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Executive summary

Note by the Secretariat

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II. Executive summary

Peru

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

The implementation by Peru of chapters III and IV of the Convention was reviewed in the first year of the first review cycle and the executive summary of that review was published on 30 May 2013 ([CAC/COSP/IRG/I/1/1/Add.14](#)). The full report of the review is available on the website of the United Nations Office on Drugs and Crime (UNODC).¹

The legislation implementing chapters II and V of the Convention includes the National Policy on Integrity and the Fight against Corruption, Acts 26702, 26864, 27482, 27693, 27785, 27806, 27815, 28094, 29277, 29976, 30057, 30225, 30483, 30689, 30717 and 30916 and Legislative Decree 1373.

The main public institutions involved in the prevention of corruption are the High-Level Anti-Corruption Commission (CAN), the Secretariat for Public Integrity of the Office of the President of the Council of Ministers, the National Authority for Transparency and Access to Public Information, the Public Prosecution Service and the Office of the Comptroller General.

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)

The National Policy on Integrity and the Fight against Corruption (Supreme Decree 092-2017-PCM) applies to all levels of government and public bodies and provides guidance for the private sector. The Policy authorizes CAN to establish a National Integrity and Anti-Corruption Plan (art. 6 of Supreme Decree 092-2017-PCM).

The National Integrity and Anti-Corruption Plan 2018–2021 (Supreme Decree 044-2018-PCM) focuses on three areas: (a) the strengthening of the State's capacity to prevent acts of corruption; (b) the identification and management of risks; and (c) the State's capacity to punish acts of corruption.

CAN, acting through the Secretariat for Public Integrity, is responsible for monitoring and evaluating the National Integrity and Anti-Corruption Plan (art. 4 of Supreme Decree 044-2018-PCM; art. 5 of Supreme Decree 042-2018-PCM; art. 5 of Supreme Decree 092-2017-PCM).

Initiatives to prevent corruption have been implemented, including a virtual platform that displays a list of candidates standing for public election against whom criminal proceedings are under way for corruption, drug trafficking, terrorism or money-laundering offences. The platform was used in the 2014 elections.² The Office of the Comptroller General carries out both preventive and control functions.

Peru participates in regional and global anti-corruption initiatives, such as those led by the Organization of American States, the Financial Action Task Force of Latin America (GAFILAT), the Organization for Economic Cooperation and Development, the Asia-Pacific Economic Cooperation forum and UNODC.

¹ <https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=PER>.

² Following the country visit, the authorities indicated that the platform had also been used in the 2020 elections (www.gob.pe/candidatos2020).

CAN, the Secretariat for Public Integrity and the Office of the Comptroller General are the main bodies responsible for preventing corruption. The role of CAN is to coordinate efforts and actions and propose policies for preventing and combating corruption to the executive branch (art. 1 of Act 29976). CAN is also responsible for promoting and fostering a culture of values (art. 3, para. 3, of Act 29976).

The Secretariat for Public Integrity is the body responsible for providing technical guidance on the National Policy on Integrity and the Fight against Corruption, for developing mechanisms and instruments to prevent and manage corruption risks and for providing technical support to CAN (art. 8 of Supreme Decree 042-2018-PCM).

The Office of the Comptroller General is responsible for ensuring that public servants and officials take full responsibility for their actions in the exercise of their duties and recommends the adoption of preventive and corrective measures (art. 15 (e) of Act 27785). The Comptroller General can make recommendations on how to improve governance and action against corruption (art. 32 (k) of Act 27785).

CAN has prepared a Guide on Principles, Duties and Ethics-based Prohibitions in the Civil Service and, together with the Secretariat for Public Integrity, carries out activities to promote ethical values and public integrity.

CAN comprises public institutions, including government ministries, and civil society and private institutions. The Secretariat for Public Integrity is an administrative division of, and financially integrated with, the Office of the President of the Council of Ministers. The Office of the Comptroller General is the technical body that governs the National Control System and has economic, administrative and financial autonomy to perform its functions effectively (art. 82 of the Constitution; arts. 16 and 34 of Act 27785).

The Office of the Comptroller General and the Secretariat for Public Integrity organize training activities for their staff. CAN does not have full-time staff or specifically allocated financial resources; its members participate on a voluntary basis (art. 5 of Act 29976).

Peru has informed the Secretary-General of the United Nations that the Secretariat for Public Integrity may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

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

The Civil Service Act (Act 30057), which was published in 2013, is aimed at unifying the various existing employment regimes but has not yet been fully implemented. At the time of the country visit, there were four general employment regimes (public administration (Legislative Decree 276), labour competitiveness and productivity (Legislative Decree 728), government procurement of services (Legislative Decree 1057) and the aforementioned civil service regime), in addition to 11 special career paths available to civil servants.

The purpose of the Civil Service Act is to establish a single and exclusive regime for persons who provide services in public entities and for persons who are responsible for the management of such entities, the exercise of their powers and the provision of services for which they are responsible (art. I). It includes the principles of merit, probity and public-sector ethics, transparency and equal opportunities (art. III).

The Act provides for a selection process (art. 8), the details of which are set out in the General Regulations implementing the Civil Service Act (arts. 164–178). Those Regulations also govern the posting and return (arts. 254 and 255), secondment and rotation (arts. 265–270) and termination of service (arts. 203–228) of public officials. Positions considered especially vulnerable to corruption have not been identified and there are no provisions on promotion.

Peru has established pay scales for some employment regimes and public entities (see, for example, Supreme Decree 023-2014-EF). The authorities indicated that some scales had not been adjusted since the 1990s. Persons sentenced to imprisonment for certain offences can neither run for the office of President or Vice-President in regional or municipal elections nor stand for the position of Congressperson or Representative in the Andean Parliament. The same applies to public officials convicted of certain offences established in accordance with the Convention (arts. 10, 107 (i) and (j) and 113 of Act 26859; art. 14, para. 5 (f) and (g), and art. 8.1 (g) and (h) of Act 26864, incorporated through Act 30717).

Political parties are funded by private and public contributions (arts. 29 and 30 of Act 28094 as amended by Act 30689). There are restrictions on funding, including a prohibition on the receipt of contributions from public-law entities or enterprises owned by the State or in which the State has a stake, from profit-making entities and, in certain cases, from convicted natural persons, and on the receipt of any anonymous contribution (art. 31 of Act 28094 as amended). Political parties should establish a system of internal audit and submit an annual financial report. The National Elections Office is responsible for external verification and audit of the economic and financial activities of political organizations (art. 34 of Act 28094). The Regulations on Party Funding and Related Financial Oversight (approved by Director's Decision 025-2018-JN/ONPE) regulate the funding of candidates for elected office (subchapter 5), with the same limitations as those set out in article 31 of Act 28094 as amended.

In order to promote transparency, Peru supports mechanisms and instruments that foster public integrity, such as the lobbying register, in which lobbyists and lobbying activities are registered as reported by the officials concerned (arts. 11–15 of Act 28024;³ art. 4.5 of Supreme Decree 042-2018-PCM).

The Civil Service Code of Ethics was adopted through Act 27815 and is applicable to all public employees (arts. 1 and 4 as amended by Act 28496).

The National School of Public Administration provides training in public-sector ethics. It does not focus on the Code of Ethics and many officials are not familiar with the Code's contents. Public employees must report acts that are contrary to the Code (art. 11 of Act 27815).

Some officials, including those who manage State funds or have certain procurement responsibilities, are required to submit a sworn declaration of interests in relation to businesses, companies or other entities in which they have a share, their participation in governing boards, management boards or similar and any employment, consultancy role or involvement in private organizations (arts. 1, 3 and 4 of Supreme Decree 080-2018-PCM). The information to be submitted covers the five-year period preceding its submission; the declaration must be made upon appointment, annually thereafter and upon the official's leaving office and is published online (arts. 4, 6 and 7 of Supreme Decree 080-2018-PCM). There are no sanctions for submission of a false declaration or failure to submit a declaration and the content of declarations is not verified. A special regime applies to certain officials of the Office of the Comptroller General (arts. 3 and 6.2 of Directive 010-2018-CG/GDET), including provisions on sanctions and the verification of declarations.⁴ Certain public officials are prohibited from accepting donations, although there are specific exceptions, including

³ Following the country visit, the Peruvian authorities indicated that the regulations implementing Act 28024 had been approved through Supreme Decree 120-2019-PCM.

⁴ Following the country visit, the Peruvian authorities indicated that the submission of a sworn declaration of interests in the public sector had been made obligatory by Emergency Decree 020-2019. They also indicated that the Emergency Decree had replaced Supreme Decree 080-2018-PCM and would cover the Office of the Comptroller General and other regulated entities. In addition, the Emergency Decree would state that administrative offences would be established through a set of regulations.

contributions to electoral campaigns (arts. 5, 17 and 18 of Act 28024). There is no register of gifts or benefits.

Violations of the Code of Ethics are punished in accordance with the Civil Service Act and the disciplinary regime and disciplinary procedure established by part VI of the regulations implementing Act 30057.

Judicial independence is provided for (arts. 139 and 146 of the Constitution; art. 1 of Act 29277).

Act No. 29277 governs entry to the judiciary and promotion (arts. 3, 5, 12, 100 (1) and 102), the general requirements for becoming and remaining a member of the judiciary and the special requirements applicable to senior judges (arts. 4 and 6–10). Part III, chapter V, establishes the disciplinary regime.

Peru has a Code of Ethics for the Judiciary (approved by Plenary Agreement 61-2018).

The Public Prosecution Service is autonomous (art. 158 of the Constitution). The requirements for the position of prosecutor, the duties and rights of prosecutors, prohibited conduct and restrictions applicable to the activities of prosecutors and the disciplinary regime are established in articles 4–6 and 9, chapters I–V, of part III of Act 30483. Prosecutors are selected through a competitive examination (art. 5 of Act 30483), have a code of ethics (Decision 018-2011-MP- FN-JFS) and receive ethics training (art. 28 of Act 30483).

The National Justice Board is legally independent (art. 150 of the Constitution) and has replaced the National Council of the Judiciary (sole article of Constitutional Reform Act 30904). The Board is responsible for recertifying judges and prosecutors every seven years and for carrying out partial performance evaluations with the Judicial Academy every three and a half years (arts. 35–39 of Act 30916). Judges and prosecutors who have not been recertified or who have been dismissed cannot re-enter the judiciary or the Public Prosecution Service (art. 154, para. 2, of the Constitution; art. 35 of Act 30916). The recertification procedure is independent of disciplinary measures (art. 35 of Act 30916).

Those who have not been recertified cease to hold office from the day following notification of the decision to that effect. A request for reconsideration may be made within five working days of notification; such a request does not have a suspensive effect and must be decided by the Board, whose decision is final (art. 37 of Act 30916).

The fate of rulings made by judges who were not subsequently recertified is unclear. At the time of the country visit, appointments, evaluations and recertifications by the National Justice Board had been suspended. According to the Tenth Transitory Supplementary Provision of Act 30916, the Board has a period of no more than 18 months from the time of its establishment to review appointments made and recertifications, evaluations and disciplinary procedures carried out by Council members who have been removed.⁵

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

The State Procurement Act (Act 30225) establishes the modalities for public procurement (art. 21), which include public bidding, competitive bidding, simplified award, selection of individual consultants, price comparison, electronic reverse

⁵ Following the country visit, the Peruvian authorities indicated that the Board had approved, on 15 January 2020, the “180-day workplan of the National Justice Board – laying the foundations for the institutional structure”, which establishes as a key step the approval of a regulatory framework and prioritization criteria for the review of cases decided by the National Council of the Judiciary and to review the appointments made by the Council, selection processes and interrupted appointments, as well as recertifications.

auction, direct contracting and other selection procedures of general scope set out in the regulations. Such modalities must comply with the principles governing procurement and international treaties or commitments that include provisions on public procurement.

The principles governing public procurement include freedom of competition, equal treatment, transparency, openness, competition, effectiveness and efficiency, equity and integrity (art. 2 of Act 30225).

Each public entity is responsible for its procurement procedures (art. 6 of Act 30225). The Supervisory Agency for State Procurement (art. 51 of Act 30225) is responsible for supervising the public procurement procedures carried out by State entities (art. 52 of Act 30225).

An electronic platform for public procurement – the Electronic System for State Procurement – has been established (art. 47 of Act 30225). Annual procurement plans (art. 15, para. 3, of Act 30225), preparatory processes, selection procedures, contracts and actions related to contract execution are published in the System.

The Supervisory Agency for State Procurement has approved standard terms of reference that entities must use to draw up and approve the specific terms of reference for each selection process. Those specific terms of reference are published in the System when the call for proposals is issued and set out the qualification requirements, assessment criteria, contractual clauses and other relevant information.

Decisions can be appealed before the contract is concluded (art. 41, para. 1, of Act 30225). Appeals, which have suspensive effect (art. 42 of Act 30225), are lodged with the contracting entity and are considered and decided on by the head of the entity if the reference value is equal to or less than fifty (50) tax units (approximately \$61,300). If the reference value is higher, the appeal is decided by the State Procurement Court (art. 41, para. 3, of Act 30225).

The lodging of an appeal requires the provision of a guarantee of up to three percent of the estimated value or reference value of the selection procedure or of the item to which the appeal relates (art. 41, para. 5, of Act 30225). Once a decision on the appeal is taken, administrative remedies are thereby exhausted. The final administrative decision may be challenged in court, but such challenge does not suspend the enforcement of that decision (art. 41, para. 6, of Act 30225).

Procurement officials must be certified technicians and/or professionals (art. 4 of the regulations implementing the State Procurement Act, approved by Supreme Decree 350-2015-EF).

The economic and financial administration of the State is governed by the budget approved annually by the Congress (art. 77 of the Constitution). The President sends the budget proposal to the Congress together with draft acts on debt and financial balance (art. 78 of the Constitution).

The Office of the Comptroller General monitors the legality of implementation of the budget, public debt operations and the activities of the institutions that are subject to control (art. 82 of the Constitution). Government control consists of oversight, monitoring and verification of governance activities and outcomes (art. 6 of Act 27785). Any budget amendment at the institutional level requires approval by law or by a regulation with the force of law.

The Legislative Decree on the National Accounting System (Legislative Decree 1438) establishes that the Accounting Offices (art. 4.4) must carry out the activities necessary for the validation, analysis, recording and processing of the entity's economic data (art. 7.1.3). It also establishes the obligation to keep supporting documentation relating to transactions for a period of not less than 10 years (art. 8.1.7). The accounting records of public sector entities are entered in the

Integrated System for the Financial Administration of Public Resources (arts. 14.4 and 33).

The falsification of public documents is a criminal offence (art. 427 of the Criminal Code).

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

Access to information is governed by the Constitution (art. 2, para. 5), the Consolidated Text of Act 27806 on Transparency and Access to Public Information (Supreme Decree 043-2003-PCM)⁶ and the regulations implementing that Act (Supreme Decree 072-2003-PCM).

As a general rule, all the activities of entities covered by the Act on Transparency and Access to Public Information are subject to the principle that information should be made public, except in the cases expressly provided for in article 15 of the Act (art. 3 of the Act). The State is required to adopt basic measures that guarantee and promote transparency in the activities of government entities (art. 3 of the Act).

If a person who requests information does not receive or is denied access to that information, that person may appeal to the Court for Transparency and Access to Public Information (art. 11 (e) of the Act). Once administrative avenues have been exhausted, an applicant who has not obtained the information required may initiate administrative appeal proceedings or the constitutional procedure of *habeas data* (art. 11 (g) of the Act).

Peru has implemented initiatives to facilitate access to information, established an online payment platform for any payments to entities and created “one-stop shops” for certain procedures (e.g. application for a licence or permit).

The minimum information that each entity must publish (arts. 5 and 25 of the Act) does not include periodic reports on corruption risks.

The Office of the Comptroller General organizes information sessions for the general public, covering, inter alia, relevant anti-corruption bodies, and training activities on anti-corruption measures and reporting. Through the “Coastal Child” and “Citizen Monitors” projects, the Office trains citizens to monitor works carried out in their area (Directive 004-2018-CG/DPROCAL, approved by Decision 044-2018-CG of the Office of the Comptroller).

The National Integrity and Anti-Corruption Plan provides for the adoption of a basic education curriculum that incorporates ethical principles and values.

Private sector (art. 12)

The Tax Code establishes the obligation to keep accounting books or other books and records as required by relevant laws or regulations or by decisions of the National Customs and Tax Administration Authority (art. 87, para. 4). A number of offences have been established in relation to the obligation to keep books (art. 175 of the Tax Code). The keeping of parallel accounts is established as a criminal offence in the Criminal Code (art. 199).

There are no specific initiatives to promote cooperation between law enforcement agencies and relevant private entities. Some private companies have codes of ethics.

Legislative Decree 1341, which amends the State Procurement Act and its implementing regulations (Supreme Decree 056-2017-EF), imposes restrictions with regard to State procurement on those who hold certain high-level public positions,

⁶ Following the country visit, the Peruvian authorities indicated that a new Consolidated Text of the Act had been approved by Supreme Decree 021-2019-JUS.

those restrictions applying for up to 12 months after the official in question leaves the position (art. 11 of Act 30225 as amended by Legislative Decree 1341).

Act 28024 governs lobbying in the area of public administration and prohibits public officials from performing administrative acts that serve interests other than institutional or State interests (art. 3).

According to the government authorities, the tax deductibility of expenses that constitute bribes would not be possible because the Income Tax Act does not provide for such a possibility. There is no specific provision preventing tax deduction for such expenses.

Measures to prevent money-laundering (art. 14)

The Financial Intelligence Unit (see below (art. 58)) is authorized to receive, analyse, investigate, process, evaluate and transmit financial intelligence information for the detection of money-laundering and the financing of terrorism and to act as a point of contact for the exchange of information at the international level as part of efforts to prevent and combat money-laundering and the financing of terrorism (art. 1 of Act 27693 and art. 3 (b) and (c) of its implementing regulations, approved by Supreme Decree 020-2017-JUS).

Regulated entities include the natural and legal persons listed in article 3 of Act 29038 and article 2 of Supreme Decree 020-2017-JUS and cover institutions in the financial system and institutions listed as designated non-financial businesses and professions.

Regulated entities must: (a) take reasonable steps to obtain, record and update information on the identity of their customers, their beneficial owners and certain commercial transactions (art. 9 of Act 27693; art. 20 of Supreme Decree 020-2017-JUS; art. 28 of Decision 2660-2015 of the Banking, Insurance and Pension Funds Supervisory Authority (SBS); art. 14 of SBS Decision 789-2018); (b) pay special attention to suspicious and unusual transactions that are carried out or attempted (art. 11 of Act 27693); (c) report such transactions (art. 11 of Act 27693; art. 25 of Supreme Decree 020-2017-JUS); and (d) keep records of their customers' documentation and the transactions they carry out for a period of not less than 10 years (art. 9, paras. 3 and 4, of Act No. 27693).

Supervisory bodies (art. 9.A.2 of Act 27693) include the Financial Intelligence Unit (art. 3, No. 10, and art. 9-A, No. 9.A.9, of Act 27693), SBS (art. 9.A.2 (a)), the Peruvian Agency for International Cooperation (art. 9.A.2 (f)), the Foundation Oversight Council (art. 9.A.2 (g)), the Stock Market Supervisory Authority (art. 9.A.2 (b)), the Ministry of Foreign Trade and Tourism (art. 9.A.2 (c)), the National Customs and Tax Administration Authority (art. 9.A.2 (e)), the Ministry of Transport and Communications (art. 9.A.2 (d)), the National Supervisory Authority for Security Services, Weapons, Ammunition and Explosives for Civilian Use (art. 9.A.2 (h)), the Bar Association, the Association of Public Accountants and any other body that carries out the functions of the aforementioned institutions (art. 9.A.2 (i)).

The supervisory function is carried out on the basis of the risk analysis conducted for each sector (art. 9.A.10 of Act 27693).

Peru has taken measures to detect and monitor the movement of cash and negotiable bearer instruments across its borders. Any person wishing to enter or exit the country carrying cash or negotiable bearer instruments with a value of over \$10,000 or its equivalent is required to submit a written declaration (Sixth Supplementary, Transitory and Final Provision of Act 28306, regulated by Supreme Decree 195-2013-EF). It is prohibited to enter or exit the country carrying cash or negotiable bearer instruments with a value of over \$30,000 or its equivalent (6.2 of the Sixth Supplementary, Transitory and Final Provision of Act 28306).

For cross-border or domestic electronic transfers of funds, identification information and the identity document or Single Taxpayer Register number of the originator must be requested. This information must be submitted together with the account number of the originator and that of the beneficiary if the account is used to process the transaction or, if there is no account, with a unique transaction reference number that allows the transaction to be traced (arts. 47 and 47.1 of the Regulations on the Management of Money-Laundering and Terrorist Financing Risks, approved by SBS Decision 2660-2015 and amended by SBS decisions 4705-2017 and 789-2018). Companies arranging such transfers are required to establish policies and procedures based on money-laundering and financing of terrorism risks to determine when to carry out, refuse or suspend a transfer in respect of which the required information on the originator has not been provided and decide on appropriate follow-up action (art. 47 of Decision 2660-2015 and amendments).

Peru is a member of GAFILAT and the Group of Experts on Money-Laundering of the Organization of American States.

2.2. Successes and good practices

- The Office of the Comptroller creates and widely distributes user-friendly “control tips” to assist public officials in their daily activities and prevent the misuse of public property and resources (art. 7, para. 1 (d))
- Implementation of the virtual platform for information on candidates for public elections (art. 10)

2.3. Challenges in implementation

It is recommended that Peru:

- Grant the preventive bodies the necessary independence and resources (art. 6, para. 2)
- Endeavour to implement the Civil Service Act throughout the civil service; take measures to regulate the promotion, rotation, transfer and retirement of all public officials; identify public positions considered especially vulnerable to corruption and adopt adequate procedures for the selection, training and, where appropriate, rotation of persons holding such positions, and assess whether pay scales need to be updated (art. 7, para. 1)
- Endeavour to include topics related to the code of ethics in training activities (art. 8, para. 2)
- Endeavour to establish sanctions for submission of a false declaration of interests and failure to declare interests;⁷ review the exceptions established in relation to the acceptance of donations, particularly campaign contributions; and establish a register of donations (art. 8, para. 5)
- Reconsider the requirement that a guarantee must be provided in order to lodge an administrative appeal, as that requirement could discourage or significantly reduce the lodging of such appeals (art. 9, para. 1)

Peru could include periodic reports on corruption risks in the minimum information that each entity must publish on its website (art. 10 (c)).

It is also recommended that Peru:

⁷ Following the country visit, the Peruvian authorities indicated that, through the adoption of Emergency Decree 020-2019, it had been established that failure to comply with the provisions of the Emergency Decree and of the regulations constituted an administrative offence and that the administrative offences in question would be defined in the regulations.

- Ensure that any evaluation or recertification of judges and prosecutors takes into account objective, transparent and predetermined criteria, international standards on judicial independence and the principle of security of tenure of judges; the right to be heard during the evaluation process, including before a decision is made; and the right of appeal against any decision not to recertify, exploring to that end the possibility of establishing a mechanism for appeal before an independent entity that has not been involved in the decision subject to appeal and of assessing the composition of the Board (art. 11)
- Strengthen the prevention of corruption in the private sector, including through cooperation with law enforcement agencies (art. 12, para. 1)
- Explicitly disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4)

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

Peru indicated the following technical assistance needs:

- Training courses for officials (arts. 6 and 7)
- The preparation of a manual for managing conflicts of interest (art. 7, para. 4)
- The development of inter-agency protocols for the early identification of cases of transnational bribery; the establishment of a platform for dealing with reports of acts of corruption within the executive branch and for the effective implementation of measures to protect reporting persons (art. 8, para. 4)
- General guidelines for drawing up standard codes of ethics in the private sector; review of relevant legislation (art. 12)
- Study of the causes of corruption and its impact on the rights of the Andean, Amazonian and Afro-Peruvian peoples; assistance in designing a strategy to increase the participation of women in the fight against corruption and developing educational materials (art. 13, para. 1)

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)

Peru does not have a law on asset recovery. All cooperation is based on the New Code of Criminal Procedure (Book Seven), the treaties on international judicial cooperation concluded by Peru and the principle of reciprocity (art. 508 of the New Code of Criminal Procedure).⁸

In practice, Peru can share information spontaneously (for the Financial Intelligence Unit, art. 5.2 of Supreme Decree 020-2017-JUS). The GAFILAT Asset Recovery Network and the secure network of the Egmont Group are used.

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

Regulated entities (art. 8 of Act 27693) are required to identify and verify the identity of customers (art. 9.3 of Act 27693; arts. 19 and 21 of Supreme Decree 020-2017-JUS). Financial institutions are prohibited from keeping anonymous accounts or accounts held under fictitious or incorrect names and must identify and verify the

⁸ At the time of the country visit, the New Code of Criminal Procedure was not in force throughout the country.

identity of customers (art. 375 (1), (2) and (3) of Act 26702; art. 29 of SBS Decision 2660-2015). Although Peru has not established a definition of high-value accounts, article 20 of Supreme Decree 020-JUS-2017 and article 28 of SBS Decision 2660-2015 require regulated entities to identify – and take reasonable steps to verify the identity of – all beneficial owners.

An enhanced customer due diligence regime applies to politically exposed persons (art. 32 (e) of SBS Decision 2660-2015 as amended). The definition of a politically exposed person does not include their family members or, except in the case of the institution's most senior figure, close associates (art. 2 (l) of Decision 2660-2015 and art. 2 of SBS Decision 4349-2016). However, the enhanced due diligence regime also applies to relatives of a politically exposed person up to the second degree of consanguinity and the second degree of affinity and to legal entities in which a politically exposed person holds 25 per cent or more of the share capital, contribution or stake (art. 32 (f) and (g) of Decision 2660-2015).

Article 32 of Decision 2660-2015 establishes the types of natural or legal persons to whom an enhanced due diligence regime applies. Peru has a mechanism through which the authorities can notify financial institutions of the identity of persons whose accounts should be subject to greater scrutiny (annex 1 (g) of Decision 2660-2015).

Financial institutions must keep records for 10 years from the completion of a transaction (art. 375, paras. 4–6, of Act 26702; art. 9.4 of Act 27693; art. 49 of Decision 2660-2015).

The establishment of banks that have no physical presence and are not affiliated with a regulated financial group is prohibited pursuant to Act 26702, SBS Decision 10440-2010 and other SBS regulations (art. 349, para. 6, of Act 26702). However, that matter has not been fully clarified at the regulatory level. Article 46 of Decision 2660-2015 prohibits companies from establishing relationships with “shell banks” and requires them to obtain proof that the foreign institutions with which they have relationships do not allow their accounts to be used by such banks. The article defines a “shell bank” as a financial institution that has been incorporated and authorized to operate in a country in which it has no physical presence and that is not a member of an economic group subject to effective consolidated supervision.

Act 27482, in accordance with article 41 of the Constitution, establishes the obligation for the persons listed in its article 2 to submit a sworn declaration of income, assets and revenue, which is verified by the Office of the Comptroller General (Decision 328-2015-CG of the Office of the Comptroller). That declaration, which includes all income, assets and revenue in Peru and abroad (art. 3 of Act 27482), must be made when the person is appointed, annually thereafter and upon the person's leaving office (art. 4 of Act 27482). The obligation to declare does not extend to any interest in or signature over any financial account in a foreign country. Only a small section of the declaration is publicly accessible (art. 15 of the regulations implementing Act 27482) and may be shared with the competent authorities of other States Parties. Article 9 of the regulations implementing Act 27482 lists the penalties for non-compliance.

The Financial Intelligence Unit (art. 1 of Act 27693) is a specialized unit of SBS (art. 1 of Act 29038), has functional autonomy and is a member of the Egmont Group. It may prescribe the freezing of funds or assets in cases linked to money-laundering or the financing of terrorism, or to the financing of persons or entities identified within the framework of United Nations Security Council resolutions as being linked to terrorism, and it must inform a judge accordingly within 24 hours (art. 3, paras. 11 and 12, of Act 27693; arts. 8 and 10 of Supreme Decree 020-2017-JUS; SBS Decision 3862-2016). At the time of the country visit, the Financial Intelligence Unit had signed 16 inter-agency agreements and 57 memorandums with its international counterparts for the exchange of information.

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)

Other States cannot initiate civil action in Peru to establish title to or ownership of property acquired through the commission of an offence. The Peruvian courts could, in theory, take the following action: (a) order persons who have committed offences to pay compensation or damages to another State party that has been harmed by such offences; and (b) when having to decide on confiscation, recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention (art. 318, para. 4, and art. 319 of the New Code of Criminal Procedure).

Orders to pay fines or confiscation orders handed down by a foreign authority may be enforced in Peru provided that certain requirements are met (art. 547 of the New Code of Criminal Procedure).

There is no restriction that prevents the competent authorities from ordering the confiscation of property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within the jurisdiction of Peru (art. 9 of Legislative Decree 1106; art. 102 of the Criminal Code).

Legislative Decree 1373 and Supreme Decree 007-2019-JUS provide for confiscation without a criminal conviction of property of illicit origin related to various offences, including offences against the public administration (art. 1 of Legislative Decree 1373).

The competent authorities may freeze or seize property upon a foreign request or order (art. 511 (h) of the New Code of Criminal Procedure), or, in the case of termination of ownership, prescribe provisional measures or enforce sentences (art. 52 of Legislative Decree 1373 and art. 75 of Supreme Decree 007-2019-JUS). If a request for legal assistance does not meet the legal requirements, the competent authority may take interim measures to avoid irreparable harm until the request has been amended (art. 530, para. 3, of the New Code of Criminal Procedure).

Peru has received a request for assistance in accordance with article 55, paragraphs 1 and 2, of the Convention. All requests for legal assistance in criminal matters must be submitted to the Judicial Cooperation Unit of the Public Prosecution Service, which forwards them to the competent judge, who in turn grants and executes the request (art. 532 of the New Code of Criminal Procedure). The minimum content of requests for legal assistance has been established and does not exceed the minimum content set out in the Convention (articles 509, 510 and 530 of the Code).

The country has provided copies of its laws and regulations that give effect to article 55 of the Convention.

Peru does not make adoption of the measures set out in article 55, paragraphs 1 and 2, of the Convention conditional on the existence of a relevant treaty (art. 508 of the New Code of Criminal Procedure; art. 75 of Supreme Decree 007-2019-JUS). The value of the property concerned is not considered a valid ground for the refusal of a request. In practice, upon receiving a request for assistance, Peru would request any necessary additional information before refusing the request. The country does not have specific provisions requiring, before the lifting of a provisional measure taken pursuant to article 55 of the Convention, that the requesting State party be given the opportunity to present its reasons in favour of continuing the measure.

Provisions protecting the rights of bona fide third parties have been established (art. 102 of the Criminal Code; arts. 318 and 319 of the New Code of Criminal Procedure; arts. 31 and 33 of Legislative Decree 1.373; art 66 of Supreme Decree 007-2019-JUS).

Return and disposal of assets (art. 57)

The central authority, acting in coordination with the Ministry of Foreign Affairs, may agree with the requesting State that where the foreign authority has imposed a fine or, as a secondary consequence of conviction, issued a confiscation order, a portion of the money or property obtained will remain in the possession of Peru (art. 547.2 of the New Code of Criminal Procedure). Article 53 of Legislative Decree 1373 on termination of ownership establishes that Peru shall share property that is the subject of a final judgment issued by a national authority when that property has been recovered as the result of judicial cooperation. Bilateral treaties with the Plurinational State of Bolivia, Colombia, El Salvador and Guatemala establish that the requested and requesting States shall share in equal parts property subject to confiscation or the proceeds of its sale. Article 547, paragraph 6, of the New Code of Criminal Procedure establishes that costs shall be borne by the requesting State.

Peru has concluded specific agreements on the final disposal of confiscated property.

3.2. Successes and good practices

- At the prosecutor's request, the Financial Intelligence Unit may prepare a report, using verifiable information contained in financial intelligence reports, to be submitted as evidence in judicial proceedings (art. 5.2.1 (c) of Supreme Decree 020-2017-JUS). The Financial Intelligence Unit may be called upon to participate in oral proceedings as an expert witness (art. 58).

3.3. Challenges in implementation

It is recommended that Peru:

- Ensure that the establishment in Peru of banks that have no physical presence and that are not affiliated with a regulated financial group is not permitted. If the legislative framework is not interpreted in this way in the future, it is recommended that the necessary clarifications be made in relation to the prohibition on the establishment in Peru of banks that have no physical presence and that are not affiliated with a regulated financial group (art. 52, para. 4).
- Consider taking such measures as may be necessary to enable all the information contained in sworn declarations of income, assets and revenue to be shared with the competent authorities of other States Parties (art. 52, para. 5).
- Consider including in the sworn declarations of income, assets and revenue of public servants and officials the obligation to declare an interest in or signature over a financial account in a foreign country (art. 52, para. 6).
- Establish mechanisms to permit another State 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 (art. 53 (a)).
- Ensure that in practice its courts can (a) 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 (b) when having to decide on confiscation, recognize another State party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention (art. 53 (b) and (c)). In the event that, in the future, the courts do not interpret the law in that way, it may be necessary to clarify the law through legislative reform.
- Ensure that before lifting any provisional measure, and wherever possible, it gives the requesting State an opportunity to present its reasons in favour of continuing the measure (art. 55, para. 8).

- Establish the necessary measures requiring the return of all proceeds of crime in accordance with all the provisions of article 57, in particular, in cases of embezzlement or misappropriation of public funds or laundering of embezzled public funds (para. 3), ensure implementation in practice and review relevant treaties in this regard (art. 57); and ensure that, in applying article 547, paragraph 6, of the New Code of Criminal Procedure, only reasonable expenses incurred in investigations or judicial proceedings leading to the return or disposition of confiscated property are deducted pursuant to article 57, paragraph 4.
- Assess whether the power of the Financial Intelligence Unit to freeze funds could be extended to all offences established in accordance with the Convention (art. 58).

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

Peru indicated the following technical assistance needs:

- Training in the area of termination of ownership and in the design and development of protocols on termination of ownership (art. 54, para. 1 (c)).
