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to the United Nations
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Executive summary

Note by the Secretariat

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II. Executive summary

India

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

India signed the Convention on 9 December 2005 and ratified it on 9 May 2011. The Convention entered into force for India on 8 June 2011. India is committed to fostering respect for international law and treaties (art. 51 of the Constitution of India). The Government of India has taken steps towards pursuing zero tolerance against corruption.

Constitutionally, India is a sovereign, socialist, secular, democratic republic comprising 29 States and seven union territories. It has a parliamentary democracy which operates under the Constitution of India of 1950.

India maintains a common law legal system inherited from the colonial era. The Constitution of 26 January 1950 is the supreme law. Statutes are enacted by Parliament, State legislatures and union territory legislatures. Subordinate legislation includes ordinances, orders, by-laws, rules, regulations, notifications, and custom or usage having the force of law.

In its legal system, treaties become part of domestic law when Parliament enacts relevant legislation (art. 253 of the Constitution, and entry 14, list 1, of its Seventh Schedule).

Proceedings before criminal courts are governed by the Code of Criminal Procedure of 1973 (CrPC). The criminal judicial system is therefore an accusatorial system.

The country's institutional framework comprises a number of institutions and bodies responsible for combating corruption, in particular, the Central Vigilance Commission (CVC), Central Bureau of Investigation (CBI), Enforcement Directorate, Financial Intelligence Unit (FIU) and Serious Fraud Investigation Office.

The Department of Personnel and Training acts as the nodal agency for anti-corruption policy, measures and mechanisms and for coordination among relevant stakeholders.

2. Chapter III: criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

The definition of "public servant" in section 2 (c) read with section 2 (b) of the Prevention of Corruption Act of 1988 (PCA) includes any person who holds an office by virtue of which he is authorized or required to perform any public duty, whether appointed by the Government or not. The scope of application currently also includes any person "expecting to be a public servant", although this is proposed for deletion in a bill amending the PCA, which was pending at the time of review. With regard to elected officials and persons holding legislative, executive or administrative office, it does not require that such person is in the service or pay of the Government.

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

India has not established active bribery of public officials as a stand-alone offence. Active bribery is indirectly criminalized through the abetment clauses of the PCA (sect. 12 on abetment of bribery as defined in sects. 7 (public servant taking gratification) and 11 (public servant obtaining valuable thing), and sect. 10 on punishment for offences under sects. 8 and 9). The provisions on abetment in the PCA and the Indian Penal Code of 1860 (IPC) only indirectly cover the promising and offering of bribes as required under article 15 of the Convention. The 2016 bill amending the PCA would establish a clear provision criminalizing active bribery, both

directly and through intermediaries and third parties, although it also recommends the omission of the element of “offer” from the definition of the offence.

Third-party benefits are specifically mentioned in section 7 of the PCA, but are not specified in section 12.¹

Section 24 of the PCA provides that a statement given by a bribe-giver during a proceeding does not subject him or her to prosecution on condition that they report the misconduct. The 2016 PCA Amendment Bill would repeal section 24 and protect bribe-givers who are compelled to give such undue advantage and who inform the law enforcement or investigating agency within seven days (sect. 8 (1), proviso).

India has not criminalized transnational bribery.

India has not criminalized active and passive trading in influence as a separate offence, although the relevant conduct is captured in practice by sections 8 and 9 of the PCA on taking gratification to influence a public servant, the bribery provisions (sects. 7 and 11 of the PCA), and sections 109, 120, 120A and 120B of the IPC on concealment, conspiracy and abetment.

India has not criminalized bribery in the private sector. Proposed amendments to the IPC to cover private-to-private corruption are under consideration.

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

Money-laundering is criminalized in sections 3 and 4 of the Prevention of Money-Laundering Act of 2002 (PMLA), as amended. However, the definition of money-laundering in section 3 contains the condition of “projecting or claiming [proceeds] as untainted property”. The application of this condition was subsequently clarified legislatively² by adding an explanation to section 3 of the PMLA.

The money-laundering offence in the PMLA extends to any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

India follows the list approach for predicate offences according to the Schedule of the PMLA, as amended in 2013. The Indian authorities confirmed that under the current legislation, there is no threshold limit for predicate offences under section 2 (1)(4)(3) of the PMLA, with the exception of one predicate offence under section 132 of the Customs Act of 1962 pertaining to false declaration and documents, which carries an inherent threshold of Rs 10 million for criminal trial under the provision.

Concealment is criminalized in sections 410 and 411 of the IPC and section 3 of the PMLA, subject to the monetary threshold restriction described in the preceding paragraph. The same condition in respect of projecting or claiming property as untainted applies.

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

Dishonest misappropriation, conversion and criminal breach of trust by public officials are criminalized under section 13 of the PCA and sections 403, 405 and 409 of the IPC.

Section 13 (1) (d) of the PCA and section 217 of the IPC partially criminalize the abuse of functions by public officials. The first provision is limited to acts of obtaining

¹ By legislative amendment following the review in 2018, India has added explanation 2 (i) to section 7, which states that the section covers “cases where a person being a public servant, obtains or ‘accepts’ or attempts to obtain, any undue advantage for himself *or for another person*, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means”.

² Pursuant to amendments to the PMLA that came into effect on 1 August 2019, an explanation to section 3 was introduced, which clarifies that persons shall be guilty of money-laundering if they are found to have engaged in any of the enumerated acts, namely, concealment, possession, acquisition, use, projecting or claiming property as untainted, or in any manner whatsoever.

a pecuniary advantage while the second is specific to acts intended to save persons from punishment or property from forfeiture. The 2016 PCA Amendment Bill covers both pecuniary and non-pecuniary advantages given or obtained by use of the term “undue advantage”. The term “improper or dishonest performance of public duty” is also proposed to be inserted.

India has criminalized illicit enrichment in section 13(1) (e) of the PCA.

India applies the common law offences of criminal breach of trust (sects. 405, 406 and 409 of the IPC) to deal with embezzlement of property in the public and private sector.

Obstruction of justice (art. 25)

Sections 195A, 192, 193, 201, 228, 330 and 331 of the IPC partially criminalize obstruction of justice. Provisions on assault (sects. 323–328 of the IPC) and criminal intimidation (sect. 506 of the IPC) cover violence against witnesses. The cited measures do not address acts of bribery to interfere in the giving of testimony or the production of evidence.

Interference with justice or law enforcement officials is covered in sections 186, 188, 189, 332, 333 and 353 of the IPC.

Liability of legal persons (art. 26)

Indian law provides for the criminal, civil and administrative liability of legal persons and allows for the imposition of criminal and non-criminal sanctions, including monetary sanctions, against legal persons for corruption offences. The definition of “person” in section 3 (42) of the General Clauses Act of 1897 includes any company or association or body of individuals whether incorporated or not. In respect of offences under PMLA, the Act provides that a legal person may be prosecuted, notwithstanding the prosecution or conviction of any individual (explanation 2, sect. 70).

Participation and attempt (art. 27)

The country’s legislation criminalizes participation through provisions on abetment (sects. 107–109 of the IPC; sects. 10 and 12 of the PCA), conspiracy (sects. 120A and 120B of the IPC) and attempt (sect. 511 of the IPC; sect. 15 of the PCA). The mere preparation of an offence, outside acts of aiding and abetting, is not criminalized.

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

The applicable penalties for corruption-related offences are determined on the basis of the gravity of the crime. Most corruption-related offences provided for in the IPC and the PCA, as amended, are sanctioned by a term of imprisonment from 3 to 10 years.

The President and State governors have immunity from criminal proceedings, arrest or imprisonment during their term of office, as well as from civil proceedings (before or after entering office) (art. 361 of the Constitution). The proviso in article 361 (1) provides that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61 (impeachment for violation of the Constitution), which may culminate in removal from office. The second proviso provides that nothing is to be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State, including any State governor (sect. 60 of the General Clauses Act). Parliamentarians have functional immunity covering their conduct in Parliament (art. 105 of the Constitution).

Judges, magistrates and public servants who may not be removed from office except by sanction of the Government cannot be criminally charged unless a previous sanction to prosecute them is received from the competent authority (generally, the Central or State Government) (sect. 197 of the CrPC; sect. 19 of the PCA). The PCA provision was under review at the time of the country visit, to lay down clear criteria and procedures for the sanction of prosecution. The proposed amendment bill would also extend protections in respect of persons who have ceased to be public servants.

Pursuant to the Lokpal and Lokayuktas Act of 2013 (Lokpal Act), the prosecution department of the CBI is headed by the Director of Prosecution and functions under the overall supervision and control of the Director of the CBI, which raises independence concerns. To resolve differences of opinion between the Director of Prosecution and the Director of the Bureau, the opinion of the Attorney General of India is to be given due regard before the decision to prosecute is taken by the Director of the CBI.

In order to launch a prosecution against a public servant, prior sanction of the competent authority under section 197 of the CrPC and section 19 of PCA is necessary (sect. 23 of the Lokpal Act). The Indian authorities noted that the requirement of sanction for prosecution is intended to filter out vexatious and frivolous cases. India has not shown how prosecution powers enhance the effectiveness of law enforcement and deter the commission of offences. The Lokpal Act was not yet operationalized at the time of review.

The Indian legal system specifies the conditions for bail to ensure the presence of defendants at subsequent criminal proceedings (for example, sects. 436, 436A, 437 and 437A of the CrPC).

Section 432 of the CrPC regulates the power to suspend or remit sentences.

Disciplinary measures, including the possibility of dismissal, removal, suspension, compulsory retirement and reassignment of accused persons, may be taken on the basis of disciplinary procedures, which may run in parallel to the criminal process (rules 10 and 11 of the Central Civil Services (Classification Control and Appeal) Rules; rules 3 and 6 of the All India Services (Disciplinary and Appeal) Rules).

In accordance with the aforementioned disciplinary rules, dismissal (but not removal) from the Service entails a disqualification from future employment in the Government, including the holding of office in any State-owned enterprise.

The Government has taken steps towards reforming prison conditions and the administration of prisons, with a view to, inter alia, promoting the reformation and rehabilitation of prisoners.

There are no specific measures or relocation agreements with other countries to protect cooperating defendants. However, sections 306 and 307 of the CrPC related to pardons were used by the trial courts in three recent corruption-related cases. Section 24 of the PCA, as referenced above, allows the application of immunity to bribe-givers who report the giving of the bribe.

Plea bargaining provisions in the CrPC (chapter XXIA) are applicable to mitigate the punishment of accused persons who provide substantial cooperation; no specific guidelines on plea bargaining have been developed.

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

Section 12 of the Whistle-blowers Protection Act of 2014 provides limited protections for victims, witnesses, experts and their relatives, which require a prior public interest disclosure by a complainant. However, the Act has not come into force. An amendment bill was under consideration at the time of review, which would limit the category of protected disclosures.

A “Public Interest Disclosure and Protection of Informers” resolution has limited application in CVC cases.

India does not have a witness protection programme. There are no witness relocation agreements in place with other countries.

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

Sections 105E and 105G–105I of the CrPC, section 29 of the PCA read with sections 3, 4 and 6 of the Criminal Law Amendment Ordinance of 1944 (CLAO), section 2 (1) (u) and (zb) and section 5 of the PMLA, and sections 29–31 of the Lokpal Act provide for freezing, seizing and confiscation measures. The proposed amendment to the PCA will provide for attachment and forfeiture of property primarily through the PMLA, as the offences under the PCA are proposed to be made predicate offences for the PMLA and otherwise following the approach of the CLAO.

The definitions of “proceeds of crime” and “property” in the CrPC allow for the confiscation of property derived directly or indirectly from proceeds of crime. However, there is a restriction in respect of freezing and seizure to funds suspected of being concealed, transferred or disposed of.

In cases not involving money-laundering, value-based confiscation is broadly covered under the CLAO and, in certain cases, under the CrPC. These provisions do not allow for the freezing, seizure or confiscation of property and instrumentalities “used in or destined for use in” offences in explicit terms.

Under the CLAO, the Government may, whether or not any court has taken cognizance of the offence, “authorize the making of an application” to the court for attachment of property which the Government believes to have been procured by means of the offence, or its corresponding value. In respect of attachment of property, a sanction or prior approval by the Government is required for the prosecution to make an application for attachment of property to the court (sect. 3 of the CLAO); the relevant consent is necessary for interim attachment applications, not for tracing and seizure orders.

While the provisions of the PMLA apply *mutatis mutandis* to corruption offences, India has not comprehensively regulated the administration by the competent authorities of confiscated, seized and frozen properties in corruption-related cases. The PCA Amendment Bill proposes to incorporate provisions to empower a specific authority to address this issue.

Section 8 (8) of the PMLA provides that the Special Court may order the restoration of confiscated property to claimants of legitimate interest in the property.

However, there are no comprehensive regulations protecting the interests of third parties. Moreover, offenders may be required to demonstrate the lawful origin of property only in specified cases under the CrPC. Such limitation is not, however, applicable in the cases covered under the PMLA.

Section 18 of the PCA, section 102 of the CrPC and sections 12, 15 and 17 of the PMLA provide mechanisms to overcome bank secrecy restrictions.

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

The CrPC and the Limitation Act exclude offences under the PCA from the period of limitation. However, corruption-related offences in the IPC are subject to a period of limitations (three years in the case of embezzlement). To date, no cases have been barred by the expiry of the period of limitations.

India provides for the introduction of foreign criminal records in proceedings related to offences committed outside India (sect. 189 of the CrPC).

Jurisdiction (art. 42)

India has established jurisdiction over offences committed in its territory, and on board vessels and aircraft, where there is a previous sanction by the Central

Government (sects. 177–189 of the CrPC). However, offences committed against nationals or the State, and by stateless persons residing in India, are not covered.

Preparatory acts to money-laundering committed outside the country are covered in the case of citizens of India.

Section 4 of the IPC, section 188 of the CrPC and sections 34 and 34A of the Extradition Act address jurisdiction where the extradition of nationals is refused.

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

The consequences of corruption are addressed in legislative measures providing for the nullity of contracts on the grounds of unlawful consideration as well as certain procurement guidelines (sects. 23 and 24 of the Indian Contract Act). A specific procurement law has been pending before Parliament since 2012.

Compensation for damages may be obtained (sects. 337 and 537 of the CrPC; sects. 60 and 63 of the Code of Civil Procedure).

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

The CBI, functioning under the Department of Personnel and Training, is the central investigating agency in India. The CBI can investigate only those offences that are notified by the Central Government (sect. 3 of the Delhi Special Police Establishment Act of 1946). This includes offences under the IPC or any criminal law in conjunction with the PCA. The CBI generally investigates cases considered important owing to their significance or magnitude or cases involving multiple jurisdictions. Other cases are investigated by local police and anti-corruption agencies of concerned jurisdictions.

The functions of the CVC, which supervises vigilance administration, are contained in chapter III of the CVC Act of 2003. Oversight of CBI investigations under the PCA or the CrPC, if charged at the same trial, is vested in the CVC (sect. 8 of the CVC Act). The CVC can direct any investigating agency, including the CBI, to carry out an investigation. The CBI appears to be adequately resourced and capacitated. Its Director has a two-year tenure and is selected on the recommendation of a committee consisting of the Prime Minister, the leader of the opposition and the Chief Justice or a judge of the Supreme Court (sect. 4A of the Lokpal Act).

Other relevant institutions include the Directorate of Enforcement, a multidisciplinary organization mandated with the task of enforcing the PMLA. The country's FIU, under the Department of Revenue of the Ministry of Finance, reports directly to the Economic Intelligence Council.

A duty of cooperation by public officials in investigations and cooperation mechanisms among agencies are established only in the area of money-laundering, where a well-defined procedure is reported to exist (sect. 54 of the PMLA).

The FIU plays an important role in terms of outreach to the private sector in relation to the fight against corruption and money-laundering. It raises awareness through its website, seminars and workshops and supports regulators, industry associations, professional bodies and reporting entities by providing resource persons for seminars and workshops.

There is a duty to report offences under the PCA (sect. 39 of the CrPC). The CVC provides channels for reporting corruption involving public servants. Moreover, it conducts education measures and outreach to the public and allows citizens to air their grievances and complaints through the Internet. In addition, the CBI promotes open reporting by individuals in respect of corruption. Complaints can be made to the CBI by post or email. In 2014, 64,000 complaints were received from all channels. Action on anonymous or pseudonymous complaints is not permissible.

2.2. Successes and good practices

- Operational steps to enhance the effectiveness of prosecutions within the CBI, including functional cooperation during the investigative stage between the investigation and prosecution units of the CBI (art. 30).
- The existence of specialized courts to hear only corruption and money-laundering cases, which function under the overall superintendence of the High Court, in accordance with article 227 of the Constitution (art. 36).
- The implementation by the CVC of various channels for reporting corruption (art. 39).

2.3. Challenges in implementation

It is recommended that India:

- Criminalize the promise, offer and giving of bribes (active bribery), independently of the acceptance or solicitation of bribes by public officials (passive bribery) and clearly cover all modalities of the commission of the offence (promise, offer and giving) (art. 15).
- Harmonize its legislation to ensure that third-party benefits are covered in the provisions on both active and passive bribery (art. 15).
- Take steps toward the adoption of the 2016 PCA Amendment Bill, which would repeal section 24 and protect bribe-givers who inform the law enforcement or investigating agency before giving the bribe, provided the same is reported within seven days (sect.8 (2)) (art. 15).
- Criminalize active transnational bribery and consider establishing the passive version of the offence (art. 16).
- Consider criminalizing trading in influence in line with the Convention (art. 18).
- Consider adopting broader measures to criminalize abuse of functions (art. 19).
- Consider the swift adoption of legislation to criminalize bribery in the private sector (art. 21).
- Adopt measures to address acts of bribery to interfere in the giving of testimony or the production of evidence (art. 25).
- For offences outside of the PMLA, clarify the liability of legal persons irrespective of the responsibility of natural persons, in accordance with judicial interpretation through a proposed amendment in the PCA (art. 26, para. 3).
- Consider criminalizing acts of preparation (art. 27).
- Ensure that the statute of limitations for Convention offences is sufficient to allow adequate investigation and prosecution (art. 29).
- Review the scope of persons covered by criminal immunities and monitor the application of the procedure for consent or sanction of prosecution, to ensure in both cases that an appropriate balance between immunities or jurisdictional privileges and the possibility of effectively investigating, prosecuting and adjudicating offences under the Convention is maintained (art. 30, para. 2).
- Take steps towards strengthening the independence of the prosecution department of the CBI and ensure that prosecution powers are used to enhance the effectiveness of law enforcement and deter the commission of offences (art. 30, para. 3).
- Consider adopting guidelines on plea bargaining (art. 30, para. 3; art. 37).
- Review and amend the existing framework on confiscation, tracing, freezing and seizure of proceeds and instrumentalities to ensure the full implementation of article 31 for offences established under the Convention, irrespective of

any link to money-laundering; specifically, it is recommended that India amend its legislation to eliminate the requirement of governmental consent for applications by the prosecution to the court for attachment of property and adopt measures clearly aligned with paragraphs 4 to 6 and 9. India may also wish to extend generally the measures requiring that an offender demonstrate the lawful origin of alleged proceeds of crime and other property to offences established in accordance with the Convention (art. 31).

- Adopt and enforce measures on the protection (including physical and evidentiary) of witnesses, experts and victims, as well as their related persons, as appropriate, and extend protections to cooperating defendants in accordance with article 37, paragraph 4; consider adopting agreements on witness relocation abroad (art. 32).
- Consider ensuring the existence of effective whistle-blower protection measures through the adoption of relevant legislation and procedures and the establishment of the necessary institutional framework for reporting and follow-up (art. 33).
- Strengthen measures to address the consequences of corruption (art. 34).
- Take steps to further strengthen the legal and operational independence of its law enforcement agencies tasked with investigating and prosecuting corruption and money-laundering offences, and to strengthen inter-agency coordination (art. 36).
- Strengthen measures of cooperation between domestic authorities in the investigation and prosecution of corruption-related offences (art. 38).
- Consider extending jurisdiction to offences committed against nationals or the State, and by stateless persons residing in India (art. 42, para. 2 (a), (b) and (d)), as well as over preparatory acts to money-laundering committed outside the country by non-citizens (art. 42, para. 2 (c)).

3. Chapter IV: international cooperation

Extradition and mutual legal assistance in criminal matters in India are governed by the Extradition Act of 1962 and the CrPC, respectively, as well as bilateral and multilateral treaties. Mutual legal assistance is available in the absence of a treaty on the basis of reciprocity. Extradition is available on the basis of a bilateral extradition treaty, an extradition arrangement or an applicable international convention. The Ministry of External Affairs of India has developed guidelines on extradition. The Government has also developed a template known as the “Indian Standard Draft”, which is used as a model for negotiating mutual legal assistance treaties and includes procedures for handling requests for such assistance.

The central authority for extradition, including Convention-related cases, is the Ministry of External Affairs. The central authority for mutual legal assistance, including Convention-related cases, is the Ministry of Home Affairs.

Regarding the application of the provisions of international treaties vis-à-vis the requirements of domestic legal provisions, generally, the provisions of bilateral or multilateral treaties will apply; however, in cases of conflict with domestic legal provisions, domestic law will prevail over the provisions of treaties.

The reviewing experts encourage India to review its domestic legislation pertinent to extradition and mutual legal assistance to more specifically address relevant obligations under this Convention, including by adopting a specific law on mutual legal assistance.

3.1. Observations on the implementation of the articles under review

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

According to sect. 2 (c) (ii) of the Extradition Act (EA), an extraditable offence means an offence punishable with imprisonment for a term of not less than one year by the laws of India or of a requesting State with which India does not have an extradition treaty in place. However, as clarified by the authorities, in practice, dual criminality is a fundamental requirement for extradition.

India applies accessory extradition as provided for in section 21 (b) of the EA and in an applicable bilateral extradition treaty.

India makes extradition conditional on the existence of a bilateral treaty, an extradition arrangement or an international convention. For their implementation, a notification is required to be issued under section 3 of the EA applying chapter II or III, as the case may be. Chapter II of the EA applies to foreign States where in the applicable bilateral extradition treaty there are evidentiary requirements justifying committal for trial. Chapter III of the EA applies to foreign States where no such evidentiary requirements are established in the applicable extradition treaty. India had concluded 42 bilateral extradition treaties and nine extradition arrangements at the time of review.

India can also treat any applicable international convention, including this Convention, as a legal basis for considering extradition in respect of offences covered by that convention. In such a case, India would issue a notification that the convention would be treated as an extradition treaty between it and the requesting State (sect. 3 (4) of the EA). At the time of the review, India had not yet issued any notifications with regard to the use of the Convention as a legal basis for extradition to any other States parties. The authorities confirmed that such a notification would be issued once the need to execute an extradition request under the Convention arose.

Indian law prohibits extradition if the offence in respect of which extradition is sought is of a political character (sect. 31 (a) of the EA). The EA also contains a schedule that lists the offences that are not to be regarded as offences of a political character. Those offences include offences within the scope of some multilateral conventions, but not this Convention.

India has a simplified arrangement for extradition, which is applied on conditions of reciprocity in respect of a country which is gazette-notified as a country to which chapter III of the EA applies.

As explained by the authorities, India may extradite its nationals on the basis of reciprocity. The EA provides that the Central Government may, as it sees fit, take steps to prosecute fugitive criminals who are not extradited (sect. 34A). According to the Indian authorities, if extradition is refused on the grounds of nationality, this provision is mandatorily applied in practice to require competent authorities to submit cases for prosecution and for prosecution to take place in cases where there is sufficient evidence.

The EA does not provide for extradition under the condition that the person sought will be returned to India to serve the sentence, or for the possibility of enforcing a foreign sentence.

Fair treatment principles are established in the Constitution and the CrPC, but are not specifically mentioned in the EA. Nonetheless, these provisions are included in many extradition treaties of India.

The grounds for refusal of extradition, found in the extradition treaties and section 31 of the EA, do not specifically include the conditions listed in article 44, paragraph 15, of the Convention; however, India may refuse a request “not being made in the interests of justice ... or [where] it is unjust to surrender a criminal” (sect. 29 of the EA).

The involvement of fiscal matters is not a ground for the refusal of extradition.

The EA does not include provisions requiring consultation with a requesting State before refusing an extradition request; however, such provisions are contained in the country's extradition treaties with 24 countries.

The Repatriation of Prisoners Act of 2003 provides a legal framework for the transfer of sentenced persons. The Government has concluded agreements on the transfer of sentenced persons with 35 countries.

There are currently no legislative provisions in India allowing for the transfer of criminal proceedings to another country.

Mutual legal assistance (art. 46)

The CrPC serves as the main domestic legal framework for mutual legal assistance. India has also concluded 39 bilateral mutual legal assistance treaties with other countries.

India provides mutual legal assistance based on reciprocity even in the absence of a treaty.

As indicated by the authorities, the average time for the execution of a request for mutual legal assistance is six months.

As noted above, Indian legislation does not specifically provide for the liability of legal persons participating in certain corruption offences; however, the authorities indicated that mutual legal assistance could still be provided in relation to legal persons. The 2016 PCA Amendment Bill seeks to criminalize acts of active bribery of public servants committed by commercial organizations (sect. 8 (1), proviso).

Sections 105 and 166B of the CrPC provide a general legal basis allowing for the provision of the types of mutual legal assistance listed in article 46, paragraph 3 (a)–(i) of the Convention.

Section 105C (3) of the CrPC specifically regulates the freezing and seizure of assets in the context of mutual legal assistance. Section 105D covers the tracing of proceeds of crime.

The PMLA specifically regulates the provision of mutual legal assistance with regard to the investigation and prosecution of money-laundering. Section 60 (7) of the PMLA contains provisions on the return and disposal of assets.

There is no domestic legislation on the spontaneous sharing of information. The Indian authorities indicated that they would always comply with requests to maintain confidentiality.

Bank secrecy is not considered as a ground for refusal of mutual legal assistance. Specific provisions to that effect have been incorporated in a number of bilateral mutual legal assistance treaties concluded by India.

India clarified that although dual criminality is generally not required for non-coercive measures, it is required for coercive measures, while its application in practice is flexible.

Provisions on the transfer of detained persons or on making detained persons or persons in custody available for the giving of testimony, statements or assistance in investigations and prosecutions are contained in section 105B and chapter XXII of the CrPC. Such provisions are contained in the Indian Standard Draft and most of the mutual legal assistance treaties.

The Ministry of Home Affairs is the central authority for all mutual legal assistance requests, including those based on article 46, which was highlighted by the reviewers as a good practice. India can accept requests made in English.

Requirements regarding the content of mutual legal assistance requests are not contained in domestic legislation, except in the case of outgoing requests (sect. 166A

of the CrPC). According to the Indian authorities, the adoption of a relevant provision was under consideration. Additional guidance to requesting States is available in the Guide on Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries.

Indian law allows for hearings via videoconference.

Provisions on the limitation of the use of information are contained in the Indian Standard Draft and some existing mutual legal assistance treaties.

The grounds for refusal of a request for mutual legal assistance are usually contained in bilateral mutual legal assistance treaties, but not in domestic legislation.

India does not have specific provisions prohibiting the refusal of assistance on the sole ground that the offence is also considered to involve fiscal matters.

Reasons for the postponement of mutual legal assistance and the requirement of consultation before the refusal or postponement of a request (art. 46, paras. 25 and 26) are reflected in some mutual legal assistance treaties.

Provisions on the safe conduct of a witness (art. 46, para. 27) are contained in the Indian Standard Draft and existing mutual legal assistance treaties, but not in domestic legislation.

Provisions on access to information in the possession of the Government are contained in the Right to Information Act of 2005.

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

The Indian law enforcement authorities cooperate mainly through the INTERPOL communication network known as I-24/7 and through bilateral cooperation agreements.

India does not have specific legislative provisions with regard to joint investigations. The authorities, nevertheless, indicated that they had always agreed to such joint investigative efforts in transnational criminal cases in the past.

Special investigative techniques are used by Indian law enforcement authorities; however, there are different degrees of their recognition as a basis for evidence in courts. Special investigative techniques may be used internationally with other States parties based on concrete arrangements.

3.2. Successes and good practices

- The country's range of treaties concluded on extradition and mutual legal assistance.
- The country's flexibility on the dual criminality requirement for mutual legal assistance.
- The Repatriation of Prisoners Act of 2003 provides a robust legal framework for the transfer of sentenced persons.
- Designation of the Ministry of Home Affairs as the central authority for all mutual legal assistance requests.

3.3. Challenges in implementation

It is recommended that India:

- Review domestic legislation pertinent to extradition and mutual legal assistance to more specifically address relevant obligations under the Convention, including by adopting a specific law on mutual legal assistance (arts. 44 and 46).
- Ensure that extradition may be provided to States parties pursuant to the Convention, in accordance with the requirement for a notification to be issued

pursuant to section 3 of the EA applying the provisions of the Act to such country (art. 44).

- Criminalize all mandatory offences under the Convention and consider criminalizing other offences to satisfy the dual criminality requirement; and further amend section 2 (c) (ii) to clarify that the dual criminality requirement is applicable to conduct punishable by not less than one year under the laws of both India and a requesting State (art. 44, paras. 1 and 2).
- Consider including offences under the Convention in the schedule of offences in the EA which are not to be regarded as political and ensure that Convention offences are included as extraditable offences in existing and future extradition treaties with other States parties (art. 44, para. 4).
- Endeavour to expedite extradition procedures and simplify evidentiary requirements in respect of requests relating to offences under the Convention, subject to domestic law (art. 44, para. 9).
- In cases where a person is not extradited solely on the ground of nationality, and at the request of the State party seeking extradition, submit the case without undue delay for the purposes of prosecution (art. 44, para. 11).
- Consider adopting legislative amendments allowing for the enforcement of foreign sentences in conformity with the requirements of its law (art. 44, para. 13).
- Ensure the consistent application of fair treatment guarantees under the existing legal framework in extradition proceedings (art. 44, para. 14).
- Consider specifically including grounds for refusal of extradition as specified in article 44, paragraph 15, of the EA.
- Consider specifically stipulating a requirement to consult, where required, with the requesting State party before refusing extradition in accordance with article 44, paragraph 17.
- Continue efforts to ensure that mutual legal assistance can be provided in relation to offences for which legal persons may be held liable (art. 46, para. 2).
- Adopt more detailed provisions on the recovery of assets in accordance with the provisions of chapter V of the Convention (art. 46, para. 3 (k)).
- Continue to flexibly apply the dual criminality requirement in relation to mutual legal assistance based on the Convention, including by providing the widest scope of assistance possible in relation to freezing and confiscation of the proceeds and instrumentalities of corruption offences (art. 46, para. 9).
- Consider incorporating the requirements stipulated in paragraphs 4, 5 and 10–12, and incorporate the requirements stipulated in paragraphs 19–22 and 24–28 of article 46 in its domestic legislation and ensure that they are followed in mutual legal assistance processes with other States parties on the basis of the Convention.
- Consider adopting legislative provisions allowing for the transfer of criminal proceedings to another country (art. 47).
- Continue strengthening law enforcement cooperation with other States parties, including inter-agency cooperation between law enforcement agencies, by entering into relevant agreements or arrangements with foreign counterparts (art. 48).
- Consider adopting specific domestic legislation on the establishment and operation of joint investigative teams (art. 49).
- Continue efforts to allow for the appropriate use of special investigative techniques in corruption cases, including by adopting corresponding guidance

on their use and admissibility, in line with the requirements of the Convention (art. 50, para. 1).

- Continue efforts to conclude arrangements for using special investigative techniques in the context of transnational corruption cases (art. 50).
