop sentencing guidelines for judges in relation to corruption offences to promote greater consistency and predictability.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person

who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

384. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 45, Tanzania Prevention and Combating of Corruption Act (2007)

Section 51, Tanzania Prevention and Combating of Corruption Act (2007)

(b) Observations on the implementation of the article

385. This provision has been legislatively implemented, although no examples of implementation were provided. The observations on plea bargaining above are referred to.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

386. Tanzania indicated that it has not implemented the provision. Tanzania reported that efforts are being made to enact whistleblower legislation. It is expected that there will be a provision that grants immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with the Convention.

(b) Observations on the implementation of the article

387. During the country visit, officials reported that no practical measures are in place on the ground or could be taken to protect witnesses and experts or indeed, cooperating defendants who testify in criminal proceedings. The scope of the protection offered to witnesses in Section 51 of the PCCA is non-disclosure of their identity. Section 52(2) of the PCCA is limited to the person who makes a complaint to the PCCB only.

388. Officials reported that they were considering enhanced protection for whistleblowers, witnesses and victims, and that these protections could also be extended to cooperating defendants. The reviewers reiterate the observations and recommendations made under articles 32 and 33 of UNCAC also in the context of cooperating defendants or informers. Specifically, they recommend extending the protections to cooperating defendants: 1) to apply to all cooperating defendants (not just those who are informants to the PCCB); 2) to cover all periods of the criminal proceeding; and 3) to sensitize officials as to what protections are available.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

389. Tanzania indicated that it has not implemented the provision. In order to ensure the implementation of the provision under review, bilateral arrangements between Tanzania and other countries are needed.

390. Tanzania indicated that it has not made any efforts to date to implement the provision under review.

(b) Observations on the implementation of the article

391. Officials advised that this provision has not been implemented. The reviewers recommended that if Tanzania considers relocation for witnesses it should also consider relocation for cooperating defendants.

(c) Challenges related to article 37

392. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Specificities in its legal system: Whistleblower legislation is needed
2. Competing priorities: The absence of whistleblower legislation was noted as a challenge to securing the cooperation of accused persons and participants in criminal activity.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

393. Tanzania has cited the following measure.
Section 45, Tanzania Prevention and Combating of Corruption Act (2007)
Section 11(3), Tanzania Prevention and Combating of Corruption Act (2007)

394. Tanzania indicated that corruption reports can be made anonymously to PCCB. In addition, under General Standing Orders of the Tanzania Police Force, police officers must report information of corrupt transactions within the Police. Under the Singida Declaration, which establishes a Zero Tolerance against corruption in the Police Force, any police officer who reports a bribe is eligible, once the bribery investigation is confirmed, to be paid one half of the amount of the bribe up to 10 million shillings as a reward. Rewards have been paid in recent years.

395. As a condition to receiving public funds from the Treasury, every ministry, department and agency (MDA) must have an anti-corruption strategy to sensitize public officials to corruption issues. The Tanzania Police Force reported that each public agency has an anti-corruption desk, and public officials employed in the agency must report corruption to the Chief Secretary of the agency, who in turn reports the incident to PCCB.

396. In a corruption case involving the Ministry of Education, the Director of Personnel cooperated with the PCCB and was permitted to share information and attend meetings during working hours. In a case involving the Tanzania Revenue Authority, a public servant reported a corruption incident to PCCB and the matter was referred to the Public Service Commission.

(b) Observations on the implementation of the article

397. Officials explained that coordination between agencies remains a challenge despite practical measures to facilitate cooperation, such as the National Criminal Justice Forum (launched by the government in December 2009 to facilitate collaboration between law enforcement organizations), joint investigations, joint meetings (including among PCCB, the Police Force, the Revenue Authority and the Customs Authority) and joint trainings (e.g., between PCCB and the FIU) comprising representatives of all relevant institutions. In addition, agencies are required to submit quarterly reports to the Public Service Commission and periodically to the Good Governance Coordination Unit.

398. Officials further advised that the PCCB, under Sections 4 and 7 of the PCCA and under NACSAP II (the completed National Anti-Corruption Strategy and Action Plan Phase II), trains public servants on ethics infrastructure and corruption issues. The National Anti-Corruption Strategy and Sectoral Action Plan is intended to guide policy makers, legislators, judicial officers and implementers. NACSAP II also aimed at encouraging strategic partnership between the Government and the private sector, civil society, the media and development partners in combating corruption and enhancing good governance in Tanzania. Under the Plan, seminars and workshop are carried out on how different stakeholders can work together in order to combat corruption in different areas of public services. It has further established Integrity Committees at all levels in the public sector and Government.

399. It is recommended that the PCCB should be informed of all investigations undertaken by the police into corruption by its officers.

400. The reviewers recommend that Tanzania further strengthen coordination by developing guidelines and memoranda of understanding to clarify the respective agencies' roles and develop mechanisms for information sharing, in order to strengthen coordination

at the operational levels. For instance, such agreements and procedures could clarify how the FIU transfers information to law enforcement agencies and outline how the DPP can play a coordinating role in information sharing. As previously recommended, the sharing of information on ongoing investigations will reduce the risk of parallel investigations. Statistics from the FIU on the number of STRs referred to law enforcement authorities for further investigation are included under UNCAC article 36 above.

401. Reviewers observed that Tanzania could also consider other measures to promote inter-agency cooperation and relationships such as secondments and multi-agency taskforces on corruption.

(c) Successes and good practices

402. The requirement that every ministry, department and agency (MDA) must have an anti-corruption strategy to sensitize public officials to corruption issues as a condition to receiving public funds from the Treasury was considered a good practice. The requirement that every MDA has an ethics committee was also positively noted.

(d) Challenges related to article 38

403. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Competing priorities: Effective measures to ensure the cooperation of public officials in corruption investigations and prosecutions are lacking due to the absence of whistleblower legislation.

404. Reviewers observed that it was important to take a holistic view of anti-corruption policy and ensure that all agencies involved in anti-corruption efforts in Tanzania are adequately resourced. For example, anti-corruption efforts will be compromised at the prosecution stage if prosecutors or the judiciary are not adequately resourced.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

405. Tanzania has cited the following measures.

Section 46, Tanzania Prevention and Combating Corruption Act (2007)

Section 39, Tanzania Prevention and Combating of Corruption Act (2007)

406. The Tanzania Police Force conducts outreach, seminars and workshops to members of Parliament, the press, and religious and community leaders on criminal issues, including corruption. Tanzanian officials and civil society advised reviewers during the country visit

that both the FIU and PCCB also undertake significant work to raise public awareness of corruption issues.

(b) Observations on the implementation of the article

407. As highlighted above, officials explained that the majority of corruption cases brought involved public officials and that there were very few cases of private sector bribery. It is recommended that an enhanced outreach programme to the private sector be undertaken to encourage increased reporting on bribery and corruption cases.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

408. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 52(2), Tanzania Prevention and Combating of Corruption Act (2007)

Section 39, Tanzania Prevention and Combating of Corruption Act (2007)

Section 7 (1) (a) of the Criminal Procedure Act

409. During the country visit, officials advised that under Section 39 of the PCCA, all members of the public in Tanzania have a duty to report corruption if they become aware of the commission of an offence or the intention to commit an offence.

(b) Observations on the implementation of the article

410. The same observations made under articles 32 and 33 above are relevant here, to encourage the reporting of corruption cases.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

411. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 8(5)-(6), Tanzania Prevention and Combating of Corruption Act (2007)

Section 12, Tanzania Prevention and Combating of Corruption Act (2007)

Section 21, Anti-Money Laundering Act

Section 48, Banking and Financial Institution Act

(b) Observations on the implementation of the article

412. Officials explained that Section 8(5) (b) (i-iii) of the PCCA grants the Director-General powers to obtain bank records without a court order. They further explained that there were no difficulties in obtaining bank and financial records.
413. This article is implemented and appears to be working in practice.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

414. Tanzania indicated that it has not implemented the provision.

(b) Observations on the implementation of the article

415. During the country visit, members of the judiciary advised that previous sentences in another jurisdiction may be considered but this consideration would be on a case-by-case basis.

(c) Challenges related to article 41

416. Tanzania has identified the following challenges and issues in fully implementing the article under review:
1. Specificities in its legal system
 2. Limited capacity (e.g. human/technological/institution/other): There seems to be some misunderstanding by officials as to what this provision of UNCAC provides for and as to the potential use of foreign criminal records in relevant cases.

(d) Technical assistance needs related to article 41

417. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. Summary of good practices/lessons learned
 2. Model legislation
 3. Legislative drafting
 4. Legal advice
 5. On-site assistance by a relevant expert

No technical assistance has been provided to Tanzania regarding the use of foreign criminal records to date.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

418. Tanzania has cited the following measures.

Section 6, Penal Code
Section 2 of the PCCA

(b) Observations on the implementation of the article

419. Officials explained that the Anti-Money Laundering Act and the Proceeds of Crime Act apply to both mainland Tanzania and Zanzibar, whereas the other anti-corruption legislation is not applicable in Zanzibar.

420. It is recommended that Tanzania adopt measures to extend jurisdiction over UNCAC offences to all territories of Tanzania, including Zanzibar.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

421. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 6, Penal Code
Section 2 of the PCCA

(b) Observations on the implementation of the article

422. The article appears to be legislatively implemented in part.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

423. Tanzania has cited the following measures.

Section 6, Penal Code
Section 2 of the PCCA

(b) Observations on the implementation of the article

424. During the country visit, it was explained that a link to Tanzania or a Tanzanian interest would need to be established to pursue PCCA cases, and that this could encompass the passive nationality principle. It was also explained that Section 2 of the PCCA was to be read in conjunction Section 6 of the Penal Code. Reviewers observed that, if the jurisdiction provision in the PCCA was read in accordance with the Penal Code, there was a degree of ambiguity on the face of the legislation as to whether it applies in relation to corruption offences committed against Tanzanian nationals. The reviewers suggested that Tanzania may wish to review its legislation in relation to jurisdiction and consider whether any amendments are necessary to resolve such potential ambiguities.

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

425. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 6, Penal Code
Section 2 of the PCCA.

(b) Observations on the implementation of the article

426. During the country visit, it was explained that a link to Tanzania or a Tanzanian interest would need to be established to pursue PCCA cases, and that this could encompass the active nationality principle. Officials further explained that Section 6 of the Penal Code should be read in conjunction with Section 2(B) of the PCCA. Accordingly, this article is legislatively implemented.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

427. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 2 (2) of the PCCA

428. Although the PCCA extends its jurisdiction to outside Tanzania, Section 2 of the Anti-Money Laundering Act provides that the Act regulating the fight against money laundering shall apply to mainland Tanzania as well as to Tanzania-Zanzibar only, and not outside Tanzania.

(b) Observations on the implementation of the article

429. The PCCA does not seem to be relevant to this provision. However, relevant measures are found in the Anti-Money Laundering Act.

430. The provision under review does not seem to be fully implemented. Although it is not a mandatory provision of the Convention, Tanzania should consider extending its jurisdiction under all relevant legislation to cover participatory acts committed outside Tanzania and Zanzibar.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

431. Tanzania indicated that it has partially implemented the provision and cited the Mahalu case, where an offence against Tanzanian property outside of Tanzania is being tried within Tanzania.

(b) Observations on the implementation of the article

432. The reviewers noted that it was unclear whether the Mahalu case was evidence of the implementation of the provision under review. No further information was provided during the country visit.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

433. Tanzania can extradite its own nationals. Tanzania would extradite its nationals to a country with which it has an agreement upon application from that country.

(b) Observations on the implementation of the article

434. On the face of the legislation and based on the information provided to reviewers, jurisdiction would be established if a Tanzanian national was not extradited in all relevant cases where conduct would amount to an offence under the PCCA, the Penal Code, the Anti-Money Laundering Act and the Proceeds of Crime Act.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

435. Tanzania has cited the following measures.
Section 6, Penal Code
Section 2 of the PCCA

(b) Observations on the implementation of the article

436. Based on the information available, jurisdiction would be established for offences under the PCCA but not for offences under the Penal Code, Anti-Money Laundering Act or the Proceeds of Crime Act. The reviewers recommend that Tanzania consider extending its jurisdiction under all relevant legislation.

437. The reviewers also recommend that Tanzania establish effective legislative provisions to allow it to prosecute persons in lieu of extradition where extradition has been refused for any reason.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

438. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 54 of the PCCA
Section 55 of the PCCA

(b) Observations on the implementation of the article

439. The DPP explained that Tanzania has developed relationships with the United Kingdom's Serious Fraud Office and the United States Department of Justice, which facilitate information sharing and would, in general, allow for spontaneous information sharing.

440. The FIU has shared information on its own initiative with other jurisdictions, and the PCCB can do so under the PCCA. The police also can share information spontaneously in the context of direct law enforcement channels, as described further under article 48 of UNCAC below.

441. The reviewers were of the view that the cited provisions, on the face of the legislation, do not appear to be relevant to the implementation of the provision. Tanzania may wish to legislatively clarify the matter.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

442. Tanzania indicated that it has not adopted any grounds of criminal jurisdiction other than those described above.

(b) Observations on the implementation of the article

443. The reviewers' observations relating to jurisdiction over UNCAC offences are included above.

Chapter IV. International cooperation

General observations

444. Officials advised reviewers during the country visit that bilateral and multilateral treaties are self-executing and can be applied directly once gazetted for both extradition and mutual legal assistance (MLA). Once gazetted treaties therefore have the force of law. However, there was contradictory information provided to reviewers as to whether multilateral treaties such as UNCAC could be used as the basis for extradition and mutual legal assistance. It was also not clear to reviewers how Tanzania's legislation interacted with treaty obligations if a treaty obligation is incompatible with a legislative provision.
445. Requests for extradition and MLA are received through diplomatic channels and transferred from the Ministry of Foreign Affairs to the central authority, the Attorney General's Office. It was explained by the DPP during the country visit that the process for handling requests is slightly different for extradition and MLA.
446. For extradition, the Attorney General engages the DPP who reviews incoming requests to verify that core requirements such as dual criminality are satisfied, that the request comes from an extradition country and that the offence is extraditable and does not qualify as a political offence. While dual criminality is strictly applied by Tanzania, it was explained that the DPP considers the case as a whole in determining whether extradition can be granted. If the necessary conditions are met, the DPP files an application with the court and the suspect is notified. Extradition hearings are held based on a prima facie standard and the suspect can raise objections on several grounds. After the hearing a court order is issued to execute or refuse the extradition request. The suspect can launch an appeal within 14 days. More streamlined procedures are available under separate procedures outlined in the Extradition Act for the reciprocal backing of warrants and the surrender of fugitive criminals. The Attorney General may designate certain countries under these provisions, and such decisions are gazetted. No further information was available during the country visit on the application of these provisions in practice.
447. For MLA, the Attorney General may execute requests directly or send them to executing agencies, or to the DPP. If the DPP is involved, the same process is followed as for extradition. It was explained during the country visit that incoming requests must contain enough information to ensure that there is a legally justifiable basis for the request and the necessary conditions for granting MLA are met.
448. The Extradition Act is applicable in both mainland Tanzania and in Zanzibar. No further information was available as to the application of international crime cooperation laws and treaties to Zanzibar.
449. A review of bilateral and multilateral international crime cooperation treaties was not possible in the context of the review. Although it was explained that Tanzania does not require a treaty basis for rendering extradition or MLA but can proceed on the basis of reciprocity and by proclamation, it is recommended that Tanzania undertake a full review of existing crime cooperation treaties for MLA, extradition and the transfer of prisoners to ensure compliance with UNCAC.

450. Because Tanzania follows a list-based approach to recognizing offences under the Extradition Act, there is a need to ensure flexibility to add new and emerging crimes to amend the legislation as necessary. It is also not clear that all UNCAC offences such as money laundering and obstruction of justice are adequately captured by the definition of extradition crimes under the Extradition Act.
451. As a general matter, the reviewing States note that it was difficult to assess in detail Tanzania's practice of granting extradition and MLA in corruption cases, due to the limited availability of information and samples of bilateral treaties, the absence of data on requests made to Tanzania and any requests that Tanzania has refused, and, more generally, the absence of a specific system for collecting data. It is recommended that Tanzania adapt its information system to allow it to collect data on the origin of extradition and MLA requests, the timeframe for executing these requests, and the response provided, including the offences involved and any grounds for refusal.
452. The reviewers strongly encourage the Tanzanian Attorney General's Office, as the central authority for international cooperation, to develop guidelines for MLA and extradition and to describe modalities of how it accepts and processes requests and what the requirements are. In this respect, Tanzanian officials indicated that it may be difficult to enact or apply such guidelines absent a similar undertaking from the counterpart State that it would follow similar procedures, but that Tanzania would be comfortable using universal guidelines for mutual legal assistance.

Article 44 Extradition

General observations

453. Tanzania has entered into a number of bilateral extradition treaties, although no information was available from the Attorney General's office with regard to the number of treaties that Tanzania has concluded to date on extradition.
454. The reviewing experts note that Tanzania is a member of the Commonwealth of Nations. Officials reported that Tanzania can also use the London Scheme for Extradition within the Commonwealth (the London Scheme) as an arrangement of non-treaty status for extradition with Commonwealth countries.
455. As noted in the introduction to chapter IV, a detailed assessment of Tanzania's practice of granting extradition in corruption cases was not possible, due to the limited availability of information and the absence of data on requests made to Tanzania and any requests that Tanzania has refused. It is recommended that Tanzania adapt its information system in this regard, as noted above. It is also recommended that Tanzania endeavor to ensure that there are information systems in place to allow relevant officials timely access to information on Tanzania's extradition and MLA processes. An awareness raising or training program may also be of assistance in this regard.

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

456. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 6, Extradition Act

Section 8, Extradition Act

Section 55, Prevention and Combating of Corruption Act

457. The Extradition Act is applicable in mainland Tanzania and in Zanzibar. Extradition may be granted to States with which Tanzania has an extradition treaty in place. Dual criminality is required for extradition. As a result, extradition would be limited to the extent that not all offences established under the Convention have been criminalized. Tanzania has entered into a number of bilateral extradition treaties, although no information was available from the Attorney General's office with regard to the number of treaties that Tanzania has concluded to date on extradition. No requests for extradition have been received since 2007 in corruption cases, though extradition has been granted by Tanzania in non-corruption cases. Tanzania has also made requests for extradition to other States, one of which is currently pending with Burundi.

(b) Observations on the implementation of the article

458. Extradition is available for offences listed in the schedule of extradition crimes.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

459. Tanzania indicated that it has not implemented the provision. Dual criminality is required for extradition.

(b) Observations on the implementation of the article

460. Dual criminality is strictly applied by Tanzania for extradition.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of

imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

461. Tanzania indicated that it has not received such a request. However, under these circumstances, Tanzania would grant the request only for those offences that are criminal offences under Tanzania's law and would return the other matters to the requesting State.

(b) Observations on the implementation of the article

462. In assessing an extradition request, Tanzania considers whether the offence is extraditable and dual criminality is satisfied, but does not focus on the period of imprisonment. Because Tanzania takes a list approach to extradition, it would grant extradition only for those offences included in a request that satisfy dual criminality and return the others.

463. Tanzania has not implemented this non-mandatory provision.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

464. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 3, Extradition Act
Schedule 1, Extradition Act
Section 5(2), Extradition Act

465. Tanzania's treaties generally provide for extradition of all cases that are punishable in Tanzania with the exception of national security matters and political offences. Tanzania has an extradition treaty with the United States of America, which came into force on 24 June 1935. In this treaty, apart from the offence of bribery, defined as the offer, giving or receiving of bribes, none of the UNCAC offences are included.

Bilateral Extradition Treaty Tanzania (The treaty applicable to Tanzania was originally signed with the United Kingdom)

Extradition

December 22, 1931, Date-Signed

June 24, 1935, Date-In-Force

Article 3 Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
 2. Manslaughter.
 3. Administering drugs or using instruments with intent to procure the miscarriage of women.
 4. Rape.
 5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age.
 6. Indecent assault if such crime or offence be indictable in the place where the accused or convicted person is apprehended.
 7. Kidnapping or false imprisonment.
 8. Child stealing, including abandoning, exposing or unlawfully detaining.
 9. Abduction.
 10. Procuration: that is to say the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person provided that such crime or offence is punishable by imprisonment for at least one year or by more severe punishment.
 11. Bigamy.
 12. Maliciously wounding or inflicting grievous bodily harm.
 13. Threats, by letter or otherwise, with intent to extort money or other things of value.
 14. Perjury, or subornation of perjury.
 15. Arson.
 16. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
 17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
 18. Obtaining money, valuable security, or goods, by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
 19. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
(b) Knowingly and without lawful authority making or having in possession any instrument, tool, or engine adapted and intended for the counterfeiting of coin.
 20. Forgery, or uttering what is forged.
 21. Crimes or offences against bankruptcy law.
 22. Bribery, defined to be the offering, giving or receiving of bribes.
 23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
 24. Crimes or offences or attempted crimes or offences in connection with the traffic in dangerous drugs.
 25. Malicious injury to property, if such crime or offence be indictable.
 26. (a) Piracy by the law of nations.
(b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.
 27. Dealing in slaves.
466. Tanzania indicated that a request received from Burundi in a non-corruption case was refused by Tanzania as the conduct was deemed a political offence.

467. Tanzania indicated that, because the death penalty is in place in Tanzania, other States will not always extradite criminals to Tanzania. The inadequacy of existing normative measures (laws and treaties) is cited as a challenge, as described further below under challenges related to article 44.

(b) Observations on the implementation of the article

468. While a full review of all treaties was not possible, from the sample provided it appears that not all UNCAC offences are uniformly covered in Tanzania's treaties. As noted above, Tanzania should undertake a full review of all treaties to ensure compliance with UNCAC and the coverage of all UNCAC offences.

469. Where a request relates to a political offence, this is a discretionary ground for refusal under the Extradition Act. During the country visit, officials explained that offences such as money laundering and terrorism clearly do not qualify as political offences, though there were no laws, guidelines, or other measures in place to define the scope of what constitutes a political offence. Concerning UNCAC offences, it was explained that these in practice would not be regarded as political offences, although no evidence of any measures in this regard in law or practice were provided to the reviewers.

470. In the context of the full implement of the provision, it is recommended that a clear delineation of political offences in the legislation and treaties be adopted. Tanzania should ensure a consistent application of the political offence exception and take steps to explicitly exclude UNCAC offences from being considered political offences.

471. As noted above, the Tanzanian Attorney General's Office, as the central authority for international cooperation, is encouraged to develop guidelines for MLA and extradition and to describe modalities of how it accepts and processes requests and what the requirements are.

472. In one case that was described to the reviewers, a request from Burundi was denied on the grounds that the underlying offence was deemed to be a political offence (treason).

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

473. Tanzania makes extradition conditional on the existence of a treaty.

474. During the country visit, Tanzanian officials indicated that the Convention has not been considered as the legal basis for extradition in respect to any corruption-related offences. However, Tanzania separately also advised reviewers that, in theory, there was

no legal impediment to the Convention forming the basis for an extradition relationship between a State Party and Tanzania in the absence of any other extradition relationship. The use of UNCAC as a basis for extradition had not been tested in practice.

475. As described below under challenges related to article 44, Tanzania has expressed an interest in exploring ways to use the Convention as a legal basis for extradition, to address the issue that requests from Tanzania to States with which no treaties are in place cannot be made.

(b) Observations on the implementation of the article

476. During the country visit officials confirmed that bilateral and multilateral treaties like UNCAC can be applied directly. A case example on MLA was given (reported under paragraph 1 of article 46 of UNCAC below). The reviewers welcome indications that Tanzania would like to explore ways to use the Convention as a legal basis for extradition.

477. However, reviewers are concerned about the potentially contradictory information as to whether multilateral treaties such as UNCAC could be used as the basis for extradition and mutual legal assistance. Reviewers recommend that Tanzania, as a matter of priority, undertake a full and comprehensive review of the extradition scheme to ensure that Tanzania's legislation and treaties implement Tanzania's obligations under UNCAC. Reviewers also recommend that this review consider whether multilateral treaties, such as UNCAC, can form a legal basis for accepting an extradition request from another State Party to the treaty.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

478. Tanzania has not made the requisite notification to the United Nations.

479. Tanzania indicated that it has not considered this Convention as the legal basis for extradition in respect to corruption-related offences.

480. Tanzania has entered into a number of bilateral extradition treaties, although no information was available from the Attorney General's office with regard to the number of treaties that Tanzania has concluded to date on extradition. Moreover, no information was available from the Attorney General's office regarding cases in which such treaties were applied.

(b) Observations on the implementation of the article

481. The observations made above regarding Tanzania's existing treaties and application of UNCAC are repeated.

482. Tanzania is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

483. Tanzania indicated that it has not implemented the provision. Tanzanian officials informed the reviewers that Tanzania makes extradition conditional on the existence of a treaty.

(b) Observations on the implementation of the article

484. While a treaty is required for extradition, the Extradition Act would apply to requests from non-treaty countries. Tanzanian officials informed reviewers that in theory, UNCAC could form the basis for an extradition request in the absence of a bilateral treaty relationship. However, Tanzanian officials also provided reviewers with potentially contradictory information as to whether or not multilateral treaties such as UNCAC could be used as the basis for extradition. Reviewers recommend that Tanzania, as a matter of priority, undertake a review of extradition law and policy (including existing treaties) to ensure that Tanzania's extradition scheme complies with obligations under UNCAC. Reviewers also recommend that Tanzania implement an awareness raising scheme among relevant officials responsible for extradition matters to ensure a common understanding of Tanzania's extradition law and practice.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

485. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 3, Extradition Act
Section 5(2) Extradition Act,
Section 15

486. Tanzania indicated that there is generally no minimum penalty requirement in the Extradition Act or treaties for Tanzania to grant extradition. However, the Act and treaties specify grounds for refusal (as described below).

487. Tanzania also indicated that the request in the Burundi case described above was refused because the offence was deemed a political offence. No others exist to the knowledge of officials in the AGO.

(b) Observations on the implementation of the article

488. While there are no minimum penalty requirements under the Extradition Act, Tanzanian officials advised during the country visit that a variety of factors can be taken into account as grounds for refusal and that the DPP considers the case as a whole in determining whether extradition can be granted. It was not possible for reviewers to assess Tanzania's approach to minimum penalty thresholds in treaties as part of this review.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

489. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 19, Extradition Act
Section 25, Extradition Act
Section 13, Extradition Act
Section 6(3) and (4), Extradition Act

490. Tanzania indicated that the amendment allowing extradition to be granted on the basis of a provisional arrest warrant was only issued in June 2011 and there have been no cases yet. On the grounds of simplified evidentiary requirements, proof of the offence having been committed in a requesting State is not needed but only affidavit of the requesting officer. This expedites the court proceeding. Reviewers were not able to review the operation of these new provisions as part of the review. Reviewers were also unable to confirm the countries from which requests for provisional arrest could be received and actioned by Tanzania.

(b) Observations on the implementation of the article

491. The judiciary confirmed during the country visit that a *prima facie* case must exist before an extradition order can be issued.
492. Moreover, separate procedures are outlined in the Extradition Act for the reciprocal backing of warrants and the surrender of fugitive criminals, though no information was available from the authorities as to whether these are applied in practice.
493. The provision appears to be legislatively implemented, though its application in practice could not be confirmed.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

494. Tanzania indicated that it has partially implemented the provision and cited the following measure.
Section 6(1), Extradition Act

495. Tanzania indicated that there have been no cases to date in corruption matters.

(b) Observations on the implementation of the article

496. While provisional arrest is not addressed in Extradition Act, Tanzanian officials explained that they can conduct provisional arrests in cases of flight risk. Moreover, the judiciary confirmed that an arrest order can be issued once an extradition request is received. Reviewers observed that the situation described by Tanzanian officials did not refer to 'provisional arrest' where a person is arrested prior to the receipt of a formal extradition request. Reviewers recommend that Tanzania consider the issue of provisional arrest as part of any review of Tanzania's extradition scheme.

497. Although a review of existing extradition treaties was not possible, Tanzania may wish to include relevant provisions in the Extradition Act to address the arrest or provisional arrest of persons whose extradition is sought.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is

one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

498. Tanzania indicated that it has not implemented the provision.

499. Tanzania indicated that it can extradite its own nationals. In connection with the bombing of the US Embassy in Tanzania in 1998, a Tanzanian citizen was extradited to the United States.

(b) Observations on the implementation of the article

500. While Tanzania has extradited its citizens in the past, Tanzanian officials advised that Tanzania could refuse extradition on the grounds of nationality under the Extradition Act. However, reviewers note that there is no explicit ground for refusing extradition on the basis of nationality in the Extradition Act.

501. The obligation to submit a case for prosecution where extradition of a national is refused is not addressed in the Extradition Act. However, on the face of the legislation provided to reviewers, Tanzanian courts would have jurisdiction under these circumstances if the person wanted for extradition is a Tanzanian national or the offence has a territorial link to Tanzania.

502. Tanzanian officials reported that they would extradite a person to a country where the death penalty could be applied.

503. Reviewers recommend that Tanzania adopt the necessary measures to enable Tanzania to prosecute a person for UNCAC offences in situations where it is not possible to surrender the person to the requesting country. Tanzania is also encouraged to adopt measures to ensure that in these circumstances, authorities submit the case for prosecution in a timely manner.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

504. Tanzania indicated that it has not implemented the provision. Conditional extradition of nationals is not recognized, as Tanzania can and does extradite its citizens.

(b) Observations on the implementation of the article

505. Tanzania does not refuse extradition on the basis on nationality. Therefore, Tanzania's legislation does not allow for conditional extradition. .

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

506. Tanzania indicated that it has not implemented the provision. Tanzania would not refuse extradition for purposes of enforcing a sentence on the ground that the person sought is a Tanzanian citizen.

(b) Observations on the implementation of the article

507. No evidence of the implementation of this provision was provided. Tanzania is encouraged to monitor the application of this provision in future cases, should extradition be refused on the grounds of nationality.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

508. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 16(3), Extradition Act

Section 5(2), Extradition Act

Section 17, Extradition Act

509. Tanzania reported that the right to fair treatment is included in the Extradition Act and in Tanzania's extradition treaties. There have been no cases where this issue came up, apart from the Burundi case referred to above.

(b) Observations on the implementation of the article

510. Tanzanian officials explained that the full set of criminal protections would be applied in extradition proceedings, including constitutional protections, as well as the right to appeal extradition decisions and the right to be represented by counsel.

511. It was explained during the country visit that the issue of fair treatment has not been invoked in any recent extradition cases.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

512. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 16(3), Extradition Act

513. There have been no cases where the issue of non-discrimination came up, apart from the Burundi case referred to above.

(b) Observations on the implementation of the article

514. Relevant measures are also found in Tanzania's extradition treaties. However, the reviewers were not able to consider these treaties as part of the review.

515. Tanzanian officials explained that the issue of non-discrimination has not been invoked in any recent extradition cases. The Burundi case cited above is referred to as an example where Tanzania has refused extradition as the conduct was deemed to be a political offence (treason).

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

516. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Schedule [Section 27(1)] of the Extradition Act

517. Under the Schedule, a list of extradition crimes is provided to include some crimes which are also fiscal and therefore extraditable.

518. Tanzania indicated that there have been no examples of extradition involving fiscal matters.

(b) Observations on the implementation of the article

519. It was explained during the country visit that Tanzania would not refuse extradition on the grounds that the underlying offence involves fiscal matters. Reference is made to the observations under articles 40 and 31(7). There appear to be no difficulties for Tanzania to extradite a person where the underlying offence involves fiscal matters.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

520. Tanzania indicated that it has partially implemented the provision. Tanzania indicated that it does not consult with the requesting State before the court refusal of the extradition request.

521. With regards to examples of implementation or recent cases, Tanzania specified that no information was available from the judiciary or the Attorney General's Office on the matter.

(b) Observations on the implementation of the article

522. While the matter is not addressed in the Extradition Act, no information was available from Tanzanian authorities as to whether consultations would be held in practice before refusing extradition.

523. Reviewers recommend that Tanzania provide for consultations to be held with the requesting country throughout the extradition proceedings, as appropriate, and in particular before refusing extradition. It may be useful for Tanzania to also adopt relevant guidelines in this regard.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

524. Tanzania indicated that it has partially implemented the provision. Tanzania has entered into a number of bilateral extradition treaties, although no information was available from the Attorney General's office with regard to the number of treaties that Tanzania has concluded to date on extradition.

525. Tanzania specified that no information was readily available with regard to examples of implementation including related court or other cases.

(b) Observations on the implementation of the article

526. Tanzanian officials informed reviewers that Tanzania, in theory, recognizes the Convention as a legal basis for extradition and also uses bilateral extradition treaties. Reviewers note, however, there was potentially contradictory information provided on this point. Reviewers recommend that Tanzania, as a matter of priority, conduct a review of the extradition scheme to ensure full compliance with UNCAC obligations.

(c) Challenges related to article 44

527. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (constitution, laws, regulations, etc.): There are no issues involving requests received by Tanzania. Because the death penalty is in place in Tanzania, other States will not always extradite criminals to Tanzania. Another issue is that requests from Tanzania to States with which no treaties are in place cannot be made. Tanzania would like to explore ways to use the Convention as a legal basis for extradition.

528. In the context of the needs assessment referred to in the introduction, it is recommended that capacity building programmes be held for relevant authorities to ensure a fuller understanding of Tanzania's extradition laws and treaties and to address the identified deficiencies with a view to developing or enhancing the existing legal and administrative measures, including to assess whether legislative revisions are necessary.

529. In context of the needs assessment, Tanzania is encouraged to develop relevant administrative guidelines to enhance its extradition practice.

(d) Technical assistance needs related to article 44

530. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Capacity-building programmes for authorities responsible for international cooperation in criminal matters: There is a need for training and capacity building for the AG's office.

Tanzania has received such technical assistance previously during conferences conducted by UNODC in Nairobi on organized crime and extradition.

531. Tanzania indicated that the extension and/or expansion of such assistance would help it to adopt the measures described in the article under review.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

532. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 3, Transfer of Prisoners Act 2004

Section 26, Mutual Assistance in Criminal Matters 1991

533. No information was readily available on examples of implementation.

(b) Observations on the implementation of the article

534. The UNCAC obligation is satisfied although no examples of implementation were provided.

Article 46 Mutual legal assistance

535. As noted in the introduction to chapter IV, a detailed assessment of Tanzania's practice of granting MLA in corruption cases was not possible, due to the limited availability of information and the absence of data on requests made to Tanzania and any requests that Tanzania has refused. It is recommended that Tanzania adapt its information system in this regard, as noted above.

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

536. Tanzania indicated that it has partially implemented the provision. The Mutual Assistance in Criminal Matters Act 1991 provides for mutual legal assistance between Tanzania, Commonwealth countries and other foreign countries, to facilitate the provision and obtaining of such assistance by Tanzania, and provides for matters related to or incidental to mutual assistance in criminal matters. Section 3 of the Act allows for mutual legal assistance to be rendered where a country is proclaimed under the Act on the basis of reciprocity or on a unilateral basis.

537. Tanzania has entered into several bilateral MLA treaties, although no information was available from the Attorney General's office with regard to the number of such treaties that Tanzania has concluded to date.

538. Tanzania indicated that no information was readily available from the relevant authorities on examples of implementation of mutual legal assistance. One case is referred to under paragraph 10 of UNCAC article 46 below.

(b) Observations on the implementation of the article

539. Tanzania reported that it has had experience in using the Convention as a legal basis for MLA in an outgoing request and cited the case **Republic v. Median Boastice Mwale**, Criminal Case No. 330 of 2011 in the Resident Magistrates Court of Arusha, in which an outgoing request for MLA based partly on the Convention was made to the United States of America. This request was partly executed by the US authorities at the time of the review.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

540. Tanzania grants mutual legal assistance for requests involving legal persons so long as dual criminality is satisfied. Dual criminality is a discretionary ground for refusing assistance; however, in practice it is treated as a mandatory requirement. There have been requests for mutual legal assistance by and to the United States involving companies registered in Tanzania suspected of having engaged in corruption and related offences.

(b) Observations on the implementation of the article

541. It was explained during the country visit that dual criminality could be more flexibly applied for MLA than for extradition. Moreover, Tanzania recognizes the criminal liability of legal persons. Nonetheless, the provision of mutual legal assistance would be limited to the extent that not all offences established under the Convention have been criminalized.

542. The reviewing experts are satisfied with the answer provided. There appear to be no issues rendering MLA in cases involving legal persons.

Article 46 Mutual legal assistance

Subparagraphs 3 (a) to (i)

3. *Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) *Taking evidence or statements from persons;*
- (b) *Effecting service of judicial documents;*
- (c) *Executing searches and seizures, and freezing;*
- (d) *Examining objects and sites;*
- (e) *Providing information, evidentiary items and expert evaluations;*
- (f) *Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) *Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) *Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) *Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

543. Tanzania indicated that it has partially implemented the provision and cited the following measures.

- Section 4, Mutual Assistance in Criminal Matters 1991
- Section 11, Mutual Assistance in Criminal Matters Act 1991
- Section 13(1), Mutual Assistance in Criminal Matters Act 1991
- Section 24(2), Mutual Assistance in Criminal Matters Act 1991
- Section 25(2), Mutual Assistance in Criminal Matters Act 1991
- Section 35(2), Mutual Assistance in Criminal Matters Act 1991

544. Tanzanian officials indicated that assistance is frequently rendered by Tanzania in all of these categories both under the Act and under the mutual legal assistance treaties, which generally provide the same purposes.

(b) Observations on the implementation of the article

545. Relevant measures to implement the provision under review are in place in Tanzania, although no examples of implementation were provided.

546. Reviewers note that it was not possible to assess Tanzania's mutual assistance treaties as part of this review.

Article 46 Mutual legal assistance

Subparagraphs 3 (j) and (k)

3. *Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (j) *Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) *The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

547. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 4, Mutual Assistance in Criminal Matters Act 1991

Sections 30-34, Mutual Assistance in Criminal Matters Act 1991

Section 35(2), Mutual Assistance in Criminal Matters Act 1991

548. Tanzania indicated that there have been no cases to date where it has rendered mutual legal assistance in an asset recovery case.

(b) Observations on the implementation of the article

549. Relevant measures are in place in Tanzania to implement the provision under review. While there could be issues in providing non-conviction based asset confiscation, no requests related to proceeds of crime have been received.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

550. Tanzania indicated that information has been exchanged *sua sponte* by law enforcement (ie, Tanzania police force) and through INTERPOL in the form of direct law enforcement communication, but not by the AG's office to another central authority.

(b) Observations on the implementation of the article

551. During the country visit it was clarified that the DPP has a relationship with the UK Serious Fraud Office (SFO) and the US Department of Justice (DOJ) and could share information spontaneously through these contacts. The FIU has shared information spontaneously and PCCB could do so under the PCCA. The police could also share information in the context of the police-to-police channels described under UNCAC article 48.

552. The provision appears to be implemented though few examples were available.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use.

However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

553. Tanzania indicated that it has not implemented the provision.

(b) Observations on the implementation of the article

554. No information was available from Tanzanian authorities as to whether the conditions described would be honored or whether Tanzania would require the disclosure of exculpatory information.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

555. Tanzania does not refuse mutual legal assistance requests on the grounds of bank secrecy. There have been no cases to date.

(b) Observations on the implementation of the article

556. It was explained during the country visit that MLA requests for bank and financial records would be treated in the same way as domestic requests. Reference is made to the observations under Chapter III of this report. The provision has been legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 9

(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

557. A request for mutual legal assistance may be refused under the Mutual Legal Assistance Act (Section 6(2)(a) and (b)) if the underlying conduct was not recognized as a criminal offence in Tanzania. There have been no cases where assistance was rendered in cases involving conduct not criminalized in Tanzania.

558. Tanzania indicated that it would render assistance in cases where the conduct is not recognized as a criminal offence in Tanzania and the assistance is non-coercive on an informal police-to-police or agency-to-agency basis. There have been no such cases to date.

559. Other than as described, dual criminality is generally required for Tanzania to provide mutual legal assistance in criminal cases.

(b) Observations on the implementation of the article

560. During the country visit, the DPP reported that assistance in a criminal matter had never been refused by Tanzania. The absence of dual criminality is a permissive ground for refusal of requests under the Act, and Tanzanian authorities explained that they take a conduct-based approach in considering whether dual criminality is satisfied in looking at the underlying conduct rather than the description of the offence.

561. It was reported that no requests have been received where dual criminality was not satisfied. Based on the information provided, the provision appears to be implemented.

Article 46 Mutual legal assistance

Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

562. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 14, Mutual Assistance in Criminal Matters Act 1991

Section 15, Mutual Assistance in Criminal Matters Act 1991

Section 24(1), Mutual Assistance in Criminal Matters Act

563. With regard to examples of implementation, Tanzania cited a case in which a prisoner was transferred from Tanzania to testify in Rwanda in a genocide case.

(b) Observations on the implementation of the article

564. The provision seems to be implemented.

Article 46 Mutual legal assistance

Paragraph 11

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

565. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 14(3), Mutual Assistance in Criminal Matters Act 1991

Section 15, Mutual Assistance in Criminal Matters Act 1991

Section 16, Mutual Assistance in Criminal Matters Act 1991

Section 21, Mutual Assistance in Criminal Matters Act 1991

Section 24(3), Mutual Assistance in Criminal Matters Act 1991

Section 25(3), Mutual Assistance in Criminal Matters Act 1991

Section 26, Mutual Assistance in Criminal Matters Act 1991

566. Tanzania indicated that these procedures were applied in the above-mentioned case upon the return of the prisoner to Tanzania.

(b) Observations on the implementation of the article

567. The conditions described are adequately addressed in the cited provisions of the Mutual Assistance in Criminal Matters Act, though no case examples were provided. The provision appears to be legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

568. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 17, Mutual Assistance in Criminal Matters Act 1991

Section 19, Mutual Assistance in Criminal Matters Act 1991

Section 24(3), Mutual Assistance in Criminal Matters Act 1991

Section 25(3), Mutual Assistance in Criminal Matters Act 1991

569. Tanzania referred to the same case where a prisoner was transferred from Tanzania to testify in Rwanda in a genocide case.

(b) Observations on the implementation of the article

570. The measures under review are addressed in the cited provisions. No further information was available regarding case examples, but it appears that Tanzania would apply these measures in practice.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

571. Tanzania reported that its central authority as described above is the Attorney General. Tanzania indicated that no information was readily available by the relevant authorities on the country's efforts to implement the provision under review

572. Tanzania has not notified the Secretary-General as prescribed above.

573. Tanzania does not allow that requests for mutual legal assistance and any related communications be transmitted to its designated central authorities but requires that such requests and related communications are addressed to it through diplomatic channels. However, Tanzania agrees that, in urgent circumstances, requests for mutual legal assistance and related communications should be addressed to it through INTERPOL.

(b) Observations on the implementation of the article

574. Tanzania's central authority under the Mutual Assistance in Criminal Matters Act is the Attorney General, and the process for handling MLA requests is described in the introduction to this Chapter.

575. Because a meeting with the central authority was not possible during the country visit, the assessment of the implementation of article 46 is based on conversations with the DPP. Based on those observations, including the difficulties Tanzania described in receiving assistance from other countries, it would be useful for the Attorney General's Office to consider referring to international guidance and practice manuals on international cooperation, such as UNODC's 2012 Manual on Mutual Legal Assistance and Extradition¹, UNODC's 2012 Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime² and the guidance issued under the Harare Scheme and by other regional and international organizations, to enhance Tanzania's MLA practice.

576. As described above, the Tanzanian Attorney General's Office, as the central authority for international cooperation, is encouraged to develop guidelines for MLA and extradition and to describe modalities of how it accepts and processes requests and what the requirements are.

577. Tanzania has not made the requisite notification of its central authority to the United Nations. Tanzania is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

¹ http://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf

² http://www.unodc.org/documents/organized-crime/Publications/Confiscation_Manual_Ebook_E.pdf

(a) Summary of information relevant to reviewing the implementation of the article

578. Tanzania indicated that it has not implemented the provision. Tanzania has not notified the Secretary-General of the United Nations as prescribed above.

(b) Observations on the implementation of the article

579. The DPP confirmed during the country visit that oral requests confirmed in writing are acceptable.

580. Tanzania has not made the requisite notification to the United Nations. Tanzania is encouraged to send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

581. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 9, Mutual Assistance in Criminal Matters Act 1991

582. Tanzania indicated that there is nothing inconsistent in its mutual legal assistance treaties.

(b) Observations on the implementation of the article

583. While Tanzania's treaties could not be reviewed and no examples of implementation were given, the provision is legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

584. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 6, Mutual Assistance in Criminal Matters Act 1991

Section 9(2)(d)-(f), Mutual Assistance in Criminal Matters Act 1991

Section 11(6), Mutual Assistance in Criminal Matters Act 1991

585. Tanzania indicated that it will execute mutual legal assistance requests in accordance with its laws and the procedures in the request that do not violate Tanzania's laws.

(b) Observations on the implementation of the article

586. The provision appears to be legislatively implemented although no case examples were provided where Tanzania was able to satisfy a requesting country's wishes as to procedures or timeframes to be followed.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

587. Tanzania has cited the following measure.
Section 40, Written Laws Amendments Act

588. The Written Laws Amendments Act allows for testimony to be taken by videoconference, which can be sent to a requesting State, and vice versa.

589. There have been no cases where testimony was taken by videoconference in Tanzania. In one case, evidence was taken from three witnesses in Italy, which was admissible in court in Tanzania.

(b) Observations on the implementation of the article

590. Tanzania informed the reviewers that the Written Laws Amendment Act covers the collection and admissibility of electronic and other evidence, but does not address the possibility of conducting criminal proceedings by video or audio conference.

591. The cited case confirms that Tanzania is able to receive video testimony from a foreign jurisdiction. However, nothing in the cited measures addresses the ability of Tanzania to conduct hearings by videoconference. Officials during the country visit confirmed that there have been no instances where Tanzania has conducted hearings by videoconference.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

592. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 17, Mutual Assistance in Criminal Matters Act 1991

Section 19, Mutual Assistance in Criminal Matters Act 1991

Section 24(3), Mutual Assistance in Criminal Matters Act 1991

Section 25(3), Mutual Assistance in Criminal Matters Act 1991

593. In practice, Tanzania has not used such information for any other purpose than specified in the request.

(b) Observations on the implementation of the article

594. The cited measures were deemed not relevant to the provision under review, which addresses the rule of specialty and limitation concerning the use of information received. The provision does not appear to be implemented, and Tanzania is encouraged to adopt relevant measures in its Mutual Assistance in Criminal Matters Act and apply them in practice.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the

requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

595. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 9, Mutual Assistance in Criminal Matters Act 1991

596. As a matter of procedure, mutual legal assistance requests are kept confidential by Tanzania and requests contain a request for confidentiality. In exceptional circumstances, there may be an obligation to disclose this information, such as if the request involves public documents or a court orders disclosure.

(b) Observations on the implementation of the article

597. It appears that Tanzania would consider and adhere to confidentiality requests, though no examples were given and there are no provisions under the Mutual Assistance in Criminal Matters Act that would preclude the disclosure of the existence or contents of a request.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

598. Tanzania has cited the following measures.

Section 6, Mutual Assistance in Criminal Matters Act 1991

Section 9(2)(i), Mutual Assistance in Criminal Matters Act 1991

599. Tanzania reported that there is nothing contrary in the existing treaties. To the knowledge of officials in the AG's office, Tanzania has never denied a mutual legal assistance request.

(b) Observations on the implementation of the article

600. Tanzania recognizes both mandatory and discretionary grounds for refusal and reported that it has never refused MLA. The provision appears to be implemented, though a review of Tanzania's treaties was not possible.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

601. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 6, Mutual Assistance in Criminal Matters Act 1991

Section 4, Written Laws (Miscellaneous Amendments) Act 2006

602. The list of exclusions in Section 6 of the Mutual Assistance in Criminal Matters Act 1991 does not include fiscal matters. Also, pursuant to Section 4 of the Written Laws (Miscellaneous Amendments) Act 2006, fiscal offences are included as "serious offences" for purposes of the Proceeds of Crime Act.

603. Tanzania indicated that mutual legal assistance has not been declined on the ground that the request involved fiscal matters.

(b) Observations on the implementation of the article

604. The provision appears to be implemented, though no case examples were cited.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

605. Though not required under the Mutual Assistance in Criminal Matters Act, reasons would be given as a matter of practice for refusal of mutual legal assistance.

(b) Observations on the implementation of the article

606. Since there have been no refusals to date where Tanzania would have applied the measures described in the provision under review in practice, and because there is no law on the issue, Tanzania may wish to administratively address the requirement that it provide reasons before refusing assistance and to ensure that this is done in practice.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

607. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 9, Mutual Assistance in Criminal Matters Act 1991

608. Tanzania indicated that it will make all reasonable efforts to respond quickly and provide timely updates to the requesting State.

609. With regard to information on the customary length of time between receiving requests for mutual legal assistance and responding to them, Tanzania indicated that the average time for responding to mutual legal assistance requests in corruption and other criminal cases is 3-6 months.

(b) Observations on the implementation of the article

610. It appears that Tanzania would consider a request to adhere to specific timeframes, though it is not required to do so under the Mutual Assistance in Criminal Matters Act.

611. No further information as to Tanzania's practice of responding to status updates was provided. As part of its implementing procedures, Tanzania may wish to revisit this provision in the future to ensure that it is able to execute requests in a timely manner and to provide updates on the status of open requests.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

612. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 6(2), Mutual Assistance in Criminal Matters Act 1991

613. Tanzania indicated that there have been no cases to date.

(b) Observations on the implementation of the article

614. The existence of an ongoing investigation or proceeding is a discretionary ground for refusing, but not postponing, assistance under the Mutual Assistance in Criminal Matters Act. No case examples were cited. It is recommended that Tanzania monitor the application of this provision and to consider a legislative amendment to provide for postponement rather than refusal of MLA under these circumstances.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

615. Tanzania indicated that it has not implemented the provision.

616. Tanzania indicated that this situation has not arisen in practice but related provisions are included in Tanzania's treaties, and Tanzania would consult with the requesting State before refusing or postponing a request.

(b) Observations on the implementation of the article

617. The provision under review is not implemented. Tanzania is encouraged to adopt relevant measures in the Mutual Assistance in Criminal Matters Act and guidelines and to amend its international cooperation practice to give effect to this provision.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

618. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 17, Mutual Assistance in Criminal Matters Act 1991
Section 18, Mutual Assistance in Criminal Matters Act 1991
Section 19, Mutual Assistance in Criminal Matters Act 1991
Section 24(3), Mutual Assistance in Criminal Matters Act 1991
Section 25(3), Mutual Assistance in Criminal Matters Act 1991

619. Tanzania indicated that there have been no cases to date.

(b) Observations on the implementation of the article

620. The Mutual Assistance in Criminal Matters Act does not address the transfer of persons who are not in custody for purposes of providing testimony or evidence, and no case examples were cited. No information was available from the authorities as to whether Tanzania could or would be precluded from transferring such persons upon their consent.

621. Tanzania is encouraged to monitor this provision and to adopt relevant measures in its law and practice to ensure that the protections described in the provision under review are applied.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

622. Tanzania indicated that it has partially implemented the provision and cited the following measure.

Section 24(3)(d)(iii), Mutual Assistance in Criminal Matters Act 1991.

623. Tanzania indicated that under Tanzania's treaties, the costs of the mutual legal assistance request are borne by the requested State.

624. Tanzania indicated that cost has not come up as an issue in mutual legal assistance requests.

(b) Observations on the implementation of the article

625. There is no general provision on costs in the Mutual Assistance in Criminal Matters Act. Tanzania might consider clarifying the issue in the Act and relevant guidelines in the context of ongoing reforms to provide greater legal certainty to requesting countries.

Article 46 Mutual legal assistance

Paragraph 29

29. *The requested State Party:*

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

626. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 5, Mutual Legal Assistance in Criminal Matters Act

627. Tanzania indicated that if it received a request for mutual legal assistance involving documents that are publicly available in Tanzania, it would be permitted to disclose the records. There have been cases where Tanzania has provided publicly available documents.

628. Tanzania indicated that there have been no cases involving the provision of documents or records that are not available to the general public.

(b) Observations on the implementation of the article

629. The provision under review seems to be adequately implemented though details were provided and no further information was available as to cases in which Tanzania provided publicly available Government documents.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

630. Tanzania indicated that it has partially implemented the provision and cited the following measures.

631. Tanzania has entered into several bilateral MLA treaties, although no information was available from the Attorney General's office with regard to the number of such treaties that Tanzania has concluded to date.

(b) Observations on the implementation of the article

632. As reported under paragraph 1 of article 46 above, Tanzania has had experience in using the Convention as a legal basis for MLA: **Republic v. Median Boastice Mwale**, Criminal Case No. 330 of 2011 in the Resident Magistrates Court of Arusha.

(c) Challenges related to article 46

633. Tanzania has identified the following challenges and issues in fully implementing the article under review:

1. Limited capacity. There is a limited capacity of personnel in dealing with mutual legal assistance requests.
2. Limited resources for implementation: There are limited resources in dealing with mutual legal assistance requests.
3. Competing priorities: Although the Attorney General's office is generally responsible for handling mutual legal assistance cases, Tanzania indicated that it has not designated a central authority for mutual legal assistance and has not notified the United Nations accordingly.

634. In the context of the needs assessment referred to in the introduction, it is recommended that capacity building programmes be held for relevant authorities to ensure a fuller understanding of Tanzania's MLA laws and treaties and to address the identified deficiencies with a view to developing or enhancing the existing legal and administrative measures, including to assess whether legislative revisions are necessary. It is also recommended that Tanzania, as a matter of priority, undertake an audit of all MLA treaties to ensure they are in compliance with UNCAC.

635. In the context of the needs assessment, Tanzania is encouraged to develop relevant administrative guidelines to enhance its MLA practice.

(d) Technical assistance needs related to article 46

636. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legal advice. A review of the Mutual Legal Assistance in Criminal Matters Act is needed with regard to the paragraphs of article 46 which Tanzania implements as a matter of practice and where procedures are not specified in the Act (eg, 46(9) and 46(21)).
2. Capacity-building programmes for authorities responsible for international cooperation in criminal matters: There is a need for capacity building for mutual legal assistance in transnational crimes. Tanzania should also designate a central authority for mutual legal assistance and notify the United Nations accordingly

Tanzania has received such technical assistance previously from UNODC in the form of seminars.

Tanzania indicated that the extension and/or expansion of such assistance would help Tanzania adopt the measures described in the article under review.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

637. Tanzania indicated that it has partially implemented the article.

638. Tanzania reported that there have been no examples in practice. The law does not provide for transfer of proceedings to another State, but in principle this could be done in appropriate circumstances if the court is satisfied that justice would be rendered in another jurisdiction. Likewise, cases have not been accepted from other jurisdictions, although records of foreign cases could be used in proceedings in Tanzania.

639. Tanzania cited a case in which a request to transfer a case to Kenya was refused because the Government was not satisfied that justice would be rendered in the case.

(b) Observations on the implementation of the article

640. No further information available as to the implementation of this provision in practice.

Article 48 Law enforcement cooperation

Paragraph 1

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

641. Tanzania indicated that it has partially implemented the provision and cited the following measures.

Section 6 (i) of the Anti-Money Laundering Act provides:

Section 54 c of the Prevention and Combating of Corruption Act

Section 4 (2)c of the Prevention and Combating of Corruption Act

Section 4(1) of the Prevention and Combating of Corruption Act.

642. Tanzania cooperates closely with other regional and international law enforcement authorities in the context of INTERPOL.

643. The Financial Intelligence Unit (FIU) is a member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG). The FIU has also applied for membership of the Egmont Group of FIUs and held observer status at the time of the review.

644. Tanzania has not entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States parties. However, the Tanzania Police Force has signed a Memorandum of Understanding (MOU) with the Rwandan police.

645. Tanzanian law enforcement authorities cooperate with other SADC countries through the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) and through the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO).

646. The possibility of law enforcement cooperation through the East African Association of Anti-Corruption Agencies (EAAACA) exists.

647. With regard to examples of implementation, Tanzania cited the following case.

In the case of the bombing of an Ethiopian restaurant in Kampala, Uganda, a suspect was arrested in Tanzania due to information Tanzanian law enforcement authorities received from Uganda, and the person was extradited to Uganda.

648. With regard to the exchange of information in recent cases involving criminal activities, Tanzania cited a case involving the National Bank of Commerce in which

Tanzania provided information *sua sponte* to authorities in Kenya that led to the arrest of a suspect.

649. Tanzania indicated that in a criminal case with Rwanda, information about forged documents and assumed names was exchanged with Rwandan authorities, in response to a request Tanzanian law enforcement received from Rwanda.

650. Regarding the exchange of personnel, the Police Force has a practice of exchanging personnel. Commissioners are posted as liaison officers in Nairobi, Botswana and Harare. No liaison officers from abroad are presently posted in Tanzania.

(b) Observations on the implementation of the article

651. During the country visit, Tanzanian law enforcement authorities reported that they have a preference for using informal bilateral arrangements rather than the formal channels of mutual legal assistance for information exchange and cooperation with their counterparts outside Tanzania.

652. PCCB reported that it has used direct law enforcement cooperation channels and has access to INTERPOL.

653. It appears from the discussions held with Tanzanian officials that direct law enforcement cooperation, through channels such as regional networks and informal communications, proceed relatively effectively in practice.

Article 48 Law enforcement cooperation

Paragraph 2

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

654. The Tanzania Police Force has signed an MOU with the Rwandan police.

655. There has been no experience in using the Convention as a legal basis for law enforcement cooperation with regard to incoming or outgoing requests.

(b) Observations on the implementation of the article

656. Law enforcement officials confirmed during the country visit that nothing in Tanzania's law or bilateral arrangements would preclude the authorities from using UNCAC as a legal basis for law enforcement cooperation and that a request received

under the Convention would be treated in the same way as requests received through any other channel.

657. The provision appears to be adequately implemented.

Article 48 Law enforcement cooperation

Paragraph 3

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

658. Tanzania indicated that it has not implemented the provision.

(b) Observations on the implementation of the article

659. It was explained during the country visit that Tanzanian authorities are not precluded from using special investigative techniques at the international level in the same manner as they are conducted domestically. No examples of implementation were provided.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

660. Tanzania indicated that it has partially implemented the article.

661. Tanzania indicated that there are few examples in corruption cases, but joint investigations were conducted with US authorities (FBI, CIA) in a terrorism case. Joint investigations are more frequent at the regional level. For example, in one case Tanzania authorities conducted a joint money laundering investigation with India involving funds stolen from the Central Bank.

(b) Observations on the implementation of the article

662. Tanzania participates in joint investigations on a case by case basis, though no legal or administrative measures were cited. The example referred to of a joint investigation with the US FBI and CIA in a terrorism case, and another example of a joint investigation with Indian authorities in a money laundering case, are evidence of this.

663. The article appears to be implemented as a matter of practice.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

664. Tanzania indicated that it has partially implemented paragraph 1 of the article and cited the following measure.

Section 40A, Tanzania Evidence Act

665. Although technically admissible under the Evidence Act, Tanzania reported that there are difficulties in practice in admitting evidence from special investigative techniques in court because of judicial discretion and corruption in the judiciary. The judiciary indicated that despite the law, magistrates exercise discretion in applying this law to admit evidence. Capacity building is needed.

666. In one case, a police officer who had conducted an undercover operation testified in Kampala, Uganda after a defendant had been extradited to Uganda, but there were difficulties in admitting the evidence.

667. The police force reported that, in an investigation conducted in Tanzania in 2010 involving a corrupt housing transaction, three witnesses located in Italy were permitted to testify in Italy by videoconference, which was admitted in court in Tanzania.

668. Tanzania indicated that it has not implemented paragraphs 2 through 4 of the article, as it has not concluded bilateral or multilateral agreements or arrangements for using special investigative techniques and has had little experience in applying such techniques at the international level.

669. Although controlled delivery is generally used in drugs cases, often evidence/substances are not admissible.

(b) Observations on the implementation of the article

670. The reviewers were informed by Tanzanian officials that Section 40 of the Written Laws Amendments Act allows for evidence obtained through undercover operations, electronic evidence and audio or video recordings to be admissible in court.

671. Tanzania reported during the country visit that it has the necessary powers to conduct special investigative techniques, though it lacks the necessary equipment.

(c) Challenges related to article 50

672. Tanzania has identified the following challenges and issues in fully implementing the provision under review:

1. Limited capacity (e.g. human/technological/institution/other)

(d) Technical assistance needs related to article 50

673. Tanzania indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques: There is a need for capacity building for investigators on how to use special investigative techniques, to ensure that electronic evidence is admissible in court. Capacity building is also needed for magistrates and the judiciary in applying the law to admit electronic and other evidence derived from special investigative techniques in corruption and other criminal cases.

None of these forms of technical assistance has been provided to Tanzania to date.

Annex 1

PCCB CASE STATISTICS FROM JANUARY-2013 TO AUGUST-2013																																			
		GENDE R		TOTAL FILES	JANUARY 2013-AUGUST 2013																									O/L	PCA No. 16/1971 R.E 2002				
		M	F		PCCA No. 11/2007																														
PERIOD	CATEGORY				S.10	S.15	S.16	S.17	S.18	S.20	S.21	S.22	S.23	S.25	S.26	S.27	S.28	S.29	S.30	S.31	S.32	S.33	S.34	S.36	S.37	S.52		S.4	S.5	S.6	S.7	S.10			
JANUARY 2013-AUGUST 2013	Opened files	415	345	760	-	123	-	3	-	5	-	176	-	3	-	1	162	88	112	63	50	-	-	-	-	-	156	-	-	-	-	-			
	Ongoing files	1,712	1,165	2,877	28	1,470	-	22	41	153	-	1,245	91	26	18	85	1,047	1,001	873	678	350	-	-	110		79	1,362	-	-	276	94	73			
	Closed files	81	95	176	-	66	-	-	2	5	-	32	-	-	-	1	34	23	15	12	8	-	-	-	-	-	75	-	-	-	-	-			
	Files sent to DPP	156	112	268	-	2	-	-	-	-	-	238	13	1	-	-	188	156	144	92	81	-	-	23	-	-	295	-	-	22	-	8			
	Files transferred to other agencies	34	28	62	-	3	-	-	-	-	-	13	-	-	-	4	4	5	2	-	-	-	-	-	-	-	16	-	-	-	-	-			
	Disciplinary Action taken	4	6	10	-	-	-	-	-	-	-	6	-	-	-	-	5	-	-	-	4	-	-	-	-	-	10	-	-	-	-	-			
	New cases filed in court	106	118	224	-	68	-	-	-	3	-	85	21	-	-	-	71	58	48	26	20	-	-	2	-	-	124	-	-	6	-	1			
	Ongoing cases	390	262	652	25	389	-	2	-	13	-	382	48	1	-	28	310	256	203	194	105	-	-	23		6	320	-	43	85	-	70			
	Conviction	29	32	61	-	15	-	-	-	-	-	17	-	-	-	-	4	4	-	-	3	-	-	-	-	-	38	-	-	3	-	1			
	Acquittal	28	16	44	-	9	-	-	-	-	-	15	-	-	-	-	5	5	-	-	4	-	-	2	-	-	21	-	-	2	-	1			
	Withdrawn cases	5	2	7	-	3	-	-	-	-	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-			
	Appeals	6	5	11	-	3	-	-	-	-	-	3	-	-	-	-	3	3	4	1	-	-	-	-	-	-	6	-	-	2	-	-			
Viongozi under investigation	92	58	150	-	8	-	-	-	5	-	36	-	-	-	-	22	7	6	23	16	-	-	5	-	-	43	-	-	6	-	3				