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State of implementation of the United Nations Convention against Corruption  

Executive summary  

Note by the Secretariat  

Addendum  

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II. Executive summary

Tuvalu

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

Tuvalu acceded to the United Nations Convention against Corruption on 4 September 2015 and deposited its instrument of ratification with the Secretary-General on the same date. The Convention entered into force for Tuvalu on 4 October 2015.

The implementation by Tuvalu of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was issued on 21 February 2018 (CAC/COSP/IRG/I/4/1/Add.53).

The main institutions of Tuvalu responsible for the prevention of and fight against corruption include the Office of the Attorney General, the Office of the Ombudsman Commission (the post of Ombudsman is currently vacant), the Office of the Auditor General, the Public Service Commission, the Transaction Tracking Unit, the Tuvalu Police Force and the Central Procurement Unit.

Tuvalu became an observer to the Asia/Pacific Group on Money Laundering in 2014.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

In Tuvalu, the Government has temporarily shifted its focus to address other pressing national interests, which has led to a delay in the development of a national anti-corruption strategy. While some integrity measures are included in the National Strategy for Sustainable Development 2021–2030, the preventive measures taken by Tuvalu are mainly found in a suite of national laws to counter corruption and promote integrity. While there is no structured process for civil society and different stakeholders to be involved in consultations to develop anti-corruption policies, such consultations are held in practice. Given that the country has an array of integrity agencies in place, efforts could focus on better coordination and strategizing in relation to the country’s anti-corruption response.

While some corruption prevention activities are undertaken annually on International Anti-Corruption Day, prevention activities in general could be further structured and coordinated to ensure their effectiveness.

There is no systematic process for the periodic review of laws and administrative measures against corruption.

There is no single anti-corruption body in Tuvalu. The mandate is spread across several bodies, with the Office of the Attorney General coordinating the implementation of anti-corruption policies and awareness-raising efforts. Vacancies in the posts of the Ombudsman and the Ombudsman commissioners create significant gaps in the oversight and enforcement of laws, clarity of reporting channels and responsibility for follow-up. Efforts are under way to widen the scope of investigative powers of the Office of the Ombudsman Commission to cover a wider range of public officials.

Constitutional offices such as the Office of the Attorney General, the Office of the Ombudsman Commission, the Office of the Auditor General and the Public Service Commission are vested with legal independence; in particular, there are legal provisions governing the appointment and removal of the heads of those institutions. As government bodies, the Transaction Tracking Unit and Procurement Unit are not independent. Anti-corruption efforts are funded from the general budget and impacted
by a need in all institutions for additional resources and specialized staff to carry out existing mandates.

Tuvalu is a member of international and regional organizations, including the Pacific Islands Forum Secretariat, the Pacific Islands Legal Officers’ Network, the Pacific Financial Intelligence Community, the Pacific Islands Chiefs of Police organization, the Pacific Prosecutors’ Association, the Secretariat of the Pacific Community and the Pacific Association of Supreme Audit Institutions.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Public Service Act, the Public Service Commission Rules and the General Administrative Orders provide for the recruitment, hiring, retention, promotion and retirement of civil servants. The recruitment and promotion of public servants are based on principles of merit and efficiency, taking into account factors such as seniority, experience and formal qualifications as stipulated in the General Administrative Orders, the Public Service Act and rule 23 of the Public Service Commission Rules. It was reported that there was a need to review and modernize the Public Service Commission Rules and the General Administrative Orders.

Pursuant to the Constitution, the Public Service Commission is responsible for the efficient management and control of the public service. Decisions on the appointment, promotion and transfer of civil servants are made by the Commission (rule 25 of the Public Service Commission Rules). Part III of the Public Service Commission Rules outlines the rules governing the appointment, promotion and transfer of public servants, while part IV governs termination and retirement. Temporary appointments are determined by the secretaries of ministries, in consultation with the Secretary to Government.

By law, vacancies are to be published by advertisement through radio broadcasts and/or in the print media for at least 14 days (rule 22 of the Public Service Commission Rules). The Commission decides whether a selection panel should be constituted and may, if it sees fit, call candidates for interviews.

While previous criminal convictions do not alone disqualify an applicant from holding public office, persons who have served a prison sentence are excluded (rule 23 of the Public Service Commission Rules). Section 18 of the Leadership Code Act provides for the appointment of leaders based on merit. In addition, section 158 of the Constitution provides for the appointment of secretaries to ministries.

Chapter 7 of the General Administrative Orders outlines salaries, increments and retirement benefits for civil servants. Salary scales are shown in the establishment register forming part of the national budget (order 7.1.2 of the General Administrative Orders) and are reviewed annually.

Education and training, including ethics and integrity elements, are provided through the Public Service Fale programme for the Pacific region, funded by New Zealand. There is a need for further training on ethics, integrity and codes of conduct for public officials, including leaders and members of the judiciary.

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1 As defined in the Act, a "leader" means a person who currently holds any one of the following positions: "(a) Head of State; (b) Head of Government; (c) Minister; (d) Member of Parliament; (e) judicial officer; (f) member of a Kaupule; (g) civil servant employed to give political or policy advice to a Minister; (h) holder of any statutory office established by legislation; (i) head of a Ministry or Department of the public service; (j) director of a corporation who is appointed by the Head of State, the Cabinet, the Head of Government, a Minister, the Parliament, a Kaupule, or other officers or bodies of the Government; (k) traditional leader who has ex officio legal powers, functions or recognition; (l) any other public servant, or officer of a Government or quasi-Governmental agency, that legislation may declare to be a Leader for the purposes of this Code; (m) the position of acting or temporary replacement for, or of permanent deputy to, a Leader; and (n) includes also any person holding office of the Ombudsman established under this Code".
Tuvalu has not established procedures for the selection, training and periodic rotation of individuals for public positions considered especially vulnerable to corruption. While a general rotation system is in place, there is a need for additional training for such positions.

The Constitution and Electoral Provisions (Parliament) Act sets out criteria for candidature and qualification for election to Parliament. Citizens of Tuvalu above the age of 21 years are qualified to be elected (sect. 94 of the Constitution), unless the grounds for disqualification in section 95 apply (for example, having a prior criminal sentence, serving a prison sentence or disqualification in relation to election offences). Similar rules apply to local government elections. There is no requirement for candidates for elected public office to disclose their interests or assets. The absence of any rules or regulations on the financing of political candidates or political parties was reported as a significant challenge in elections.

Leaders in Tuvalu are prohibited from engaging in any conduct, whether public or private, that could expose them to conflicts of interest or compromise the fair and impartial exercise of their official duties, and they must resolve such situations in favour of the public interest (sects. 17 and 18 of the Leadership Code Act). Leaders who anticipate that they will face a possible conflict of interest must notify the Ombudsman in writing, who then takes a decision on the matter, and excuse themselves from the matter (sects. 29–33 of the Act). In addition, leaders must detach themselves of any interest that is foreseeable likely to cause regular or frequent conflicts of interest. Section 20 of the Leadership Code Act provides that leaders should disclose to the Ombudsman gifts received that are valued at more than 100 Australian dollars ($A), except for customary gifts received openly and for the benefit of a community or group (sect. 19 of the Act). Members of Parliament are required to disclose any interests in matters under consideration in Parliament and to abstain from taking part in such proceedings (sect. 97 of the Act; rule 42 of the Parliamentary Rules of Procedure). In the absence of a functioning Office of the Ombudsman Commission, the conflict of interest rules applicable to leaders are not enforced. Furthermore, sanctions for violations of the Leadership Code are not specified. Also, a leadership tribunal has not been established.

For civil servants, the General Administrative Orders prohibit private work and trade (order 5.2.1), trading with the Government (orders 5.2.6 and 5.2.8) and the receipt of valuable gifts (order 5.5.1), restrict activities of spouses (order 5.2.11), require divestiture of interests under certain circumstances (order 5.2.14) and prescribe the disclosure of interests (orders 5.2.7 and 5.2.10); violations are punishable as disciplinary offences (rule 44 of the Public Service Commission Rules). While civil servants are to report their private interests (including valuable gifts of an undefined value) to secretaries, who report such matters through the Secretary to Government to the Public Service Commission for resolution, these rules are not enforced (orders 5.2.7, 5.2.10 and 5.5.1).

Leaders must file annual statements of assets and liabilities with the Ombudsman (sect. 33 of the Leadership Code Act). While section 35 of the Act requires the Ombudsman to publish in the official gazette the names of leaders who have, as well as those who have not, filed their annual statement, no such reports have been published. The annual statement must set out details of the assets and liabilities of the leader and any spouse or dependents, as well as of any trust of which the leader, spouse or child is a beneficiary. Disclosure of non-financial interests from which a conflict may arise is not required. Although some annual disclosures are being filed in practice, there has been no verification or follow-up investigation by the Ombudsman. Sanctions under section 36 of the Leadership Code Act for failure to file are not clearly defined.

Part III of the Leadership Code Act outlines a code of conduct for leaders, and chapter 5 of the General Administrative Orders establishes rules of conduct for civil servants, which are currently under review. Additionally, each department may also
develop its own code. There is work yet to be done in developing guidance on the application of the standards of conduct.

Section 61 of the Leadership Code Act provides anonymity for any person bringing complaints under the Act. There are no specific measures to facilitate the reporting by public officials of acts of corruption.

Disciplinary measures are contained in the Constitution, the Leadership Code Act, the Public Service Commission Rules and the General Administrative Orders.

The judiciary in Tuvalu is constitutionally independent. For judges of the High Court, section 122 of the Constitution provides that the Chief Justice is to be appointed by the Head of State, acting in accordance with the advice of the Cabinet. The Head of State, acting in accordance with the advice of the Cabinet given after consultation with the Chief Justice, may appoint such other High Court judges as necessary (sect. 123 of the Constitution). A judge of the High Court may be removed only for inability or misbehaviour, in accordance with the procedure set out in section 127 of the Constitution. Section 128 considers the suspension of judges. The Magistrates Court Act outlines rules for the appointment of magistrates (sect. 7 of the Act). The Governor-General may cancel or suspend any appointment, acting in accordance with the advice of the Public Service Commission and subject to the approval of the Chief Justice. While judicial officers are covered under the Leadership Code Act, it is unclear if judges are included in the definition of leaders. Although a code of judicial conduct is in place, further training on ethics and integrity could be useful.

The Attorney General acts as the Director of Public Prosecutions, although this function will be exercised by the Director of Public Prosecutions established under the new Constitution with effect from October 2023. As a leader as defined in the Leadership Code Act, the code of conduct contained in that Act applies to him or her. As civil servants, the code of conduct and the specific orders of the General Administrative Orders relating to disciplinary measures apply to prosecutors.

Public procurement and management of public finances (art. 9)

Public procurement is governed by the Public Procurement Act and the Public Procurement Regulations. The Central Procurement Unit in the Ministry of Finance and Economic Development is tasked with developing public procurement policy and carrying out all major procurements (sect. 10 of the Act).

Part 2 of the Public Procurement Act provides for the institutional arrangements for public procurement. Designated procurement officers in each ministry are responsible for undertaking all “minor procurements” (those with a value below A$ 15,000), while “major procurements” (those with a value exceeding A$ 15,000) are approved by procurement review committees (regulation 11 of the Public Procurement Regulations). The review committee must further establish a list of specialists to serve on review panels for the purpose of reviewing complaints with respect to any breach by a procuring entity of its obligations under the Act (sect. 12 of the Act). Regulation 8 of the Public Procurement Regulations outlines other duties of procurement officers. The National Audit Office is to provide monitoring and oversight of all procurements (sect. 8 of the Act and regulation 5 of the Regulations).

Tuvalu applies different procurement methods dependent on financial thresholds (regulation 13 of the Public Procurement Regulations). Open competitive bidding is required for all contracts for goods, works and non-consulting services with a value above A$ 200,000 (regulations 24–26).

Regulation 72 requires procuring entities to publish certain information on the procurement website and on public notice boards within one week of the information
becoming available. Regulation 27 requires detailed requirements to be set out in bidding documents, while regulation 28 requires technical specifications.

Staff of the Central Procurement Unit, procurement officers and members of the Procurement Review Committee are declared as leaders under the Leadership Code Act 2006 (sect. 13 of the Public Procurement Act) and are therefore subject to its provisions. Procurement staff must further declare to their superiors any potential conflict of interest arising in a procurement process and recuse themselves from involvement in that process and in administering the implementation of the procurement contract (regulation 71 of the Public Procurement Regulations). In that regard, there is a need for greater awareness-raising regarding conflict of interest rules.

Challenges identified through procurement audits include a lack of oversight by the Central Procurement Unit, a need for regular review of minor procurements to ensure that procurement regulations are followed and proper documentation is kept, insufficient procurement planning, contract management and monthly reporting by line ministries, a lack of enforcement of applicable sanctions and the absence of electronic procurement. Furthermore, the Central Procurement Unit is not fully staffed in accordance with its operational needs.

The key legislation in relation to public financial management is the Public Finance Act and subsidiary regulations, including the Financial Instructions. The Audit Act expands on the provisions of the Constitution relating to the Auditor General and the public audit function.

The Planning and Budget Department of the Ministry of Finance coordinates the preparation of the annual national budget and the updating of the medium-term fiscal framework in accordance with the Public Finance Act. Line ministries make submissions in relation to their budgets, which are guided by ceilings approved by the Cabinet. Once submitted to the Parliament, rule 35 of the Parliamentary Rules of Procedure outlines the procedures for the adoption of the national budget, such as those regarding time frames, debate, confidentiality and amendments. There is no structured process for public consultation in the adoption of the budget.

Part IX of the Constitution deals with finance. Section 165 provides for a national budget to be prepared each financial year. Section 170 establishes the Office of the Auditor General as an independent office and section 172 sets out the powers of the Office, which extend to the inspection and auditing of public accounts, finances and property. However, the Office of the Auditor General is not fully staffed in accordance with its operational needs.

Pursuant to section 31 of the Public Finance Act, within a period of six months after the end of each financial year, the Minister of Finance is to transmit full public financial account statements to the Auditor General. Public companies in Tuvalu are required to report on their financial performance in accordance with the Public Enterprises (Performance and Accountability) Act. However, owing to delayed reporting by line ministries, audited financial reports have not been prepared since 2020.

The Financial Instructions provide for some measure of risk management and internal control, although an internal control framework in public institutions has not been established.

2 The information is to include: (a) the Public Procurement Regulations; (b) the procurement suspensions and debarment procedures; (c) the procurement complaints and appeals procedure; (d) approved annual procurement plans of all ministries and their updates; (e) requests for expressions of interest, quotations and invitations to bid; (f) lists of contracts awarded, with the name and address of the contractor; (g) where a contract is awarded to other than the lowest bidder, an explanation of why lower-priced bids were not accepted; (h) details of terminated contracts and reasons for the termination; and (i) details of completed and closed contracts, including the final price paid to the contractor.
Sanctions for failure to adhere to public financial management rules have not been defined.

Public financial records may be destroyed seven years after the annual financial statement is introduced in Parliament, provided that they have been audited, while electronic records held in the financial management information system must be retained indefinitely (secs. 324–326 of the Financial Instructions). The Public Records Act provides for the preservation and archiving of public records. Section 12 prohibits the unauthorized destruction or disposal of public records. Section 20 establishes criminal penalties for the wilful or negligent damage, disposal or destruction of public records. Additional rules are found in chapter 18 of the General Administrative Orders.

**Public reporting; participation of society (arts. 10 and 13)**

Section 29 of the Constitution establishes the right to hold, receive and communicate opinions, ideas and information. There is no legislation on freedom of information and no systematic process for the public to obtain information on the administration of government, which was reported as a challenge.

The Ministry of Justice, Communication and Foreign Affairs has made efforts to streamline and digitalize electronic government services. However, there are no concerted efforts by the Government to improve the efficiency of government services or simplify administrative procedures.

There are no policies and procedures providing for the publication of periodic reports on the risks of corruption in public administration. Tuvalu has not conducted any corruption risk assessments of public institutions.

The main mechanism for the involvement and participation of civil society in local governance is the *falekaupule* assembly, which is held quarterly for each island. During legislative consultations, line ministries provide information to enable the Office of the Attorney General to facilitate discussion with communities on proposed bills.

Some public information activities are undertaken that contribute to non-tolerance of corruption, including in primary school curricula. There are no reported constraints on the freedom to seek, receive, publish or disseminate information concerning corruption. Education and awareness-raising regarding corruption and reporting mechanisms are limited.

Section 59 of the Leadership Code Act mandates the Ombudsman to investigate any reports, including anonymous reports, of any breach of the Code by any person. However, there have been no investigations or follow-up actions carried out in relation to complaints received. In the absence of a fully operational Office of the Ombudsman Commission, reports may be made to the Office of the Attorney General or the police. No detailed procedures have been established for receiving and investigating reports of corruption and protecting whistle-blowers.

**Private sector (art. 12)**

There are limited measures in place to prevent corruption in the private sector.

Tuvalu has not criminalized corruption in the private sector. Accounting and auditing requirements are set forth in part VI of the Companies Act. Provisions in the Companies and Business Registration Act require companies to file annual balance sheets, and the Penal Code prescribes corporate record-keeping requirements. There are no internal audit requirements for private sector entities. Enforcement of the Companies Act is weak and the Act is under revision in order to, inter alia, strengthen sanctions for non-compliance, as required under the country’s Anti-Money-Laundering Action Plan.

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3 The *falekaupule* is the traditional assembly on each island of Tuvalu and is composed in accordance with the local customs and usages of the particular island.
No specific standards or principles of business conduct or integrity have been developed.

The Companies and Business Registration Act requires every company or partnership established in Tuvalu to file a list of directors or partners in the companies register (sect. 3 of the Act). Shareholder and beneficial ownership information should also be reported to the registrar at the time of company formation, in accordance with the filing requirements established by the National Bank of Tuvalu; however, there is no obligation to keep the information up to date. In practice, there is weak compliance with these requirements and sanctions for violations have not been applied. There are no specific rules to regulate trusts, and authorities reported that no trusts operated in Tuvalu. In this regard, the Anti-Money-Laundering Action Plan foresees amendments to the Companies Act, including in relation to beneficial ownership requirements and rules regarding bearer shares, warrants and nominees, as well as strengthening the resources of the registrar of companies.

There are no specific post-employment restrictions for former public officials transitioning to the private sector.

Division 8 of the Companies Act outlines a number of offences, including the making of false and misleading statements (sect. 213 of the Act) and false reports (sect. 214). However, the specific accounting practices set out in article 12, paragraph 3, of the Convention are not prescribed in the legislation.

There is no provision in the legislation of Tuvalu prohibiting the tax deductibility of expenses that constitute bribes.

**Measures to prevent money-laundering (art. 14)**

Part 5 of the Proceeds of Crime Act outlines the preventive obligations of financial institutions and cash dealers in relation to anti-money-laundering. The obligations include requirements to verify the identity of prospective customers and take reasonable measures to establish the identity of beneficial owners if the obliged entity is acting on behalf of a principal (sect. 99 of the Act), to establish and maintain customer records (sect. 100), to report suspicious transactions (sect. 101), to establish and maintain internal reporting procedures (sect. 102) and to retain transaction records (sects. 104 and 105). The anti-money-laundering requirements do not apply to other designated non-financial businesses and professions.

The three financial institutions of Tuvalu are the National Bank of Tuvalu, the Tuvalu National Provident Fund and the Development Bank of Tuvalu. Two foreign cash dealers (Western Union and MoneyGram) also operate locally. The law does not prescribe risk-based requirements to which financial institutions must adhere when implementing obligations relating to money-laundering, such as customer due diligence requirements.

Customer due diligence and beneficial ownership identification are not required in the case of customers that are already subject to the Proceeds of Crime Act or when a transaction or series of transactions is part of an existing business relationship (sect. 99 (6) of the Act).

Apart from considering whether a client is based or incorporated in a higher-risk jurisdiction and considering relevant custom and practice (sect. 99 (5) of the Proceeds of Crime Act), no specific guidance is available on how customer due diligence and beneficial owner identification are to proceed.

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4 In the Act, a “cash dealer” is defined as: (a) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker; or (b) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travellers’ cheques, money orders or similar instruments, or of collecting, holding and delivering cash as part of a business of providing payroll services; or (c) an operator of a gambling house, casino or lottery; or (d) a trustee or manager of a unit trust.
By law, reporting of suspicious transactions is only required where the financial institution or cash dealer is party to a transaction and has information concerning that transaction that may be relevant to a money-laundering investigation (sect. 101 of the Act).

Institutionally, Tuvalu has not designated any anti-money-laundering supervisory or regulatory bodies and the banking sector is largely unregulated. The Transaction Tracking Unit in the Tuvalu Police Force is tasked with disseminating information concerning suspicions of money-laundering within Tuvalu or elsewhere (sect. 18 (3) (e) of the Proceeds of Crime Act). Its functions include cross-border cooperation (sect. 18 (1) (e) of the Act). Work is under way to reorganize the Transaction Tracking Unit into a fully functional financial intelligence unit within the Ministry of Finance. A national Anti-Money-Laundering Coordination Committee has been established to oversee policy formulation and implementation. Internationally, the Tuvalu Police Force has memorandums of understanding with its counterparts in the Australian Federal Police and the New Zealand Police and cooperates with the Pacific Transnational Crime Coordination Centre based in Samoa, which comprises 28 transnational crime units across member countries in the Pacific region.

There is no legal requirement to declare cross-border movements of cash and bearer negotiable instruments, although a declaration requirement is applied in practice. Incoming and outgoing passengers must declare items with a value in excess of $A 10,000 to customs authorities. Imports and exports of suspected criminal proceeds with a value above a specified threshold may be seized and detained (sect. 110 of the Proceeds of Crime Act).

There are no specific rules governing electronic transfers of funds (wire transfers).

Tuvalu became an observer to the Asia/Pacific Group on Money Laundering in 2014. Full membership would be beneficial to enhance the country’s implementation of the Convention. Tuvalu is not a member of the Financial Action Task Force.

### 2.2. Successes and good practices

- Involvement of civil society in the development of the National Strategy for Sustainable Development (art. 5).

### 2.3. Challenges in implementation

It is recommended that Tuvalu:

- Take steps towards developing a coordinated national anti-corruption strategy on the basis of a solid assessment of corruption risks and to ensure that civil society and different stakeholders continue to be involved in anti-corruption efforts (art. 5, para. 1).

- Conduct activities aimed at corruption prevention and awareness-raising that are more structured and coordinated and allocate the necessary resources to that end (art. 5, para. 2).

- Endeavour to establish a more structured process to periodically evaluate relevant legal instruments and administrative measures against corruption (art. 5, para. 3).

- Ensure the existence of a dedicated office or body tasked with ensuring integrity, good governance and measures against corruption and, to that end, strengthen the capacity, resources and mandates of the Office of the Attorney General in respect of policy formulation and coordination, and of the Office of the Ombudsman Commission as the contact point for oversight and enforcement of laws, for receiving reports of irregularities and with responsibility for follow-up (art. 6, para. 1).

- Vest the anti-corruption bodies, including the Office of the Attorney General, the Office of the Ombudsman Commission, the Transaction Tracking Unit, the
Procurement Unit, the Office of the Auditor General and the Public Service Commission, with the necessary independence, resources and skilled staff to carry out their functions effectively (art. 6, para. 2).

- Review and modernize the Public Service Commission Rules and the General Administrative Orders to strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants (art. 7, para. 1 (a)) and provide further training on ethics, integrity and codes of conduct for public officials, including leaders and members of the judiciary (art. 7, para. 1 (d)); and furthermore, consider establishing procedures for the selection, training and periodic rotation of individuals in public positions considered especially vulnerable to corruption (art. 7, para. 1 (b)).

- Consider including previous criminal convictions as grounds for ineligibility for public office, and requiring candidates for election to public offices to provide disclosures of assets and interests (art. 7, para. 2).

- Consider establishing rules and regulations on the financing of political candidates and political parties, including the establishment of a relevant oversight body (art. 7, para. 3).

- Strengthen the prevention and reporting of conflicts of interest, and to this end, endeavour to:
  - Specify sanctions for violations of the Leadership Code and establish the Leadership Tribunal, as required under the Leadership Code;
  - Operationalize the Office of the Ombudsman Commission and ensure that the rules applicable to leaders (including those related to gifts) are consistently enforced;
  - Expand the disclosure requirement for leaders beyond assets and liabilities to include non-financial interests from which a conflict of interest may arise; ensure that reporting obligations are consistently enforced, including by publishing the names of leaders who have, as well as those who have not, filed, as required under the Code; and review declarations and ensure that appropriate follow-up action is taken;
  - In respect of civil servants, ensure that rules to prevent conflicts of interest and rules regarding the reporting of private interests (including valuable gifts) under the General Administrative Orders and the Public Service Commission Rules are enforced, and define an appropriate amount for the receipt of gifts (arts. 7, para. 4, and 8, para. 5).

- Continue to enhance the rules of conduct for civil servants (art. 8, para. 1).

- Consider adopting measures to facilitate the reporting by public officials of acts of corruption (art. 8, para. 4).

- Strengthen public procurement by adopting measures to:
  - Ensure sufficient procurement planning, contract management and monthly reporting by line ministries;
  - Ensure appropriate oversight by the Central Procurement Unit and enforce applicable sanctions for non-compliance with procurement rules;
  - Conduct regular reviews, including of minor procurements, to ensure that procurement regulations are followed and proper documentation is kept;
  - Conduct training and awareness-raising activities for procurement staff relating to conflict of interest rules;
  - Provide full staffing and resources for the Central Procurement Unit in accordance with its operational needs;
  - Accelerate the introduction of electronic procurement systems (art. 9, para. 1).
• Establish a structured process for public consultation in the adoption of the national budget, enforce rules requiring timely reporting by line ministries and the regular publication of annual audited government financial reports, strengthen the internal control framework governing public funds in government institutions, define sanctions for failure to adhere to public financial management rules and ensure that the Office of the Auditor General is fully staffed in accordance with its operational needs (art. 9, para. 2).

• Consider adopting freedom-of-information legislation and a systematic process for the public to obtain information on the public administration (art. 10 (a)).

• Continue efforts to improve the efficiency of government services and simplify administrative procedures (art. 10 (b)).

• Consider periodically publishing reports on the risks of corruption and conducting risk assessments of corruption in public institutions (art. 10 (c)).

• Endeavour to clarify the application of the Leadership Code Act to judges and carry out further training on ethics and integrity, including under the Code of Judicial Conduct (art. 11).

• Strengthen corruption prevention in the private sector, and to this end, endeavour to:
  o Criminalize corruption in the private sector;
  o Assess the need for internal audit requirements for private sector entities;
  o Finalize the revision of the Companies Act in order to, inter alia, strengthen sanctions for non-compliance, as required under the Anti-Money-Laundering Action Plan, and ensure adequate enforcement;
  o Strengthen the transparency of legal persons by finalizing amendments to the Companies Act, including in relation to beneficial ownership, bearer shares, warrants and nominees, as foreseen under the Anti-Money-Laundering Action Plan; by enforcing rules requiring legal entities to regularly report updated shareholder and beneficial ownership information to the company registrar; and by considering the adoption of rules to regulate trusts; and strengthen the resources of the registrar of companies, as required under the Action Plan;
  o Develop standards of ethical business conduct and integrity;
  o Adopt post-employment restrictions for former public officials transitioning to the private sector (art. 12, paras. 1 and 2).

• Adopt an explicit provision disallowing the tax deductibility of expenses that constitute bribes (art. 12, para. 4).

• Conduct further education and awareness-raising activities regarding corruption and reporting mechanisms, and strengthen the protection of reporting persons and the follow-up on reports (art. 13).

• Comprehensively review the Proceeds of Crime Act and extend obligations relating to countering money-laundering by: (a) designating supervisory and regulatory authorities for all sectors and ensuring coverage of all relevant designated non-financial businesses and professions; (b) prescribing risk-based requirements for obliged entities, including for customer due diligence; (c) ensuring that customer due diligence and beneficial ownership identification are required for all customers and transactions, regardless of whether the client is already subject to the Proceeds of Crime Act or whether the transaction is part of an existing business relationship; (d) developing guidance on customer due diligence and beneficial owner identification requirements; (e) prescribing reporting requirements relating to suspicious transactions, regardless of whether the financial institution or designated non-financial business or profession is
party to a transaction that gives rise to a suspicion of money-laundering (art. 14, para. 1).

• Consider establishing the necessary legal requirements for cross-border declarations of cash and bearer negotiable instruments (art. 14, para. 2).

• Establish rules governing electronic wire transfers in accordance with article 14, paragraph 3, of the Convention.

• Finalize efforts towards membership in the Asia/Pacific Group on Money Laundering and continue to implement the principles adopted by international and regional organizations against money-laundering (art. 14, paras. 4 and 5).

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

• Development of guidance on standards of conduct for public officials (art. 8).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Mutual legal assistance is governed by the Mutual Assistance in Criminal Matters Act, which applies to assistance involving all foreign States (sect. 4 of the Act). Part 4 of the Act deals with assistance for search and seizure.

Tuvalu has not entered into any mutual legal assistance treaties but is party to the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth. Tuvalu could recognize the Convention as a legal basis, although it has not yet done so in practice. Tuvalu requires dual criminality for coercive measures (parts 4 and 7 of the Mutual Assistance in Criminal Matters Act) and the Attorney General has discretion to refuse assistance where the requirement for dual criminality has not been met (sect. 12 of the Act). Tuvalu does not make cooperation conditional on the existence of a treaty.

There have been no requests for asset recovery and Tuvalu has not refused any mutual legal assistance requests to date. There has been little experience with asset recovery at the national and international levels.

While there is no specific legislative provision for the proactive transmission of information, the Mutual Assistance in Criminal Matters Act does not limit the provision of other forms of assistance in criminal matters different from those that may be provided under the Act (sect. 6 of the Act). The Tuvalu Police Force has shared information spontaneously through the International Criminal Police Organization (INTERPOL) in money-laundering cases, as well as through the Pacific Islands Chiefs of Police organization.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

As noted above, financial institutions are required to verify the identity of prospective customers and take reasonable measures to establish the identity of beneficial owners (sect. 99 of the Proceeds of Crime Act). There is an exemption in the case of existing business relationships and entities subject to the Proceeds of Crime Act.

There are no legal provisions that require enhanced scrutiny of accounts held by or in the name of politically exposed persons, their family members or close associates, and a list of such persons has not been developed. The National Bank applies enhanced customer due diligence requirements to parliamentarians and ambassadors under its internal procedures (sect. 5.2 of the internal procedures).
Tuvalu has not issued advisories regarding higher-risk accounts, persons or transactions or appropriate account-opening, maintenance and record-keeping measures. While there are no specific measures to notify financial institutions, either at the request of another State or spontaneously, of particular persons or accounts for which enhanced scrutiny is required, such notifications may be made through communication with the relevant institutions.

Section 100 of the Proceeds of Crime Act requires financial institutions and cash dealers to establish and maintain customer records of all transactions exceeding a value of $A 200. Section 104 of the Act prescribes that records relating to financial transactions be kept, albeit with some exceptions.

There are no measures to prevent the establishment of shell banks or to prohibit financial institutions from entering into business relationships with shell banks or with financial institutions that permit their accounts to be used by shell banks. An example was provided of a case in which a relevant application was denied.

Leaders must file annual statements of assets and liabilities with the Ombudsman (sect. 33 of the Leadership Code Act), although there has been weak enforcement and follow-up in the absence of a functioning Office of the Ombudsman Commission (as described above in the section relating to article 8, paragraph 5, of the Convention). Reported information could be shared with foreign authorities through the mutual legal assistance process. Although assets inside and outside Tuvalu must be reported (sect. 33 (5) of the Leadership Code Act), there are no specific requirements to report interests in or signature authority over foreign financial accounts and to maintain appropriate records.

The Transaction Tracking Unit is tasked with receiving, analysing and disseminating to the Attorney General suspicious transaction reports issued by financial institutions and cash dealers (sect. 17 of the Proceeds of Crime Act). The reorganization of the Unit is under way. Tuvalu is not a member of the Egmont Group of Financial Intelligence Units. There are no specific measures to ensure the independence and sufficient capacity of the Unit.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

There are no measures to give legal standing to foreign States to file civil claims in the courts to establish title to or ownership of property acquired through the commission of an offence. Civil claims follow the Western Pacific High Court (Civil Procedure) Rules 1964.

Under common law principles, persons who have suffered damages as a result of corruption may initiate legal proceedings against those responsible in order to obtain compensation. The definition of a person in the legislation of Tuvalu includes any public body or any company, association or body of persons, corporate or unincorporated (sect. 10 of the Interpretation and General Provisions Act). It was explained that this also covers foreign legal and natural persons (including entities of foreign States).

Section 27 (4) (a) of the Proceeds of Crime Act stipulates that, in deciding whether to forfeit property, the courts may take into account any right or interest of a third party (including entities of foreign States) in the property.

Pursuant to section 41 of the Mutual Assistance in Criminal Matters Act, the Attorney General may apply for the registration and enforcement of a foreign forfeiture order upon the request of a foreign State, if a person has been convicted of the offence and the conviction and the order are not subject to appeal in the foreign State. A foreign order so registered has the same effect and may be enforced as if it were a domestic order (sect. 44 (1) of the Act).
Sections 22 and 27 of the Proceeds of Crime Act provide for domestic forfeiture orders against tainted property and pecuniary penalty orders against persons for benefits derived from the offence, where a person is convicted of a serious offence, either domestic or foreign. These measures can be taken at the request of a foreign State.

Confiscation in Tuvalu is conviction-based. However, sections 26 and 30 of the Proceeds of Crime Act allow for asset forfeiture where a person has absconded. Furthermore, Tuvalu recognizes civil asset forfeiture under common law principles. Section 32 of the Proceeds of Crime Act provides for payment instead of a forfeiture order where property cannot be found, has been transferred or intermingled, or is located outside Tuvalu. A request for non-conviction-based measures could be addressed under the Mutual Assistance in Criminal Matters Act.

Concerning provisional measures, the same process described under section 41 of the Mutual Assistance in Criminal Matters Act with regard to the registration and enforcement of foreign forfeiture orders also applies to requests by foreign States to register and enforce foreign pecuniary penalty orders and foreign restraining orders (sects. 41 (1) and (3)). Once registered, these orders have the same effect as domestic orders (sects. 44 (2) and (4)). Sections 21 and 47 provide for search and seizure upon the request of a foreign State. The search warrants are executed in the same manner as provided for in the domestic law (sect. 101 of the Criminal Procedure Code). Sections 48 and 49 of the Act provide for foreign requests for restraining orders and information-gathering orders. Provisional measures under the Proceeds of Crime Act are also available in the context of international cooperation. Part 4 provides for a range of measures of search, seizure and restraint, which can be taken at the request of a foreign State (sects. 51–56, 68–78 and 95 of the Proceeds of Crime Act).

Some measures are in place to preserve property for confiscation once a person has been charged with an offence. Section 23 of the Mutual Assistance in Criminal Matters Act provides that if property is seized upon the request of a foreign State, the Commissioner of Police must inform the Attorney General and arrange for its safe custody. The Attorney General may issue any written direction about how property should be dealt with, including by sending it to the foreign authority. Once a foreign restraining order is registered, the court may, upon application of the Attorney General, direct the administrator to take custody of property and to take any necessary measures for its preservation (sect. 80 of the Proceeds of Crime Act).

Section 8 of the Mutual Assistance in Criminal Matters Act outlines the procedure for requests for mutual legal assistance by foreign States, including the content requirements for incoming requests.

The Attorney General has discretion to refuse assistance where the provision of the assistance would impose an excessive burden on the country’s resources or where it would be appropriate to refuse assistance, taking into account all of the circumstances of the case (sect. 12 of the Mutual Assistance in Criminal Matters Act). Furthermore, the Attorney General may postpone the consideration of a request having incomplete particulars (sect. 8 (3) of the Act), and deficiencies in the request alone do not constitute grounds for refusal. There are no legislative provisions for consultations with requesting States. Tuvalu has requested assistance in the development of internal and external guidelines on international cooperation.

The rights of bona fide parties in forfeiture proceedings are protected (sects. 23, 27 (4), 29 and 46 of the Proceeds of Crime Act). The Attorney General may also file a claim on behalf of a person who claims an interest in the property before the forfeiture order is made (sect. 29 (6) of the Proceeds of Crime Act), although there have been no such cases.

Return and disposal of assets (art. 57)

Domestically, confiscated property may be disposed of and proceeds applied as the directed by the administrator (sect. 28 (5) (b) of the Proceeds of Crime Act). On
application by a person with an interest in property, the administrator must return the
property to the applicant or pay an amount equal to the value of the interest to the
applicant (sect. 29 (8) of the Proceeds of Crime Act).

The Attorney General may enter into an arrangement with a foreign State to share the
property or amount forfeited or paid under a foreign forfeiture order or a foreign pecuniary penalty order (sect. 44 (3) of the Mutual Assistance in Criminal Matters Act). Tuvalu has not adopted measures providing for the return of confiscated property in accordance with article 57, paragraph 3, of the Convention.

The costs of mutual legal assistance are not addressed in the Mutual Assistance in Criminal Matters Act.

Tuvalu has not concluded any agreements or arrangements addressing the final disposal of confiscated property, apart from the Commonwealth Scheme on Mutual Legal Assistance in Criminal Matters.

3.3. Challenges in implementation

It is recommended that Tuvalu:

• Adopt rules requiring enhanced customer due diligence in the case of politically exposed persons, their family members and close associates, and develop appropriate guidance for their implementation (art. 52, para. 1).

• Issue advisories regarding higher-risk accounts, persons or transactions and appropriate account-opening, maintenance and record-keeping measures (art. 52, para. 2 (a)).

• Adopt rules prohibiting the establishment of shell banks and prohibiting financial institutions from entering into business relationships with shell banks or with financial institutions that permit their accounts to be used by shell banks (art. 52, para. 4).

• Enhance the asset and income declaration system by ensuring that reporting obligations are consistently enforced, including by publishing the names of leaders who have, as well as those who have not, filed, as required under the Leadership Code; operationalize the Office of the Ombudsman Commission, which is designated to receive declarations and ensure appropriate verification and follow-up action (art. 52, para. 5); and consider requiring appropriate public officials to report interests in or signature authority over foreign financial accounts (art. 52, para. 6).

• Adopt measures as necessary to permit foreign States to initiate civil action in the courts to establish title to or ownership of property acquired through an offence (art. 53 (a)).

• Consider taking additional measures to permit authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge (art. 54, para. 2 (c)).

• Continue efforts to develop internal and external guidelines on international cooperation that would specify, inter alia, the grounds for refusal and for consultations with foreign States (art. 55, paras. 7 and 8).

• Adopt measures providing for the return of confiscated property in accordance with article 57, paragraph 3, of the Convention.

• Consider including provisions in the Mutual Assistance in Criminal Matters Act regulating the costs of mutual legal assistance (art. 57, para. 4).

• Continue efforts to establish a fully functional financial intelligence unit vested with the necessary independence, resources and specialized staff (art. 58).
3.4. Technical assistance needs identified to improve implementation of the Convention

• Development of internal and external guidelines on international cooperation (art. 55).