United Nations CAC/COSP/IRG/II/2/1/Add.36

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

Distr.: General
24 June 2024

Original: English

Implementation Review Group
First resumed fifteenth session
Vienna, 28 August–6 September 2024
Agenda item 4
State of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

Contents

V.24-11337 (E) 180724 190724

II. Executive summary

Kiribati

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

Kiribati acceded to the United Nations Convention against Corruption on 27 September 2013.

The implementation by Kiribati 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 31 March 2015 (CAC/COSP/IRG/I/4/1/Add.10).

Kiribati is a parliamentary democracy and its legal system comprises acts of parliament, certain statutes of the United Kingdom of Great Britain and Northern Ireland, common law and customary law. The Head of State and Government is the President (Te Beretitenti). The House of Assembly (Maneaba ni Maungatabu) is a unicameral legislative institution.

The legislation implementing chapters II and V of the Convention principally comprises the Public Service Performance Management Act, the Leaders Code of Conduct Act, the Act to Regulate the Public Procurement of Goods, Services and Works (the Public Procurement Act), the Companies Act, the Penal Code, the Proceeds of Crime Act and the Mutual Legal Assistance in Criminal Matters Act (the Mutual Legal Assistance Act).

Entities with mandates relevant to the prevention and countering of corruption include the Leadership Commission, the Office of the Attorney General, the Public Service Commission, the Public Service Integrity and Corruption Control Unit, the Central Procurement Unit and the Kiribati Police Service, which itself includes the Financial Intelligence Unit and the Transnational Crime Unit.

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)

Kiribati launched a national anti-corruption strategy in 2017. The strategy was adopted for the period 2017–2019, but its implementation period was extended internally until 2021. At the time of the country visit in February 2023, the Cabinet was in the process of developing a new strategy for the period 2023–2025.[1] Other relevant initiatives include the Kiribati Development Plan 2020–2023, which contains commitments related to accountability, transparency, equality and inclusiveness, and the Kiribati Vision 2016–2036, in particular pillar 4 on good governance, which highlights the Government's commitment to fighting corruption through strengthened domestic policies, legislative frameworks and strategic partnerships.

The implementation of anti-corruption policies is decentralized, but primary responsibility for implementation lies with the National Anti-Corruption Committee, together with the Leadership Commission and the Public Service Integrity and Corruption Control Unit. The National Anti-Corruption Committee is an advisory body that consists of representatives from various public and private bodies such as the Office of the Attorney General, the Kiribati Police Service, the Kiribati Chamber of Commerce and Industry and the Kiribati Local Government Association. The Committee is responsible for advising the Government on anti-corruption matters, including recommendations on law reform and the development of anti-corruption

[1] Kiribati reported that a new national anti-corruption strategy for the period 2023–2025 was launched in July 2023.

policies and standards. The Committee was established by a cabinet directive and its mandate and procedural rules are delineated within its terms of reference.

The Leadership Commission is responsible for investigating corruption and misconduct among leaders, as outlined in sections 11 and 13 of the Leaders Code of Conduct Act. Pursuant to part VI of the Public Service Performance Management Act, the Public Service Integrity and Corruption Control Unit is responsible for conducting investigations into alleged acts of corruption by employees who report directly to or hold positions below the secretaries of government ministries and chief executive officers of State-owned enterprises. The Public Service Integrity and Corruption Control Unit also conducts public outreach activities concerning corruption. However, the anti-corruption efforts of the Commission and the Unit are hampered by insufficient staffing and resources and a lack of specialized training, which prevent them from fully implementing their mandates.

Although there is no structured or formalized system in place for the periodic review of legislation to ensure its adequacy to prevent and combat corruption, the National Anti-Corruption Committee actively contributes to the process by providing recommendations to the Cabinet for the review and strengthening of relevant anti-corruption legislation.

Kiribati is a member of international and regional anti-corruption initiatives such as the Pacific Islands Law Officers' Network, the Pacific Islands Forum Secretariat and the Pacific Association of Supreme Audit Institutions. The country was reminded of its obligation to inform the Secretary-General of the name and address of its authorities that may assist other States parties in developing and implementing specific measures for the prevention of corruption in line with article 6, paragraph 3, of the Convention.

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

The civil service in Kiribati is governed by the Constitution, the Public Service Performance Management Act and the National Conditions of Service. Civil servants are appointed by the President, acting in accordance with the advice of the Public Service Commission (sects. 99 and 100 of the Constitution). More specific rules concerning the appointment, promotion, conduct and termination of employment of civil servants are outlined in the Conditions. They prescribe that public officer vacancies must be filled through an open and merit-based competition (sect. B4). According to the Conditions, any person appointed to a permanent position must undergo a probation period (sect. B12). There are other kinds of recruitment, such as contract-based recruitment and temporary recruitment. Recruitment is conducted by ministerial appointment panels responsible for the selection of qualified candidates, and salaries are determined by the salary scale for all public servants (sect. B6 and appendix E.1 of the Conditions). The Conditions also outline grounds for promotion, including work experience and education (sects. B21 and B22). The employment of permanent civil servants can be terminated subject to the approval of the Public Service Commission, and removal decisions can be appealed within 21 days to the Commission (sects. C1 and C7 of the Conditions). Kiribati has not identified positions considered especially vulnerable to corruption or adopted procedures applicable to such positions, including procedures for the selection and training of individuals for such positions and their rotation, where appropriate. In terms of integrity training, the Public Service Office conducts induction training covering topics of integrity and corrupt practices. The Leadership Commission collaborates with the parliament to conduct comprehensive induction workshops covering the Leaders Code of Conduct Act for newly elected members of the parliament. Furthermore, the Public Service Office provides training on the codes of conduct applicable to civil servants on an ad hoc basis.

The eligibility criteria for candidates in parliamentary elections include holding Kiribati citizenship and being at least 21 years of age (sect. 55 of the Constitution).

The Constitution also prescribes grounds for the disqualification of candidates, including having served a sentence of imprisonment imposed by a court in the Commonwealth or having any allegiance to a foreign State (sect. 56). Presidential candidates are nominated from among members of the parliament (sect. 32). Eligibility criteria for candidates in local elections are governed by the Local Government Act (sect. 9). There is no legislation governing transparency in the funding of candidatures for elected public office or in the funding of political parties.

With regard to conflicts of interest, the National Conditions of Service impose restrictions on the participation by certain types of civil servants in politics (sect. D15). The Conditions also prohibit the acceptance by civil servants and their family members of gifts, except for gifts received in the course of public duty that cannot be refused without causing offence (sect. D16). The Conditions contain neither provisions governing the outside employment or commercial activities of civil servants, nor rules on the disclosure of conflicts of interest.[2] Penalties for misconduct (including violations of the conflict-of-interest rules) under the Conditions include reprimand, suspension without pay, the stoppage of salary increments and dismissal (sect. D23). Penalties are imposed by the second reporting officers or the Public Service Commission, and civil servants can file appeals to the Commission (sect. D24). In 2019, the Cabinet approved the Kiribati Public Service Code of Conduct, which contains rules on a range of matters such as conflicts of interest, the acceptance of gifts and the misuse of public positions. Failure to comply with the Code can be penalized by sanctions under the relevant provisions of the National Conditions of Service.

The Leaders Code of Conduct Act contains rules prohibiting the acceptance of gifts and requiring the disclosure of conflicts of interest for an enumerated list of island leaders (sects. 8 and 9). The scope of relevant conflicts of interest encompasses any interests in matters under the control or influence of a leader. As highlighted above, the implementation of the above-mentioned rules is hampered by the limited resources available to anti-corruption bodies.

The Leaders Code of Conduct Act imposes an obligation on island leaders and their immediate family members to submit annual declarations of assets and liabilities (sect. 11). The Leadership Commission is responsible for the implementation of the asset disclosure obligations under the Act (sect. 11). Breaches of the Act can result in penalties such as fines, reprimands or suspension (sects. 18 and 19). However, the Commission does not have sufficient resources or staff to enforce and implement the provisions of the Act. As a result, the asset disclosure rules are not currently being enforced. Furthermore, although available annual declarations are published on the website of the Leadership Commission, the website is not updated regularly, owing to capacity limitations.

Anonymous complaints concerning potential misconduct or acts of corruption can be submitted directly to the Public Service Integrity and Corruption Control Unit or the Leadership Commission. However, there is no legislation on the protection of reporting persons or a general obligation for civil servants to report acts of corruption.

The Chief Justice is appointed by the President, acting in accordance with the advice of the Cabinet after consultation with the Public Service Commission, and other judges of the High Court are appointed by the President, acting in accordance with the advice of the Chief Justice after consultation with the Commission (sect. 81 of the Constitution). The Constitution prescribes eligibility criteria for judges of the High Court, such as previous judicial appointments (sect. 81). Judges of the High Court and the Court of Appeal can be removed for inability to perform their duties and misconduct on the basis of a recommendation of dismissal issued to the parliament by a tribunal established by the President (sect. 83). Magistrates are appointed by the President on the basis of the recommendation of the Chief Justice (sect. 7 of the

[2] Kiribati reported that the Government is in the process of reviewing the National Conditions of Service to implement declaration forms for gifts with a value exceeding 20 Australian dollars and for potential conflicts of interest encountered during official duties.

Magistrates' Courts Ordinance). The Magistrates' Courts Ordinance contains provisions designed to promote integrity in the judiciary, including the recusal of magistrates by reason of personal interest (sect. 11). Kiribati has also adopted a code of judicial conduct that is applicable to judges and magistrates. The code covers the principles of independence, integrity and impartiality, the management of conflicts of interest and the acceptance of gifts (sects. 2.3 and 4.5). However, there are no rules concerning incompatible offices for judges and relevant officials responsible for public prosecution, creating the potential for corruption and the risk of conflicts of interest. Furthermore, there are no training programmes for judges concerning the content of the code or ethical conduct.

The Office of the Attorney General is responsible for criminal proceedings (sect. 42 of the Constitution). In the exercise of prosecutorial functions, the Attorney General must not be subject to the direction or control of any other person or authority (sect. 42). The Attorney General can delegate prosecutorial powers to subordinate officers (sect. 42). The Attorney General is appointed and removed by the President, with no clearly defined criteria or independent assessment for appointment and dismissal, creating a risk of interference in the proper performance of prosecutorial functions. There is no specific integrity training for prosecutors.

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

The public procurement process in Kiribati is decentralized and governed by the Public Procurement Act and the Public Procurement Regulations. The Act prescribes open procedure as a standard procurement method (sect. 20). Limited and single-source procurements require the approval of the Chief Procurement Officer, along with the approval of the Secretary of the Ministry of Finance for single-source procurements (regulation 15 of the Regulations). Invitations to tender and other procurement documents must be made publicly available through online publication, and procurement entities must provide sufficient time for economic operators to submit their tenders (sects. 26 and 27 of the Act). Procuring entities are obliged to use model procurement documents issued by the Chief Procurement Officer (sect. 25 of the Act). Published invitations to tender must stipulate the relevant evaluation criteria and procurement specifications (regulation 33 of the Regulations). The Act and the Regulations do not apply to procurements involving matters such as the purchase or rent of immovable property, financial investments or travel expenses (regulation 3 of the Regulations).

Procuring entities can prescribe eligibility criteria for tenderers (regulation 36 of the Public Procurement Regulations). Received tenders are assessed by evaluation committees established by procuring entities (regulation 24). Evaluations are based on technical and financial criteria (regulation 33). The Regulations prescribe tenderer exclusion criteria, including previous criminal offences and breaches of tax obligations (regulation 35). However, authorities reported challenges related to the implementation of this provision, including regarding the identification of excluded tenderers. Furthermore, there is no register of debarred tenderers.

Public procurements can be cancelled owing to reasons such as suspicions of collusion or corruption (reg. 27 of the Public Procurement Regulations). Depending on the type of procurement, final contract awards are awarded by the Contract Award Committee or the Central Contract Award Board (regulation 39). Contract award notices must be published (sect. 29 of the Public Procurement Act); however, at the time of the country visit, this provision had not been implemented in a consistent manner, including there having been no online publication of awards. Depending on the type of procurement, complaints against procurement decisions can be submitted to the procuring entities, the Chief Procurement Officer or the Procurement Complaints Board (regulations 52–54 of the Regulations).

Members of the evaluation committees must be excluded from participating in procurements in which they may have conflicts of interest (regulation 24 of the Public Procurement Regulations). All procurement officers must declare any possible

incompatibility with other positions and any possible personal interest in tenders or personal or family connection with tenderers (sect. 4 of the Public Procurement Act). However, the above-mentioned provisions are not consistently implemented in practice. There are no specific ethics or integrity training requirements for procurement personnel. The misconduct of procurement officers can be sanctioned by criminal or administrative penalties (sects. 38 and 39 of the Act).

According to section 109 of the Constitution and section 60 of the Rules of Procedure of the Parliament, the Minister of Finance is responsible for the preparation of a draft appropriation bill, which is submitted to the parliament annually for adoption. The deliberations concerning the adoption of the budget are open to the public. The Public Finance (Control and Audit) Act (the Public Finance Act) outlines the duties of the Accountant General and accounting officers responsible for reporting on revenue and expenditure and record-keeping (sects. 15 and 17). The Auditor General is responsible for the audit of all accounts prepared by the Chief Accountant and accounting officers (sects. 29 and 39). Although a system of internal audit was established under section 14 of the Act, there are no robust rules concerning risk management and internal controls. Furthermore, there are no rules concerning timely reporting on revenue and expenditure.

The Government Finance Regulations govern a range of public finance matters, including rules on record-keeping (regulation 2.1). The Regulations contain an obligation to report any suspected loss, shortage, irregularity, fraud or theft affecting the funds of the Government (regulation 17.1). Records must be kept in a digital or physical form for a period of seven years (regulation 2.2.5). Breaches of the Regulations and the Public Finance Act by responsible officers can be penalized through criminal or administrative sanctions such as suspension, dismissal and imprisonment (regulation 17.11 of the Regulations; sect. 19 of the Public Records Act). Furthermore, the Penal Code prohibits the falsification or destruction of accounting documents by private and public companies (sects. 298 and 299); however, there are no clear provisions governing the falsification of records under the Public Finance Act or the Regulations.

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

The Constitution protects freedom of expression, including the freedom to receive information without interference (sect. 12). The Broadcasting and Publication Authority Ordinance Revised Edition of 2022 specifies in its section 12(2) the general duty of the Authority to promote the publication of news and information of general and special interest to all people. However, Kiribati does not have legislation that lays down substantive rules and procedures concerning the implementation of the right to access information.[3] Certain public bodies and State-owned enterprises are obliged to publish annual reports (sect. 24 of the State-Owned Enterprises Act).

Most ministries maintain websites with general information concerning the services they provide; however, there is no overarching policy on simplifying administrative procedures to facilitate public access to competent decision-making authorities. At the time of the country visit, Kiribati was not in the practice of conducting periodic corruption risk assessments. The country is planning to launch a corruption risk management programme in the public sector in 2024.

The Rules of Procedure of the Maneaba ni Maungatabu allow members of the public to submit petitions to the parliament; however, there is no public consultation process for legislative drafts (sect. 25). All adopted bills and their explanatory memorandums must be published (sect. 52). During the country visit, it was reported that several anti-corruption public information activities had been organized in Kiribati.

[3] In October 2023, Kiribati enacted the Digital Government Act, which recognizes the rights to freedom of expression and information.

The Public Service Integrity and Corruption Control Unit and the Leadership Commission accept anonymous corruption and misconduct complaints. However, there is no policy or legislation on the protection of reporting persons.

Private sector (art. 12)

The Kiribati Chamber of Commerce and Industry is working jointly with the Ministry of Commerce to promote a dialogue between the public and private sectors. However, there are no specific measures to promote cooperation between law enforcement agencies and the private sector. There are no codes of conduct for the correct and proper performance of business activities, although the Chamber has developed a draft code of conduct.

Any entity operating under a business name must submit its registration to the companies register (sect. 4 of the Registration of Business Names Act; sect. 7 of the Companies Act). The register contains a range of information concerning private entities, including company constitutions, the names of directors and the names of shareholders (sect. 7 of the Companies Act). The company information in the register is not fully digitized or available online, but can be accessed by the public upon individual request and for a fee (sect. 213). There is no beneficial ownership register; however, companies are required to collect information about the beneficial owners of shares (sect. 52). However, this information is not systematically updated or verified.

There are no general rules designed to prevent the misuse of procedures regarding the provision of subsidies and licences to private entities. Furthermore, Kiribati has not adopted any restrictions on the professional activities of former public officials or on the employment by the private sector of public officials after their resignation or retirement, where such activities or employment relate directly to the functions held by those public officials during their tenure.

Private entities must keep appropriate accounting records that correctly reflect company transactions and their financial position (sect. 149 of the Companies Act). Companies with a specified number of shareholders are required to prepare audited financial statements; however, such companies have the option to exempt themselves from audit obligations (sects. 152 and 153). There are no dedicated rules concerning internal auditing controls. Companies must also prepare annual returns and submit them to the companies register (sect. 143). The Act imposes penalties for the destruction and falsification of accounting records, books or other documents (sect. 231). However, not all accounting practices described in article 12, paragraph 3, of the Convention are expressly prohibited. Furthermore, there are no provisions that expressly prohibit the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The main legislation prescribing measures to prevent money-laundering is part V of the Proceeds of Crime Act.

The Proceeds of Crime Act establishes preventive measures and reporting obligations for financial institutions, including banks, cash dealers and money remitters (as defined in section 3). The Act also applies to a range of designated non-financial businesses and professions, including natural or legal persons that provide electronic services for the transmission of money or value (sect. 3). However, at the time of the country visit, only one foreign bank was operating on the territory of Kiribati and applying Australian anti-money-laundering regulations.

Financial institutions are accountable under the Proceeds of Crime Act and are subject to customer due diligence requirements (sects. 101–103), transaction monitoring (sect. 104), suspicious transaction reporting (sects. 106 and 107) and record-keeping measures (sect. 110).

There is no designated supervisory authority for financial institutions. In 2021, Kiribati adopted the Financial Supervisory Authority Act and the Financial Institutions Act, but the authority has not yet been established.

The Proceeds of Crime Act establishes the Financial Intelligence Unit within the Kiribati Police Service. Section 17 of the Act gives the Unit the power to consult with any relevant person (domestic or foreign) in exercising its powers or duties.

The Proceeds of Crime Act was amended in 2005 to include provisions relating to the cross-border transfer of cash (in any currency), but the current definition does not include appropriate bearer negotiable instruments. A person leaving or entering Kiribati with an amount of cash greater than 5,000 Australian dollars must declare that amount to an authorized officer. Anyone who fails to do so commits an offence punishable by a fine of 12,000 Australian dollars or two years of imprisonment, or both (sect. 115A).

The Proceeds of Crime Act requires financial institutions or cash dealers to maintain complete originator information throughout the payment chain, scrutinize wire transfers that do not contain such information and apply enhanced scrutiny to such transfers (sects. 104(2)(b) and 105). However, at the time of the country visit, the only entity providing money remittance services was the foreign bank operating on the territory.

At the time of the country visit, the Financial Intelligence Unit had developed a new policy on financial institution guidelines that was being adopted by the Office of the Attorney General and that was based on guidelines and recommendations made by the Financial Action Task Force and the Asia/Pacific Group on Money Laundering. Since 2013, Kiribati has participated as an observer in the Group, but has not been assessed in a mutual evaluation.

The Financial Intelligence Unit has not signed any memorandums of understanding with foreign counterparts, but it does have informal connections, in particular with the Fiji Financial Intelligence Unit. Kiribati is also part of the Association of Pacific Island Financial Intelligence Units and is applying for membership of the Egmont Group of Financial Intelligence Units. However, Kiribati is not a member of other international or regional networks.

The Transnational Crime Unit cooperates through the Pacific Transnational Crime Network, which established the Pacific Transnational Crime Coordination Centre, and through other counterparts, including the International Criminal Police Organization (INTERPOL) and the Australian Federal Police.

2.2. Successes and good practices

- The establishment of multiple bodies with preventive anti-corruption mandates, including the Leadership Commission and the National Anti-Corruption Committee (art. 6, para. 1).

2.3. Challenges in implementation

It is recommended that Kiribati:

- Continue ensuring that the national anti-corruption strategy is adopted and updated in a timely manner and conduct periodic evaluations on the progress of the strategy's implementation (art. 5, para. 1).
- Endeavour to adopt a structured system for periodically reviewing legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption (art. 5, para. 3).
- Strengthen the existing corruption prevention bodies by providing sufficient staffing, resources and specialized training to ensure the full implementation of their mandates, including the mandates related to the enforcement of conflict of interest and asset disclosure requirements; furthermore, continue ensuring that

the National Anti-Corruption Committee meets regularly and fully implements its mandate (art. 6, para. 2, art. 7, para. 4, and art. 8, para. 5).

- Endeavour to enhance public sector integrity by identifying positions considered especially vulnerable to corruption and adopting procedures for the selection and training of individuals for such positions and their rotation, where appropriate (art. 7, para. 1 (b)).
- Consider enhancing transparency in the funding of candidatures for elected public office and political parties by adopting legislation governing political funding and ensuring adequate transparency (art. 7, para. 3).
- Endeavour to strengthen the existing conflict of interest framework by adopting rules on outside employment and commercial activities, as well as on the disclosure by civil servants of any conflicts of interest; furthermore, endeavour to ensure implementation of the rules on conflicts of interest under the Leader Code of Conduct Act (arts. 7, para. 4, and 8, para. 5).
- Consider strengthening the existing corruption reporting mechanisms by adopting legislation on the protection of reporting persons and imposing a general obligation for civil servants to report acts of corruption (art. 8, para. 4, and art. 13, para. 2).
- Endeavour to strengthen the existing asset disclosure regime by implementing the declaration requirements and publishing annual statements in a consistent manner (art. 8, para. 5).
- Strengthen the public procurement framework by ensuring that the types of procurement excluded under the Public Procurement Act are subject to sufficient oversight and adequate regulation, ensuring the timely and complete publication of information on contract awards, and consider maintaining a register of debarred tenderers; furthermore, continue to enforce relevant provisions on the disclosure of personal interests and the appropriate conduct of procurement personnel and consider adopting additional training requirements on ethics and transparency for such personnel (art. 9, paras. 1 (a), (b) and (e)).
- Strengthen the system for the management of public finances by adopting clear and robust rules on internal controls and risk management for public bodies and rules concerning timely reporting on revenue and expenditure; furthermore, adopt clear provisions governing the falsification of records under the Public Finance Act, the Government Finance Regulations and other relevant instruments (art. 9, paras. 2 (d) and 3).
- Strengthen the framework on public reporting and participation by adopting and enforcing legislation governing substantive elements of the right to access information and developing an overarching policy on simplifying administrative procedures to facilitate public access to competent decision-making authorities; furthermore, consider conducting and publishing comprehensive corruption risk assessments and adopting rules concerning public consultations during the law-making process (art. 10, paras. (a), (b) and (c), and art. 13, paras. 1 (a) and (b)).
- Strengthen integrity and transparency in public prosecution by addressing the risk of political interference in the proper performance of prosecutorial functions, including through the adoption of clearly defined criteria or an independent assessment for the appointment and dismissal of the Attorney General, or the establishment of a separate position of director of public prosecution; adopt rules concerning incompatible offices for judges and relevant officials responsible for public prosecution to address the risk of conflicts of interest; furthermore, consider adopting training requirements on ethics and appropriate conduct for judges and prosecutors (art. 11, paras. 1 and 2).

- Strengthen integrity and transparency in the private sector by:
    - Adopting measures to promote cooperation between law enforcement agencies and the private sector (art. 12, para. 2 (a));
    - Promoting the adoption by private companies of standards of conduct for the correct and proper performance of business activities (art. 12, para. 2 (b));
    - Digitizing the existing companies register and ensuring that it remains easily accessible to the public; furthermore, consider imposing an obligation on private entities to disclose beneficial ownership information and ensuring that such information is verified and updated in a timely manner (art. 12, para. 2 (c));
    - Considering the adoption, where necessary, of provisions to prevent the misuse of procedures regarding subsidies and licences for private entities (art. 12, para. 2 (d));
    - Considering the adoption, where necessary and for a reasonable period of time, of restrictions on the professional activities or employment of former public officials, where such activities or employment relate directly to the functions held by those public officials during their tenure (art. 12, para. 2 (e));
    - Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls and that their financial statements are subject to auditing procedures (art. 12, para. 2 (f));
    - Expressly prohibiting the accounting practices described in article 12, paragraph 3, of the Convention, as well as the tax deductibility of expenses that constitute bribes (art. 12, paras. 3 and 4).
- Strengthen its supervisory regime, including by establishing or designating supervisory authorities for all relevant sectors, including for financial institutions and designated non-financial businesses and professions (art. 14, para. 1 (a)).
- Strengthen the ability of the Financial Intelligence Unit to cooperate at the national and international levels (art. 14, para. 1 (b)).
- Consider implementing feasible measures to detect and monitor the movement of appropriate bearer negotiable instruments across its borders (art. 14, para. 2).
- Endeavour to develop and promote regional, subregional and bilateral cooperation in order to combat money-laundering (art. 14, para. 5).

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

- Assistance to review and strengthen existing anti-corruption legislation and policies, including new legislation and policies to address specific areas identified during the review process.
- Training and other support for domestic anti-corruption bodies and other stakeholders, such as the private sector, civil society organizations and public officials.
- Support to develop systems for asset declaration and public procurement to enhance transparency and accountability.

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)

The Mutual Legal Assistance Act provides the legal basis for mutual legal assistance with asset recovery. Kiribati does not make mutual legal assistance conditional on the existence of a treaty and the Convention can be used as a legal basis.

Kiribati has not established a dedicated unit for asset recovery and management. The Kiribati Police Service has two units: the Financial Intelligence Unit, which is responsible for recovering assets related to money-laundering offences (sects. 18, 19 and 43 of the Proceeds of Crime Act), and the Transnational Crime Unit, which is in charge of recovering assets obtained through other transnational crimes (sect. 44). The Criminal Investigations Division of the Kiribati Police Service is mandated to enforce orders of confiscation. In addition, the Financial Intelligence Unit provides assistance in monitoring and ensuring that no money of foreign origin that cannot be accounted for is deposited inside or outside Kiribati.

Section 67 of the Police Service Act provides for the possibility of authorizing the disclosure of information that is in the possession of the Kiribati Police Service, even without prior request. In practice, certain units of the Service, such as the Transnational Crime Unit, have spontaneously transmitted information to foreign competent authorities in previous cases. However, this practice is mostly carried out through formal and informal networks and arrangements.

The Transnational Crime Unit cooperates internationally through the Pacific Transnational Crime Network, as well as through other counterparts such as INTERPOL and the Australian Federal Police.

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

Part V of the Proceeds of Crime Act requires financial institutions to identify customers and verify their identity on the basis of reliable and independent source documents when entering into a continuing business relationship, when conducting any transaction, when there is a suspicion of money-laundering or when there are doubts about the adequacy of previously obtained customer due diligence information (art. 102). The Act does not require financial institutions to identify beneficial owners or take reasonable steps to determine their identity. Furthermore, the Act does not explicitly provide for enhanced scrutiny or due diligence for politically exposed persons, their family members and close associates.

The Financial Intelligence Unit is mandated to issue guidelines to financial institutions and provide them with training regarding transactions, record-keeping and reporting obligations. However, the Unit does not issue notifications or advisories regarding higher-risk persons, accounts and transactions to which they would be expected to apply enhanced scrutiny.

The Proceeds of Crime Act sets out record-keeping requirements (sect. 110) and the obligation to register original documents (sect. 111). The record-keeping requirements do not apply to documents related to customer due diligence.

Kiribati does not have any legal or regulatory provisions in place to prevent the establishment of shell banks in the country or to prevent financial institutions from entering into or continuing a correspondent banking business with shell banks or with foreign financial institutions that permit their accounts to be used by such banks.

The Statement of Interest that all leaders need to submit annually includes declarations of estimated assets obtained and liabilities incurred outside Kiribati (sect. 11 of the Leaders Code of Conduct Act). However, the asset declaration requirements for

leaders do not extend to foreign bank accounts, including any signature or control authority over such accounts.

Kiribati has established the Financial Intelligence Unit, which is tasked with, inter alia, receiving, analysing and disseminating suspicious transaction reports (sect. 16 of the Proceeds of Crime Act). However, the Unit is integrated within the Kiribati Police Service and is not financially or administratively independent.

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)

Kiribati does not have specific legislative provisions permitting another State to initiate civil action in its national courts or claim for compensation and damages. Civil action can, however, be initiated by legal persons. At the time of the country visit this situation had never arisen, and there are no provisions allowing courts to order those who have committed offences to pay compensation or damages to another State party. Section 28 of the Proceeds of Crime Act provides for the protection of third parties, including legal persons, in the context of confiscation. However, as in the case of civil proceedings, there is no certainty that these measures can be extended to foreign States.

Section 41 of the Mutual Legal Assistance Act establishes a process for the registration of foreign forfeiture orders before they can be enforced on national territory. Requests are received through the central authority, which is the Attorney General. Kiribati applies a special procedure for countries that are part of the Commonwealth. Section 3 of the Commonwealth Scheme on Mutual Legal Assistance in Criminal Matters (Harare Scheme) provides for the direct enforcement of confiscation, seizure and freezing orders from another Commonwealth country.

Section 26 of the Proceeds of Crime Act provides for the possibility for confiscation to be based on a serious offence, including the offence of money-laundering, instead of on a predicate offence, but the Mutual Legal Assistance Act does not specify whether this is possible in the context of mutual legal assistance. Confiscation in Kiribati is conviction-based, except where the person has absconded or died (sect. 29 of the Proceeds of Crime Act). The country does not a priori allow for the execution of non-conviction-based foreign forfeiture orders (sect. 41(1)(b) of the Mutual Legal Assistance Act). However, authorities noted that the order would still go through the registration process and that the possibility of executing it would be assessed by the High Court.

Sections 21, 41 and 47 to 49 of the Mutual Legal Assistance Act provide for the enforcement of foreign search, seizure and freezing requests and orders. As in the case of foreign forfeiture orders, search, seizure and freezing orders must go through a process of registration (sect. 41(3)). Part 4 of the Proceeds of Crime Act grants the authorities the power to preserve property subject to confiscation, including on the basis of the execution of a foreign order (sect. 50). The Mutual Legal Assistance Act also provides for the possibility for a police officer to seize and freeze items other than those strictly included in the search warrant if they are believed to be relevant to a proceeding or investigation in a foreign country; to provide evidence about the commission of a criminal offence in Kiribati; and to be likely to be concealed, lost or destroyed if they are not seized. (sect. 22(3)). During the country visit, Kiribati provided a specific example of such cooperation with the Marshall Islands, Nauru and Tuvalu.

Kiribati does not have a provision that allows the issuing of preservation orders without prior request or on the basis of a foreign arrest or criminal charge.

Section 8 of the Mutual Legal Assistance Act and section 14 of the Harare Scheme outline the format of and the information that must be included in mutual legal assistance requests. These provisions provide that requests must contain a minimum of information on the type of property to be searched for and confiscated. However,

there is no obligation on the requesting State to provide adequate notification to bona fide third parties or to provide the other information required under article 55, paragraph 3, of the Convention. Regarding requests for confiscation, the Attorney General must be satisfied that a person has been convicted of the offence and that the conviction and the order are not subject to further appeal in the foreign country (sect. 41(1)(b)). Information regarding the exact location of the properties and their precise nature is not necessary for the execution of such requests, particularly for search warrants.

Section 12(g) of the Mutual Legal Assistance Act provides for the possibility of refusing mutual legal assistance requests if the provision of assistance would impose an excessive burden on the resources of Kiribati. However, the Act does not provide a definition of the term "excessive burden", and Kiribati has not had any such cases where this provision has been used. There is no reference to a potential time limit for the provision of assistance.

No provision within the Mutual Legal Assistance Act or the Harare Scheme clearly indicates that Kiribati should, before lifting a provisional measure, give the requesting State an opportunity to present its reasons in favour of continuing the measure. There are no specific rules concerning the de minimis value of property.

Sections 26(4)(a), 28 and 31 of the Proceeds of Crime Act provide for the protection of bona fide third parties.

Return and disposal of assets (art. 57)

Kiribati does not have any legal provisions regulating asset disposal and return. Only the Mutual Legal Assistance Act provides for the possibility of entering into ad hoc arrangements to return confiscated property to the requesting foreign country (sect. 44(3)). The interests of bona fide third parties are protected (sects. 26(4)(a), 28 and 31 of the Proceeds of Crime Act). There is no legal provision that gives effect to the obligations of article 57, paragraph 3, of the Convention in the case of offences established in accordance with the Convention.

The law of Kiribati does not provide for the possibility of deducting reasonable expenses incurred in investigations, prosecutions or judicial proceedings. At the time of the country visit, Kiribati had not entered into any ad hoc agreements on asset return.

3.2. Successes and good practices

- Kiribati allows for the seizure and freezing of properties and assets other than those strictly detailed in a search warrant if those items are believed to be relevant to a proceeding or investigation in a foreign country; to provide evidence about the commission of a criminal offence in Kiribati, and to be likely concealed, lost or destroyed if they are not seized (art. 54, para. 2).
- Kiribati proactively and spontaneously transmits information to foreign competent authorities, without a prior mutual legal assistance request, where such information could assist in the investigation of offences (art. 56).

3.3. Challenges in implementation

It is recommended that Kiribati:

- Consider establishing a financial intelligence unit that is separate from the Kiribati Police Service and establishing an agency in charge of the management of seized and confiscated assets (arts. 51 and 58).
- Take necessary measures to require financial institutions to identify beneficial owners and take reasonable steps to determine the identity of beneficial owners, and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of both domestic and foreign politically exposed persons, as well as their family members and close associates (art. 52, para. 1).

- Take necessary measures to issue advisories regarding higher-risk persons, accounts and transactions and to notify financial institutions of the identity of particular natural or legal persons to whose accounts they will be expected to apply enhanced scrutiny (art. 52, para. 2 (a) and (b)).
- Include customer due diligence records in the registration and record-keeping requirements established by the Proceeds of Crime Act (art. 52, para. 3).
- Take appropriate measures to prevent the establishment of shell banks and consider requiring financial institution to refuse to enter into or continue correspondent banking relationships with shell banks or with foreign financial institutions that permit their accounts to be used by such banks (art. 52, para. 4).
- Consider extending asset declaration requirements for leaders to foreign bank accounts, including any signature or other authority over such accounts (art. 52, paras. 5 and 6).
- Take measures to permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention; permit its courts to order those who have committed offences established in accordance with the Convention to pay compensation or damages to another State party that has been harmed by such offences; and permit its courts or competent authorities, when having to decide on confiscation, to recognize another State party's claim as a legitimate owner of property acquired through the commission of the Convention (art. 53).
- Consider taking measures to allow the confiscation of property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases for the purposes of international cooperation (art. 54, para. 1 (c)).
- Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (art. 54, para. 2 (c)).
- Consider amending the existing mutual legal assistance guidelines by imposing an obligation on the requesting State to provide adequate notification to bona fide third parties and to provide other information required under article 55, paragraph 3, of the Convention.
- Consider defining the term "excessive burden" included in section 12(g) of the Mutual Legal Assistance Act and limiting its application to property of a de minimis value (art. 55, para. 7).
- Consider adopting measures providing for consultations before provisional measures are lifted (art. 55, para. 8).
- Take necessary measures to ensure that confiscated property is returned in line with article 57 of the Convention, even in the absence of an agreement with the requesting State (art. 57, para. 3), and regulate costs arising from asset recovery proceedings in accordance with article 57, paragraph 4.
- Consider concluding more bilateral and multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken in relation to asset recovery (art. 59).