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

Executive summary

Note by the Secretariat

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II. Executive summary

Panama

1. Introduction

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

The Republic of Panama ratified the United Nations Convention against Corruption on September 23, 2005, and incorporated it into its own legislation by Law 15 of May 10, 2005, the date on which it came into effect.

Under the Constitution, the power is divided between three separate branches of government: the legislature, executive and judiciary. The functions of the Judicial Power are closely linked with those of the Public Prosecutor's Office and are discharged by the *Procurador General de la Nación*.

Panama has put in place a multifaceted institutional framework to address corruption. The national legal framework against corruption includes provisions from the Constitution, the Criminal Code and the Criminal Procedure Code. It further contains specific legislation such as: the Law on Measures to Prevent of Money Laundering; the Decree on Banking regime; the agreements of the Superintendency of Banks on the improper use of Banking and Trust Services; Codes of Ethics, the bilateral and multilateral treaties adopted to facilitate international cooperation in criminal matters and the laws creating and regulating the institutions described below.

The National Transparency Council against Corruption, advises the Executive in the designing and implementation of policies and actions that promote the fight against corruption, both in the sphere of the education and training, but also through the reception of complaints and the review of administrative management to inform the competent authorities of potential acts of corruption. The Council was replaced by Act 33 of April 25, 2013 by the National Authority for Transparency and Access to Information.

The four Anti-corruption Prosecutor's Offices are in charge of the investigation and prosecution of crimes against the Public Administration or when the patrimony of the State is at stake and a circuit office for minor cases.

The Comptroller's General Office, exercises of supervisory functions, based on the law, the principles of economy, efficiency, effectiveness, equity, quality, transparency in the management and improvement of public funds, and exercises oversight over the funds.

The Accounts Prosecutor Office, is responsible for the investigation of alleged irregularities committed by public officials in the management of entrusted public funds and property that damage the patrimony of the State with the objective to recover the goods or money seized in favour of the State.

The Public Contracts Court is the administrative court that adjudicates on disputes or grievances that may arise during procurement processes.

The Superintendence of Banks is responsible for the supervision and identification of risks of the numerous banking institutions settled in Panama while promoting the stability and competitiveness of the Panamanian Banking system, through the policy “know your client”.

The Financial Intelligence Unit is responsible for the collection and analysis of information related to financial transactions that could be linked to money-laundering offences or the financing of terrorism and therefore, in cooperation with the banking system.

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)

Active and passive bribery of a public official constitute criminal offences and cover a wide array of public officials and a range of conduct that involves performing, omitting or delaying an act in violation of his or her obligations. This is also applicable to those officials working for public institutions that manage funds of a private nature to avoid the existence of a safe haven for these conducts. While Panama punishes the active bribery public foreign official or an official of a public international organization who receives benefits in order to omit or delay performing an act, concept of “directly or indirectly” as prescribed by the Convention is not included in the criminal offence and thus Panama is encouraged to improve its measures to combat foreign bribery. Broad jurisdiction applies both to conduct within Panama, and to conduct by Panamanian citizens, residents overseas.

The Criminal Code conforms to the requirements of UNCAC with regard to trading in influence, which encompasses both acting and refraining from acting by both national public officials and foreign government officials or public officials from international organizations.

Bribery in the private sector has not been criminalized in Panama.

Money-laundering, concealment (articles 23, 24)

Panama’s criminalizes whoever, either personally or through another person, receives, deposits, negotiates, transfers or converts cash, securities, instruments, property or other financial resources, that have been originated from a wide array of predicate offences that include international bribery, qualified fraud, financial offenses, bribery of government officials, illicit enrichment, acts of terrorism, funding of terrorism, in order to conceal or cover up the unlawful origin, or help to evade the legal consequences of said crimes. In addition, those persons who, being aware of its origin, receive or use money or any funds that originate from money-laundering to finance political campaigns shall be sentenced. Laundered funds may be confiscated and forfeited with due consideration for the rights of bona fide third parties.

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

There is no specific offence under the Criminal Code of Panama which fully corresponds to embezzlement of property in the private sector. However, there are

provisions that extend the criminalization of embezzlement of funds to those individuals who administer funds or assets coming from the public sector or private property entrusted in virtue of judicial administration, freezing or seizures or from private companies with State shareholding

Abuse of functions is criminalized, however proving the “undue advantage” is not required by the Criminal Code.

Panama criminalizes unjustified enrichment when a public official who, either personally or through another person, improperly increases his or her wealth with regard to lawful income earned for the discharge of his or her functions and for five years after having stood down from said position. The same applies to the person who covers up any unjustified increase in wealth.

Obstruction of justice (article 25)

The Criminal Code prohibits the obstruction of justice, including the use of force, intimidation or corruption of witnesses, experts, interpreters; inducing false testimony, report, interpretation or translation. The use of physical force, threats or intimidation to an official of the Judicial Power or the Office of the Public Prosecutor in order to prevent them from discharging their official duties is also criminalized.

Liability of legal persons (article 26)

No criminal liability for legal persons is in place. The Criminal Code provides that when a corporate entity is used or established to commit an offense, provided that it benefits from said offense, it shall be subject to a variety of penalties, including the cancelation or suspension of its licence or registration for a maximum of five years, a fine proportional to the loss or benefit of the property, loss of tax incentives, banning from entering into contracts with the State and winding-up of the corporation.

Participation and attempt (article 27)

Criminal Code extends criminal responsibility to aiding and abetting, concealing the proceeds of crime and instigating the commission of an offence, joint commission, commission by proxy, incitement and conspiring to commit an offence. A person who attempts to commit an offence can be punished as if the offence attempted had been committed. Mere preparatory acts are not punishable under Panamanian law.

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

Panama has strong criminal, civil and administrative sanctions in place to address acts of corruption and ensure the presence of the offenders in trial. Courts are obligated to take into account the circumstances of the offence in determining an appropriate sentence. Immunity from criminal responsibility does not extend to most public officials. The *Procuraduría General de la Nación* is responsible for the investigation and prosecution of offences committed by all public officials, the deputies of the *Asamblea Legislativa*, the President and Magistrates of the Supreme Court of Justice for whom the Asamblea is responsible of the investigation and processing of the latter and the lifting of immunities, except in the case of the

deputies whose processing corresponds to the Supreme Court of Justice. With regard to parole, the Criminal Code provides for the possibility of early release after having served three quarters of the sentence provided that prison rules have been followed and there are signs of good behaviour.

Panama encourages the cooperation with law enforcement authorities through a reduction of the sentence by half and conditional suspension of its execution to those offenders who have confessed the crime or disclosed the identity of other perpetrators or accomplices and have provided sufficient evidence for them to be brought to justice. There are no norms regulating immunity from prosecution, but there are plea-bargaining provisions in the four provinces of Panama where the adversarial system is already being implemented (Coclé, Veraguas, Herrera y Los Santos). In 2016, these provisions will be applicable throughout the national territory.

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

Since 2011 the new Criminal Procedure Code has been entering into force gradually in the different judicial districts. The Public Prosecutor's Office shall protect victims of crime throughout all stages of criminal processes and also protect any informants, witnesses and collaborators. These provisions include, inter alia, protection against reprisals, non-disclosure of person's identity, provision of the judicial office as the official address of the witness, concealed appearance in hearings, interrogation through technological means, provision of police protection and safe homes, relocation powers but under no circumstances shall the measures established in this article be to the detriment of the rights of defence and of the principle of contradiction of the accused. Panama does not have a system in place to provide protection to reporting persons.

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

The Panamanian legal system provides for measures enabling the freezing, seizure and confiscation of property, assets or instruments, and income or benefits obtained from the proceeds, associated with offences covered by the UNCAC. The latter include assets that have been intermingled with those derived from a legitimate source. Confiscated assets remain at the disposal of the Department of the Economy and Finance until the case is decided by the competent court. The national legislation provides for the reversal of the burden of proof regarding the lawful origin of the alleged proceeds of money-laundering offences, only in cases of drug trafficking and illicit enrichment. Seizure and confiscation orders are executed without prejudice to the rights of bona fide third parties. Bank secrecy is not an obstacle for the prosecution services to request that bank, financial or commercial records be made available or seized during the course of the investigations.

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

The period of statute of limitations for criminal proceedings is 6 years for offences that entail up to 6 years of imprisonment. For offences that entail more than 6 years of imprisonment the period is extended to a time equal to the maximum prison sentence imposed for that offence. For offences such as embezzlement of funds, illicit enrichment and offences against the property of public entities, the statute of limitations equals the double of the maximum foreseen by the law. The suspension

of the statute of limitations period in the event of crimes against the public administration or crimes against property of public entities committed by a public officials while any of the public officials implicated in the case is still holding public office.

Criminal records are managed through the *Gabinete de Archivo e Identificación Personal*, being the Directorate of Judicial Investigations the body that issues criminal record certifications. The exchange of information on criminal records takes place pursuant to the bilateral and multilateral treaties subscribed by the national authorities.

Jurisdiction (article 42)

With regard to corruption offences criminalized in Panama, jurisdiction is exercised over acts committed wholly or partly within the territory of Panama as well as acts committed by nationals, residents and corporate bodies in other places subject to the jurisdiction of the State (oversees, vessels, aircraft, except for the exceptions established in international treaties and conventions in effect in Panama. In particular, the Panamanian jurisdiction applies when the crime against the national economy and against the public administration has been committed in another country. The money-laundering offence applies to Panama regarding the proceeds or instruments of crime relating to indictable offences committed outside in another country.

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

Panama has remedies in place to address corruption, including criminal, civil and administrative sanctions. Perpetrators of and participants in the commission of a crime are jointly liable for paying any damage and losses caused. Moreover, the termination of criminal action or the sentence shall not exonerate civil liability. In proceedings for crimes against the property of public entities or crimes against public administration that lead to financial losses, the affected organization must act as a party so as to claim indemnity if the existence of a crime is proven and financial compensation has not been paid.

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

Panama has several specialized agencies working in the area of preventing and combating corruption and law enforcement (see above). Provisions to guarantee their investigative and operational independence have been incorporated into their enacting legislation. All individuals and institutions are legally required to report crimes to the law enforcement authorities. Weekly meetings take place among all the security institutions of Panama to ensure due coordination and exchange of information.

2.2. Successes and good practices

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

- Panama has successfully investigated and prosecuted a broad range of corruption offences, some of them included the use of special investigative techniques such as undercover operations and controlled deliveries.

- Successful recovery of large amounts of funds pertaining to stolen assets or proceeds of crime.
- Extension of criminal liability to individuals who facilitate unjustified enrichment of a public official.
- Weekly meetings between the different law enforcement agencies and high ranking officials to ensure due coordination and exchange of information.
- The large number of MoUs signed by the Financial Analysis Unit with other foreign jurisdictions and the provision of spontaneous intelligence information to other jurisdictions when necessary.
- Training for public officials from different institutions by the Office of the Prosecutor to promote an understanding of the consequences of committing corruption offences.
- Provision of specialized education (masters) to officers of the Public Accounts Prosecutor Office, which could be replicated in other institutions.
- The facilitation of an annual training to entities obliged to report suspicious transactions by the Financial Analysis Unit to improve the quality of the reporting of such transactions.
- The publication of updated statistics on a monthly basis by the Office of the Prosecutor, the National Transparency Council and all governmental institutions.
- The creation of the National Authority for Transparency and Access to Information.

2.3. Challenges in implementation, where applicable

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

- Panama could approve the draft amendments to the Penal Code in regards to the increase of penalties for Crimes against the Public Administration, in order to broaden the range of precautionary measures, including preventive detention. Panama should consider whether to adopt a legal framework that would fully criminalize bribery and embezzlement of property in the private sector.
- Banking regulations should be amended as to ensure that suspicious transactions will be reported in the shortest time limit and guarantee immediateness if an investigation is required. In addition, the list of entities obliged to report these transactions should be broadened.
- Given the large number of Banking institutions and others in Panama, it would be desirable that the staff of the Financial Analysis Unit is increased.
- In order to more effectively investigate and prosecute illicit enrichment, Panama may wish to consider the introduction of a computerized system for the completion and analysis of asset declarations.
- Panama may wish to consider including in the Criminal Procedure Code a provision that would grant immunity from prosecution to cooperating offenders.

- The establishment of a system to protect reporting persons is desirable.
- Panama should consider the introduction of further measures to ensure functional independence of anti-corruption bodies to continue and improve the good work that is already being done.
- In the institutions that require experts a public roster/database of specialized experts and mechanisms to expedite the process could be created.
- Stability must be guaranteed for public officials working in anti-corruption bodies.
- The Judiciary's capacity to adjudicate cases on corruption offences should be reinforced.
- The National Authority for Transparency and Access to Information should be present throughout the country.
- Notwithstanding the current support of Panama to the various anti-corruption institutions, it is understood that professionalism and adequate resources will remain a priority.

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

- Provision of advanced training on investigating techniques
- Legislative assistance
- On-site assistance by an expert

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

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

Panama has entered into a number of multilateral and ten bilateral extradition treaties, including with Brazil, Costa Rica, Spain and the United States of America. The most recent extradition agreements signed by Panama cover a broad range of criminal offences, including all UNCAC-related offences. In the absence of an international agreement, Article 516 of the Criminal Code provides that Panama may extradite on the basis of reciprocity.

Under Article 517 of the Code of Criminal Procedure, Panama may only extradite an individual where dual criminality is established. However, a flexible approach is taken as to the establishment of dual criminality, with Article 517 providing that Panama and the requesting State do not have to categorize or define the relevant criminal conduct in exactly the same manner in order for dual criminality to be met.

Article 518 of the Code of Criminal Procedure outlines the grounds on which a request for extradition may be refused, including cases where the requested individual is already subject to criminal proceedings or completing a sentence in Panama; cases where the requested individual may be subject to the death penalty; and where the executive consider that the request for extradition has been made in relation to a political offence or for political motives. Any offences with regard to

which Panama has assumed an international obligation by way of multilateral treaty will not be considered to be a political offence. Consequently, no offences established in accordance with the UNCAC will be considered as a political offence.

Panama does not extradite its own nationals due to a constitutional prohibition. However, where a request is refused on this basis, the Code of Criminal Procedure provides that the principle of *aut dedere, aut judicare* will apply. Panama does not allow for the enforcement of a sentence imposed under the domestic law of the requesting State party where a request for extradition of a Panamanian national has been rejected. In such circumstances, the individual will be retried in Panama based on information provided by the requesting State.

Panama is able to deal with requests for extradition promptly and is currently seeking to reforms to expedite and simplify the extradition process. Article 2140 of the Judicial Code allows for the provisional arrest of an individual upon the request of the State seeking extradition where the offence in question is subject to a minimum sentence of at least four years. Specific examples were provided by Panama in which provisional arrests had been made so as to facilitate the extradition of individuals.

The formalities and information necessary in order to process a request for extradition are found in Article 521 of the Criminal Procedure Code and are also detailed in the bilateral and multilateral treaties to which Panama is a party. These are in compliance with the requirements of the Convention.

Panama has a number of domestic provisions in place, both on a constitutional level (Articles 21, 22 and 23), and in multilateral and bilateral extradition agreements concluded by the national authorities, which guarantee the rights to a fair trial and fair treatment to those subject to extradition proceedings. Individuals subject to extradition proceedings have the right to appeal the decision to extradite before the Supreme Court. The executive branch is, however, responsible for the final decision as to whether extradition is granted.

In principle, requests for extradition that involve both corruption and fiscal or tax matters will be facilitated, despite the fact that dual criminality would not be established in relation to the tax offences for which extradition is sought. Extradition will not be permitted however where a request relates primarily to tax offences. Decisions are taken on a case-by-case basis by the Ministry of Foreign Affairs as to whether a request for extradition is to be rejected on this basis.

Under Article 524 of the Code of Criminal Procedure, where a court considers that insufficient information has been provided by the requesting State in order to be able to effect extradition, the court may request further information from the requesting State before coming to a final decision. In practice, the Panamanian authorities take a proactive approach to seeking further information prior to refusing a request. Examples were given by Panama in this regard and bilateral and multilateral agreements provide that further information must be sought before a request is refused.

Panama has signed ten bilateral treaties and a number of multilateral agreements in relation to the transfer of sentenced persons and will also consider a request for transfer on the basis of the principle of reciprocity where an agreement is not in place.

Panama has entered into both bilateral and multilateral agreements regarding the transfer of sentenced persons.

Mutual legal assistance (article 46)

Panama has entered into a number of bilateral and multilateral agreements in relation to mutual legal assistance, including agreements with Colombia, Spain, the United States of America and Mexico. Panama is also party to a number of multilateral agreements such as the Inter-American Convention on Mutual Assistance in Criminal Matters 2001 and the Treaty on Mutual Legal Assistance in Criminal Matters between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

Where a specific bilateral or multilateral treaty is not in place, the UNCAC is used by Panama as a legal basis for the provision of mutual legal assistance to all other States Parties to the Convention. Panama cited a number of specific examples in which mutual legal assistance had been successfully provided on the basis of the Convention, including the successful freezing, confiscation and repatriation of funds obtained through corruption.

Where a treaty basis does not exist, assistance may be provided by Panama on the basis of reciprocity. There is currently no detailed domestic legal framework governing the provision of mutual legal assistance, with reliance placed, instead, on the terms of bilateral or multilateral agreements, as noted above.

In practice, Panama is able to respond to requests for mutual legal assistance rapidly and effectively. Examples were provided in which Panama had been able to execute such requests within twenty-four hours, including where it had been necessary to obtain information from financial institutions. Panama also confirmed that where it becomes aware of information that may be relevant to or give rise to criminal proceedings in another State, it will transfer such information to another State party spontaneously, without the need for a request. As a general principle, Panama will cover the costs of facilitating a request for mutual legal assistance and has in the past paid for the expedited transfer of information where assistance was requested at short notice.

The terms of the multilateral and bilateral agreements entered into by Panama in relation to the limitations on the use of information provided and the confidentiality of such information meet the requirements of the Convention. In this regard, Panama also cited its use of the IberRed and Groove network as a secure means of communication which has facilitated Panama's cooperation with other States in relation to criminal matters.

Panama does not reject requests for mutual legal assistance on the grounds of bank secrecy. Executive Order No. 52 dated April 30, 2008 and Article 2053 of the Judicial Code allow law enforcement authorities to obtain relevant information from banks and other financial institutions where required for the purposes of mutual legal assistance. Panama was able to cite specific cases in which information had been obtained from financial institutions at short notice in response to a request for mutual legal assistance.

Since 2005, the provision of video evidence in criminal proceedings in Panama has been permissible in criminal proceedings and Panama confirmed that such video

evidence has been used for the provision of evidence in criminal proceedings in other States, including the United States of America.

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

Panama has a number of mutual legal assistance agreements in place facilitating cross-border cooperation between law enforcement authorities. In practice, law enforcement bodies in Panama regularly cooperate with bodies from other jurisdictions in relation to criminal matters though few examples were cited regarding law enforcement cooperation in relation to corruption offences specifically.

The Public Ministry, upon receiving authorization of a Court, is able to use special investigate techniques such as undercover surveillance, wire-tapping and controlled delivery in relation to the investigation of corruption offences. A specific example was cited in which controlled delivery had been used in the investigation of an individual for bribery of a national public official, leading to a successful prosecution. To date, there are no examples of the use of such techniques in the context of international cooperation with another State.

Panama is presently not party to any international agreements allowing for the establishment of joint investigative bodies. Efforts are presently being made by Panama to establish such agreements.

3.2. Successes and good practices

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

- Panama has demonstrated the ability to respond rapidly and effectively to requests for international cooperation both in relation to extradition and mutual legal assistance.
- Panama has successfully used the United Nations Convention against Corruption as the legal basis for the provision of mutual legal assistance, leading to the freezing, confiscation and return of a significant amount of assets obtained through the commission of corruption offences. In doing so, Panama offers a source of inspiration for other countries.
- Panama has entered into a wide range of multilateral and bilateral agreements in relation to international cooperation and a number of new agreements are presently being negotiated.
- Panama takes a flexible approach to the establishment of dual criminality, focusing on whether the conduct in relation to which the request is made is criminalized in both States rather than on the specific categorization of the relevant offences.

3.3. Challenges in implementation, where applicable

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

- Panama should consider the introduction of a domestic legal framework in relation to mutual legal assistance, so as to clarify the applicable procedures for officials responsible for facilitating such assistance.
- Panama should ensure that mutual legal assistance is provided where a request in relation to an offence established under the Convention also relates to tax or fiscal matters.
- Panama should continue its efforts to establish bilateral or multilateral agreements to allow competent authorities responsible for the investigation of corruption offences to establish joint investigative bodies with law enforcement agencies in other jurisdictions.

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

- Legislative drafting assistance in relation to the development of a domestic legal framework for the provision of mutual legal assistance.
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