# FOREWORD

I am pleased to present the *Bhutan: United Nations Convention against Corruption (UNCAC) Self-Assessment Report and Implementation Matrix* for general readership. This Report examines the legislative, regulatory, policy and institutional measures that exist in Bhutan to prevent and fight against corruption. The Report demonstrates Bhutan’s commitment to good governance.

Bhutan signed the UNCAC in 2005 but has not yet ratified it. Yet we have completed a self-assessment checklist on the state of our anti-corruption laws, regulations and administrative measures and also the UNCAC Self-Assessment, which demonstrates Bhutan’s readiness to join the international community in preventing and fighting corruption. The Report among others will be useful for the UNCAC ratification process in the future.

The primary audience of the Report is the Government, in particular the Committee of Secretaries, various ministries and agencies involved in this exercise. Other target audiences include civil society at large, academic institutions, media, development partners and other persons committed to the fight against corruption in Bhutan.

The Report provides insights into the context within which the anti-corruption war is being fought. It also examines the challenges faced and opportunities for dialogue and collaboration in the collective efforts towards the realization of clean Bhutan. In line with this, the Government has committed itself to enhancing the fight against corruption through enacting and operationalizing the necessary policy, legal and institutional framework needed to strengthen public accountability, transparency and integrity.

The publication of the Report coincides with a momentous epoch in the socio- political history of Bhutan, when the country is going through a process of self-introspection in various areas of good governance, particularly integrity and ethics, economic reforms, national cohesion, human rights, and rule of law. Admittedly, of all the areas of good governance, the fight against corruption has been receiving much more attention and rightly so due to its far-reaching political and socio-economic impact.

In order to ensure a sector-wide approach to planning and implementation of anti-corruption measures, the ACC has been restructured to provide synergized approach with a spectral focus and for the first time National Anti-Corruption Strategy (NACS) has been integrated into the Sectoral Key Result Area and Key Performance Indicator of the 11th Five Year plan. On the issue of transparency in the management of public funds, Parliament has enacted the Public Finance Act in 2007, which will strengthen expenditure commitment control systems and improved budget transparency. Under this Act, the Government has revised the Procurement Rules in 2009 to enhance the transparency, economy and efficiency in the public procurement of goods and services. The Financial Services Act has been enacted, which seeks to streamline legal and financial sector reforms.

Furthermore, through the financial support of the Asian Development Bank, the Government has developed an Anti-Money Laundering and Combating the Financing of Terrorism Regulations and established a financial intelligent unit in the Royal Monetary Authority charged with fighting money laundering.

The fight against corruption has borne the country significant dividends such as increased integrity in the public service, enhanced public-service-delivery, increased awareness on quantity, quality and cost of services offered by public agencies through the introduction of various service delivery standards in the public agencies and the opening-up of Government to the members of the public. Evidently, therefore, the fight against corruption will accelerate Bhutan’s economic growth and development and, therefore, facilitate the realization of clean Bhutan.

With regard to the implementation of the findings and recommendations of this Report, I wish to reiterate the Government’s commitment. This will be undertaken systematically through legal reforms, administrative action, inter-agency collaboration and capacity building, among other forms of intervention. To achieve this, support of various ministries or agencies and law enforcement institutions such as the Parliament, Judiciary, Royal Audit Authority, ACC, Office of Attorney General, and Royal Bhutan Police is crucial. The ACC is committed to facilitating the implementation of the Report, in consultation with all the relevant stakeholders.

I would like to congratulate the excellent role played by the management and technical experts of various institutions in the preparation of the Report. The conclusions, recommendations and lessons learnt in the UNCAC Self-Assessment exercise will certainly enhance inter-agency cooperation during the implementation phase and form a basis for informed dialogue with the international community and development partners so that the anti-corruption instruments are fully implemented. The invaluable financial and technical assistance towards the completion of the Report of the Basel Institute on Governance (Switzerland), UNDP Regional Centre, Bangkok, UNDP Office, Bhutan, Swiss Agency for Development and Cooperation, and United Nations Office on Drugs and Crime is highly appreciated. I also acknowledge the contribution of the local and international experts whose contribution significantly enhanced the quality of the Report. Input from the Institute of Governance Studies (IGS), BRAC University of Bangladesh is also appreciated. I call upon our development partners to join hands with the Government in the implementation of this noble undertaking.

In conclusion, I would like to reiterate the Government’s commitment to the fight against corruption that will manifest in tangible action plans and visible results. The second edition of the NACS that is underway will further mainstream anti-corruption, ethics and integrity in the management of public affairs. The findings and recommendations of this Report will enrich the implementation of NACS. The implementation of the anti-corruption measures recommended in this Report will, together with other public sector reform initiatives, contribute to the pursuit of “Gross National Happiness”.

Tashi Delek!

Penden Wangchuk,

Cabinet Secretary & Chairperson,

Committee of Secretaries

**PREFACE**

The Parliament asked the Government to expedite the amendment of the Anti-Corruption Act 2006 and other related laws or regulations in 2008 following which the ACC consulted stakeholders in a one-day workshop in 2009 on the subject to translate the Government’s policy of ‘Zero Tolerance for Corruption’. Dr. Alain Sham, an expert from the Department of Justice, Hong Kong assisted the workshop, which brought together ministers, secretaries, private sector, media, civil societies and other actors outside the public service. The workshop generated a broad-based support for the initiative from the Government as well as the public. The NACS endorsed by the Government in 2009 is now being evaluated and its second edition is underway.

The Government voluntarily decided to undertake the UNCAC Self-Assessment with the primary aim of using its findings and recommendations as the main source of information for amending the Anti-Corruption Act. The UNCAC is widely accepted as the comprehensive international governance framework that seeks to address corruption, not only through law enforcement, but also through prevention, international cooperation and asset recovery. Apparently, the Report will also prepare Bhutan for accession to or ratification of the UNCAC and facilitate the fulfillment of Bhutan’s reporting and implementation obligations under the UNCAC Review Mechanism in the future. The UNDP Regional Centre, Bangkok and the UNDP Country Office, Bhutan extended the financial and technical support.

Bhutan’s main anti-corruption statutes, namely the Anti-Corruption Act 2006 and Penal Code 2004, were enacted though the UNCAC is yet to be adopted. Therefore the anti-corruption legal and institutional framework was established before the UNCAC Self-Assessment. The adoption of NACS in July 2009 was an important development in its efforts toward visible reforms for good governance. It reinforced the Government’s commitment and declared strategy to fight against corruption.

The Report systematically compares the domestic legislative, regulatory, policy and institutional systems and day-to-day practice with the UNCAC standards to comprehensively assess the extent of compliance gaps as well as related technical assistance needs. The essence of the Self-Assessment exercise was to establish the extent to which the domestic legal and policy framework complied with the UNCAC. This in turn would help the country to identify what actions are necessary to take to ensure full compliance with the UNCAC, thus ensuring comprehensive anti-corruption drive. Implementation of the UNCAC is important as it will help Bhutan to strengthen the legal and policy framework for preventing and combating corruption, and regional and international cooperation and coordination.

In carrying out this exercise, we have largely followed the suggested methodology provided in the UNDP’s Guidance Note, which provides an indicative roadmap for UNCAC Self-Assessment processes. However, the initial stakeholder workshop was not convened and a steering committee was also not established as enlisted in the checklist, as there was demonstrably the necessary political will to give respectability and authority to the assessment. The process got off to a quick start with ACC taking the lead on completing the Report as the coordinator of national anti-corruption policies and with relevant responsibilities, expertise, and exposure to the international work.

The ACC commissioned an inclusive and multi-disciplinary team of technical experts (TTE) consisting of nineteen legal professionals and other relevant experts drawn from the Parliament, ministries, national institutions, civil society organizations and private sector in January 2010 to drive the process forward and lead the day-to-day substantive work. The TTE worked on a full-time basis from March 1-April 9, 2010 under the overall coordination of a fulltime team leader, ACC’s Chief Legal Officer. After their appointment, the TTE members were familiarized with the UNCAC provisions to deepen their understanding and the UNCAC Self-Assessments methodology in a two-day Orientation Workshop (February 26-27, 2010). It was resourced by Mr. Manzoor Hasan from the IGS, BRAC University, Bangladesh. The members of the Good Governance Committee of the National Council also participated in the workshop.

Bhutan decided to take an article-by-article approach for the UNCAC Self-Assessment in line with the UNDP’s Guidance Note. The components of an anti-corruption system are interconnected and should be considered jointly to provide a comprehensive picture of reform requirements and enable the country to prioritize and sequence its reforms according to their relative importance and urgency. In the course of its work, the TTE also supplemented the data, which were already collected by the ACC prior to its formation. The TTE also held consultations and discussions with government officials and specialists in various sectors including non-governmental actors, wherever necessary.

Bhutan approached the UNCAC Self-Assessment in a simple and straightforward manner. The TTE was further divided into IV sub-teams with specific thematic responsibilities under the UNCAC and each sub-team was overseen by a coordinator. The sub-teams reported to the ACC on a weekly basis. The TTE members read and discussed the UNCAC article by article to investigate whether Bhutan has complied with it. They noted how Bhutan has complied if their findings indicate compliance and in the reverse case, they identified this as a gap for that particular article and made recommendations on what needs to be done in order to ensure compliance. These findings and recommendations were entered in a matrix with the following columns:

| UN CONVENTION AGAINST CORRUPTION | | BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES | GAP ANALYSIS  UNCAC-BHUTANESE FRAMEWORK | | RECOMMENDATIONS |
| --- | --- | --- | --- | --- | --- |
| ARTICLE | CONTENTS | LEGISLATIVE AND REGULATORY | ENFORCEMENT AND IMPLEMENTATION |

The first column is divided into two sub-columns, which mention the UNCAC articles and their contents, respectively. The second column provides the various methods by which domestic laws, regulations and administrative measures have complied with a particular UNCAC article. The third column, divided into two sub-columns, is an analysis of the first and second columns. The first sub-column identifies the areas where there are gaps in legislative, regulatory or administrative framework, while the second sub-column identifies the areas where the requisite laws, regulations and administrative measures are in place, but which may not be effective in fulfilling the UNCAC’s intended purposes. The fourth column contains recommendations.

After completing the matrix, each sub-team prepared a shorter summary report highlighting the most important achievements and challenges, the key reform priorities, and the proper sequencing of those reforms in their assigned areas. The matrix and the shorter summary report comprise the first draft UNCAC Self-Assessment Report. It was presented to the Good Governance and the Legislative Committees of the National Council.

During their on-site visit, the international experts from the Basel Institute on Governance, Switzerland held a series of consultations in “thematic panels” with relevant state and non-state actors such as the Parliament, ministries, departments, independent institutions, civil society organizations, private sector, media, and development partners from May 14 and 17-21, 2010 to strengthen and enhance the quality and credibility of the Report. These international experts also had exclusive consultations with civil society organizations, media and development partners in a private setting. Written submissions have been solicited from various stakeholders on specific parts of UNCAC. The second draft Report was enriched based on the feedbacks and comments made during the consultations.

After the second draft, ACC, in collaboration with the international experts, prepared a broad implementation action plan, which follows the thematic approach to translate the Report into concrete action and tangible results. The Implementation Action Plan was developed, which identifies the development goals, specific objectives, indicators, key actors, and time frames. Based on this broad plan, the ACC developed a detailed Implementation Matrix, which is included in this report as Annex I, highlighting specific strategies and activities with responsible agencies and their time frames to ensure full implementation of the Report.

The findings of the second draft Report along with its Implementation Matrix were presented to and approved by the final validation workshop held from September 29 to October 1, 2010 that included the same group of participants that attended the consultations. The Report is intended to guide and instruct anti-corruption reform programs undertaken by the Government and other concerned stakeholders over time. The Report will enable an up-to-date evaluation of its progress in implementing anticorruption measures over time, which allows civil society organizations and the general public to monitor the Government’s commitment to combating corruption.

The findings and recommendations of the Report will be implemented as part of a national anti-corruption strategy under the monitoring and supervision of an appropriate body/forum. Every agency will be required to report within a set timelines on the actions undertaken as a result of the Report. These individual Reports will be consolidated and referred to the Parliament as part of the ACC’s annual report for more detailed review and follow-up actions. The final Report along with an Implementation Matrix was published on the ACC’s website to disseminate to all relevant public agencies, civil society organizations, local donor community, international organizations and other development partners. The Report has been updated (there may be some inadvertent oversights) prior to its publication and posted on the website.

This Report shows that Bhutan has complied fully with a good number of the measures required by the UNCAC. For instance, an anti-corruption agency has been established, most of the offences specified in the UNCAC chapter 3 are criminalized, operationalized Asset Declaration Rules and Gifts Rules in 2008 and 2009 respectively which have been further revised and enforced for all public officers, among other things. With the amendment of the Anti-Corruption Act in 2011, majority of the findings and recommendations of the Report has been implemented.

Although there are some optional provisions, the Report includes almost all the measures provided for in the UNCAC because they are useful in the fight against corruption. However, some of the measures are more urgent than others, especially where they translate to greater impact. We have, therefore, prioritized these so that high potential impact measures are implemented in the short term while others are implemented in the medium term.

The Report, however, also shows that there are several measures that Bhutan needs to put in place. For example, Bhutan has not implemented many of the requirements of UNCAC chapters IV and V, which provide for measures for international cooperation and asset recovery, respectively. There is an urgent need to enact a comprehensive and effective law for protection of witnesses, confiscation and forfeiture of proceeds of crime, money laundering and the right to information law. There is also an urgent need for domestic law on mutual legal assistance, transfer of prisoners, and transfer of criminal proceedings. The existing laws on extradition also need to be updated and the usefulness of asset declaration as an anti-corruption tool should be enhanced by providing for an efficient and effective method of verifying the declarations.

We are grateful to the Government for the trust that it placed in us to lead this exercise on its behalf. We are also grateful for the cooperation and support extended by various ministries, agencies, civil society organizations, corporate bodies and the private sector.

I thank all the TTE members for their devoted participation in this exercise and their respective agencies for releasing them from their workplace to perform this important national exercise. I also thank the various institutions and individuals who participated in the workshops in the course of this exercise. I acknowledge the useful input of the experts from Basel Institute on Governance who read the drafts and gave valuable comments and UNDP for financial and technical assistance and participation in the workshops and many others who played one role or another in making this Report a reality. I also thank the IGS, BRAC University, Bangladesh for the orientation of our TTE members and the SDC for financing the publication of the Report.

The completion of this report is not an end in itself. It marks the beginning of the next phase, which is implementing its findings and recommendations. We are convinced that Bhutan will be better equipped to fight against corruption by putting in place legal, institutional and administrative measures pursuant to the Report.

It is, therefore, my great pleasure to submit this Report to the Government for a clarion call to join forces in fully and consciously implementing its findings and recommendations to strengthen the fight against corruption domestically and on a global scale at large.

(Neten Zangmo)

Chairperson, Anti-Corruption Commission

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# EXECUTIVE SUMMARY

The Bhutan: UNCAC Self-Assessment Report and the Implementation Matrix provide an article-by-article examination and analysis of the country’s compliance with the anti-corruption measures required by the UNCAC. The Report is based on the study focused on the domestic laws, regulations, and administrative measures for preventing and combating corruption.

The rationale of the Bhutan: UNCAC Self-Assessment was to amend the Anti-Corruption Act, 2006 by ascertaining the extent of Bhutan’s compliance with UNCAC obligations to prepare stringent anti-corruption legislations and institutional framework. The assessment will also subsequently prepare for the ratification of UNCAC. The Report assists to find legislative and regulatory, administrative and implementation loopholes and provides recommendations, therefore, to address the lapses.

In undertaking the Bhutan: UNCAC Self-Assessment, the TTE endeavoured to provide honest assessment of the country’s level of compliance with UNCAC and made necessary recommendations to assure the same. The TTE also recommended Bhutan to ratify and implement all the provisions of the UNCAC, including both mandatory and optional provisions consistent with principles of State sovereignty and State integrity.

The UNCAC has eight chapters and 71 articles. The Report begins with a summary followed by a matrix, which paraphrases the respective articles of the UNCAC and the corresponding domestic legislations and regulations after each UNCAC chapter. The matrix also analyses the extent of Bhutan’s compliance to the respective UNCAC articles and recommendations of what is required to be done to bring full compliance.

The sequence of the Report follows the sequence of the UNCAC chapters, which are: General Provisions, Preventive Measures, Criminalization and Law Enforcement, International Cooperation, Asset Recovery, Technical Assistance and Information Exchange, and Final Provisions.

This Report has two parts. The first part is the Bhutan: UNCAC Self-Assessment Report, which analyses the provisions of the UNCAC vis-à-vis the domestic legislations, regulations and the administrative and policy frameworks. The second part comprises an Implementation Matrix, which specifies the implementation actions, general objectives, UNCAC requirements, key actors and timeframe for various activities to address the gaps found in the report and subsequently comply with the convention.

**UNCAC CHAPTER 1: GENERAL PROVISIONS**

UNCAC Chapter 1 provides the statement of purpose, the definition of terms, the scope of application, and protection of sovereignty. The statement of purpose of the UNCAC states as: to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to enhance international cooperation and technical assistance; and to promote integrity, accountability and proper management of public affairs and public property.

The UNCAC is the first global legally binding instrument, representing the demonstration of commitment and determination of the international community to fight against corruption adopted on December 9, 2003 and entered into force on December 14, 2005. Bhutan signed the UNCAC on September 15, 2005 but is yet to ratify it. The Anti-Corruption Act 2011, which is a specific anti-corruption legislation meets majority of the UNCAC requirements.

**UNCAC CHAPTER 2: PREVENTIVE MEASURES**

UNCAC Chapter 2 focuses on corruption prevention measures directed at both the public and private sectors. This chapter requires States Parties to take a number of preventive anti-corruption measures including the setting up of anti-corruption body/bodies; prevention of corruption in finance, procurement, appointments in public administration; encouraging and supporting public reporting and the participation of civil society and the private sector in preventing corruption.

**Preventive anti-corruption bodies, policies and practices**

The UNCAC requires State Parties to have an independent preventive anti-corruption body or bodies, preventive anti-corruption policies and practices. Bhutan is in compliance with this requirement since the ACC was established along with other agencies like RAA, OAG, DRC, RCSC etc., however the relevant provisions of the CSA need to be amended to provide necessary independence.

Bhutan has enacted several legislations that provide for prevention of corruption which includes; Constitution of the Kingdom of Bhutan, Penal Code of Bhutan 2011, Civil and Criminal Procedure Code 2011, Anti-Corruption Act 2011, Audit Act 2006, Financial Services Act, Bhutan Civil Service Rules and Regulation 2012, Good Governance Plus and preventive measures such as SCM, CRM, National Integrity Assessment, IDT and Service Delivery Standards. However NACS is the only policy document, which has been developed. The implementation of laws and policies especially NACS is poor due to the lack of proper monitoring and implementation mechanisms, sanctions for failure, external oversight by media and awareness amongst the general public.

The Report found the need to develop assessment tool to access the impact of NACS, CRM and SCM in collaboration with civil society organizations and media and to designate monitoring authority for the effective implementation of NACS, SCM, CRM and RIA initiatives. There are also needs for publishing books, promotional materials, program manuals and infusion of anti-corruption content in the school curriculum to successfully prevent the corruption.

The Report found that there is acute shortage of human resource in the ACC and highlights the needs to access and grant adequate human resources, develop various policies and legislative provisions in order to successfully prevent corruption and to ensure strict law enforcement. The UNCAC requires State Party to grant necessary independence but ACC does not have complete independence over recruitment, management and dismissal of its own staff. Therefore, the report highlights the need to provide such independence.

**Strengthening appointment and promotion system in public Sector**

This chapter lays emphasis on strengthening the system of recruitment, hiring, retention, promotion and retirement of public servant. It also requires States Parties to promote adequate remuneration and equitable pay scales based on country’s economic development.

It is found that BCSR and CSA are fairly in compliance. While legislative provisions provide that the civil service recruitment shall be based on merit, qualification, fair and open competition but seniority is the general norm for selection process for certain positions, for example, in the appointment of district and sub-district judges. The selection process and appointment of *Gedrung* also remains unclear. Therefore, it is recommended to develop detailed procedures on selection, recruitment, appointment, promotion, transfer, training and disciplines of all public officials including those officials for elected post to avoid misuse of power and authority in the system considering the merit as criteria through competitive selection process. There is need for pre-screening of successful candidate before appointment and promotion and impose post-employment restrictions in private entities with which that had dealings during their public service tenure. The system of subordinate feedbacks or subordinate rating in the civil service is not effectively implemented. There is need to enhance the enforcement of feedbacks on the supervisors from subordinates and need to have a system for peer review in the civil service and effectively implement it.

The Report highlights the need to revisit the adequacy of remuneration for civil servants at lower levels, provision of adequate incentive scheme to retain the professionals and introduction of performance indicators and checking criteria to pay equal pay for equal value of work.

**Code of Conduct for public officials**

The UNCAC requires States Parties to develop and subject public officials to codes or standards of conduct for the correct, honorable and proper performance of public functions to promote integrity, honesty and responsibility among public officials.

The BCSR 2012, JSA 2007, Service Rules of Companies/Corporations and other by-laws in place have exhaustive provisions on Code of Conduct for public officials. However, the codes reflected in these by-laws are not effectively implemented by responsible individuals and agencies alike. It is essential to review the existing codes of conduct to plug the loopholes and then implemented effectively in the larger public interest rather than leaving them in papers. The Report recommends to draft their code of conduct based on the model code of conduct drafted by the ACC. Conflict of interest was found as a serious issue in Bhutan. The Report, therefore, highlights the need to define it succinctly and introduce the system to declare and manage the conflict of interest in the code of conduct.

**Public procurement and management of public finance**s

This article requires state parties to have appropriate system of public procurement and financing management based on transparency, competition and objective criteria in decision-making. There is major compliance with the UNCAC but need to ensure procurement planning along with annual budget proposal. The Report found the need to make limited bidding transparent, publicize contract award decision including assessment and contracting decision and pre-appointment screening, monitoring of lifestyle and accounts, rotation and develop rules on post-resignation requirements of all public officials involved in procurement. There is need to establish independent review body and grievance mechanism so that all grievances for goods, works and services can be addressed altogether at one stop. Centralize procurement system for specified feasible goods by setting the idea of procurement planning and develop the system of e-procurement and legal framework on it. There is also need for training on general procurement norms and procurement planning.

The management of budget will be addressed adequately through introduction of Multi-Year Rolling Budget (MYRB) and completion of developing new accounting software like Budget and Accounting System (BAS) and Public Expenditure Management System (PEMS). However, the Report found that more than 20% of the budget return unutilized and lack proper coordination between the MPs and Local government in budget proposal and utilization. Therefore, the Report recommends the development of human capacity in budget preparation and coordination between parliamentarian and LG in budget preparation.

**Public reporting**

UNCAC requires state parties to enable citizens to access information and encourages State Parties to publish information particularly with regards to combating corruption. Bhutan is in compliance with this obligation as Article 7 (3) of the Constitution of the Kingdom of Bhutan guarantees every Bhutanese to have the right to information. There is, however, no legislative provision allowing general public to obtain information on the organizational functioning and decision making-processes other than the provision in the Constitution. The agencies disseminate information through annual reports and their websites. Bhutan will be in full compliance once the RTI Bill, which is in draft form, is adopted. The report recommends to introduce legislative provisions which enables citizens to access information, simplifying administrative procedures in order to facilitate public access to competent decision making authorities and the public bodies to undertake self-assessment and publish information regarding likelihood of corruption occurring.

**Measures relating to judiciary and prosecution services**

The UNCAC entails States Parties to take measures to strengthen integrity and to prevent corruption in the judiciary and prosecution services. Bhutan is partially in compliance with this requirement. The officials of judiciary below the rank of Drangpon Ramjam are under RCSC, which the RCSC needs to reconsider these officials under Judiciary. Moreover, the prosecuting agency, OAG is under the purview of RCSC. Bhutan has taken measures to prevent corruption in judiciary and prosecution service including the capacity building and need for proper coordination between the agencies, among other measures. However, there is a need to regulate the profession of lay *Jabmis* and also review and implement the *Jabmi* Act to ensure the establishment of Bar Council.

**Role of private sector and Civil Society**

The UNCAC requires States Parties to address private sector corruption, improve preventive and monitoring functions in the private sector and to introduce sanctions for non-compliance. Bhutan does not comply with this obligation. Though there are legislative provisions and policy frameworks in NACS to prevent corruption in the private sector, its implementation is very weak. The Report, therefore found the need to introduce various measures including the drafting of codes of conduct for the private sectors, co-operation between law enforcement, ensure proper accounting and auditing system and introduce legislative provisions which disallow bribes as tax deductible expenses and provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with measures.

The UNCAC also requires promoting participation of CSOs, NGOs and community-based organizations to participate in combating corruption. Bhutan is partially in compliance with this obligation. Though there are legislative provisions allowing the active participation of civil societies, NGO and community-based organizations in the prevention of corruption, the role of the civil society in terms of combating corruption is weak in Bhutan and there is a need to educate them on corruption and involve them in the fight against corruption. In a move towards active engagement of non-state actors, the ACC has signed memorandum of understanding with seven civil society organizations.

**Anti-money laundering**

This chapter also provides for establishment of comprehensive national regulatory and supervisory regime to deter money laundering, and to enable the agencies responsible for combating money laundering to co-operate and exchange information both at the national and international levels and consider establishing FIU for that purpose.

The Anti-Money Laundering and Combating the Financing of Terrorism Regulation and the Financial Service Act provide mechanisms for combating money laundering and financing of terrorism. The Financial Intelligence Unit had been set up in the RMA. However, the Report emphasizes the need to draft anti-money laundering legislation in long run covering all aspect of money laundering activities as detailed in the UNCAC.

**UNCAC CHAPTER 3: CRIMINALIZATION AND LAW ENFORCEMENT**

**Criminalization**

Chapter 3 deals with criminalization and law enforcement. It lists the conducts that should be investigated and punished as corruption offences both in the public and private sectors. This chapter emphasizes on the criminalization of bribery of foreign public officials and officials of public international organizations, embezzlement, trading in influence, money laundering and predicate offence and abuse of function. It also imputes criminal responsibility of legal persons, and recognizes the importance of protecting witnesses, victims and whistleblowers in corruption cases.

**Bribery in public and private sectors**

This chapter requires States Parties to criminalize various forms of bribery both in the public and private sectors. The ACA fully complies with the requirements of this chapter.

**Embezzlement, abuse of function, trading in influence and illicit enrichment**

The UNCAC obliges the States Parties to mandatorily criminalize embezzlement, misappropriation or other diversion of property both in public and private sector, trading in influence, abuse of function and illicit enrichment. Domestic laws fully comply with the UNCAC obligations.

**Concealment and laundering of proceeds of crime**

The UNCAC obligates State Parties to criminalize the laundering of proceeds of crimes with which the domestic law fully complies.

**Obstruction of justice**

The UNCAC requires States Parties to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage either to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to offences covered by the Convention. Bhutan is fully in compliance since her laws expressly cover the use of physical force against witness and others.

**Liability of legal persons**

The UNCAC requires states parties to take the necessary steps to provide for criminal, civil or administrative liability of legal persons without prejudice to the criminal liability of the natural persons who have committed the offence. Bhutanese laws fully comply with this requirement as it imputes corporate criminal liabilities beyond the acts of board of director or a high managerial agent if those acts are committed in the course of their employment in Bhutanese laws. The debarment rules has been finalized.

**Law enforcement measures**

The law enforcement obligations of the UNCAC encompass certain procedural steps meant for investigation, prosecution, punishment and sanctions. State Parties are required to establish participation and attempt, knowledge, intent and purpose as elements of an offence. State Parties are also required to have longer statute of limitation period and make liable to sanctions through prosecution and adjudication. Moreover, the Convention requires the State Parties to have measures for freezing, seizure and confiscation of proceeds of crime, instrumentalities of crime, the intermingled assets and converted properties, which Bhutan is in compliance.

The UNCAC requires State Parties to take appropriate measures for protection of witness, experts and victims; compensation for damage; co-operate between law enforcement authorities, national authorities and private sector. The UNCAC also obligates to establish jurisdiction over the offences under the Convention. Bhutan is substantially in compliance with such law enforcement measures required.

However, Bhutan needs to draft a comprehensive and stand-alone Witness Protection Act and Whistleblowers Act and identify the implementing agency to safeguard witnesses, experts, and victims against any retaliation and intimidation.

The mechanisms for co-operation with law enforcement agencies, cooperation between national authorities, and cooperation between national authorities and the private sector is weak. Although in practice, law enforcement authorities receive cooperation whenever they seek and when there is specific penal provisions ensuring such cooperation. However, private sector entities are not very forthcoming due to fear of potential retaliation or intimidation and also because of limited accessibility to ACC by the public at grass roots level. There is need to establish clear mechanisms to secure cooperation from other agencies. This can be done by signing memorandum of understandings and drafting specific guidelines.

**Bank secrecy**

The UNCAC requires domestic legal system to have an appropriate mechanism to overcome obstacles arising out of bank secrecy laws. Bhutan substantially complies with this UNCAC requirement as ACC can have access to financial information with prior judicial authorization and if there is an imminent danger of destruction or removal of required information, ACC can have an access to bank records and statements without prior judicial authorization and customer consent, subject to principle of due process. However, the need of customers consent in FSA will be a greater obstacle to have access to financial information. Therefore, the Report recommends that such customer consent requirement in FSA be amended.

**CHAPTER 4: INTERNATIONAL COOPERATION**

UNCAC Chapter 4 highlights on mutual legal assistance, extradition and informal law enforcement cooperation. It also provides for countries to opt to enter into bilateral and/or multilateral agreements or simply use the UNCAC as the legal basis for cooperation. The UNCAC provides detailed provisions for the formalities of requests and recommends the States Parties to assist each other in building capacity to enhance the efficiency and effectiveness of international cooperation. UNCAC detailed the provisions for transfer of prisoners, transfer of criminal proceedings, cooperation between law enforcement agencies, and the use of special investigative techniques.

**Need for mutual legal assistance legislation, updated extradition laws and admissibility of evidence from special investigative techniques**

The report acknowledges the legal, administrative, implementation and enforcement gaps, which hinder international cooperation in Bhutan’s fight against corruption. It recommends the amendment of existing Extradition Act to allow investigation of corrupt acts and the enactment of a new stand-alone law for mutual legal assistance, which should also facilitate international cooperation in civil and criminal proceedings, including asset tracing and recovery, and administrative matters. Bhutan would benefit greatly by relying on thee UNCAC as the legal basis for cooperation between Bhutan and other States Parties on matters of latter’s request for mutual legal assistance, extradition and transfers of sentenced persons and criminal proceedings.

The Report also recommends that clarity be provided in the domestic laws to provide for admissibility of all types of evidence in criminal cases gathered through due process of law by employing all aspects of modern technology and special investigative techniques.

**UNCAC CHAPTER 5: ASSET RECOVERY**

The UNCAC states asset recovery as a fundamental principle and requires State Parties to provide the widest measure in how cooperation and assistance in asset recovery is to be provided, how the proceeds of corruption are to be returned to a requesting state party, and how the interests of other victims or legitimate owners are to be considered.

Bhutan is in substantial compliance with these UNCAC requirements with the establishment of FIU in the central bank and the adoption of the Anti-Money Laundering and Combating the Financing of Terrorism Regulations. However, Bhutan needs to enact a comprehensive law on anti- money laundering and proceeds of crime covering the aspects of instrumentalities of crime, intermingled assets and converted properties. The Report also recommends the enactment of comprehensive and effective laws to provide for return and disposal of confiscated assets and to provide legal standing to initiate civil action in Bhutanese court to establish the ownership of the property acquired through the commission of the corruption offences.

**UNCAC CHAPTER 6: TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE**

UNCAC Chapter 6 lays emphasis on the needs of cooperation to develop the national capacity to implement various aspects of UNCAC standards. This chapter obligates States Parties to take a comprehensive approach that involves reforms of law and the enhancement of practical capabilities related to the prevention and detection of, and recovery from, acts of corruption. The UNCAC specifically obligates States Parties to undertake training, technical assistance, monitoring, and efforts at international cooperation for the purposes of successfully implementing anti-corruption laws and policies, and increasing capacity to take efficient and appropriate measures. The technical assistance is mainly in the form of training for capacity building. In particular, it focuses on strengthening the capacity of States Parties to combat and prevent corruption.

The Report found that the training conducted in past were mostly generalized and not coordinated and highlights that though the training activities related to preventing and combating corruption has been outlined in the 10th Five year plan they need to be more specific with special reference to ACC personnel, the law enforcement officers, prosecutors, judges or other judicial officers.

The NACS envisages strengthening the institutional capacity but it falls short of specifying the exact training requirements for development and planning strategic anti-corruption policy to ensure its effective implementation. The Report, therefore, highlights the needs to develop guidelines and provide specialized training on the NACS implementation.

The Report also recommends specialized training in the execution of mutual legal assistance, extradition, anti-money laundering, management of public finances, public procurement, detection and freezing of proceeds of crime, surveillance of movement of proceeds of crime, and the protection of whistleblowers, witnesses and victims.

The Report also highlights the needs to review the technical needs of ACC to take advantage of its existing assistance and HRD master plan to consider laying aside some budget for specialized training in public procurement, public financial management system, etc.

.**CHAPTER 7 AND 8: MECHANISM FOR IMPLEMENTATION AND FINAL PROVISIONS**

UNCAC Chapter 7 establishes and makes provisions for the Conference of States Parties to the Convention, and the Secretariat. UNCAC Chapter 8 gives the Final Provisions touching on: implementation of the Convention; settlement of disputes; signature, ratification, acceptance, approval and accession; entry into force; amendment; denunciation; depository and languages.

Bhutan has signed the UNCAC. The Report recommends Bhutan to ratify or accede to UNCAC and participate in the CoSP. The Report also recommends the Government to make reservation that Bhutan does not consider itself bound by paragraph 2 of article 66 at the time of ratification or accession to the UNCAC. It must asserted that the consent of all parties to such a dispute is necessary, in each individual case, before the dispute is submitted for arbitration or to the International Court of Justice.

Bhutan: UNCAC Self-Assessment Report provides a coherent and systematic account on legislative and administrative, institutional and policy measures, which has been undertaken so far, and the measures that need to be put in place in order to fully comply with all the UNCAC obligations. This Report indeed goes ahead to formulate an elaborate Implementation Matrix to guide the different agencies on how to systematically comply with the provisions of the UNCAC. The ACC has developed a more detailed Implementation Matrix.

**THE IMPLEMENTATION MATRIX**

The Implementation Matrix spells out detail strategies and activities with responsible agencies that the Government will employ to address the gaps identified and the recommendation made in the Report within the timeframe provided. The Implementation Matrix identifies the general objectives, UNCAC requirements, specific implementation actions based on the gaps identified and recommendation made in the Report, key actors assigning clear cut responsibilities to the agencies and the timeframe to accomplish these activities. The Implementation Action Plan articulates the intention to translate the Report into concrete action and tangible results following the thematic approach. The Implementation Matrix is annexed in the Report as Annex I.

**Overview of proposals in the Implementation Matrix**

The Implementation Matrix proposes to fight against corruption through promoting and strengthening coordinated anti-corruption measures amongst Government, international and national anti-corruption agencies and other stakeholders and by enacting necessary laws. However, such anti-corruption measures, or any UNCAC obligation must be in consistence with the principles of State sovereignty and State integrity.

The Implementation Matrix specifically seeks to develop, maintain, coordinate, evaluate and monitor comprehensive national anti-corruption policies, ensure existences of anti-corruption commission, improve and strengthen the institutional capacity of anti-corruption agencies, review and strengthen anti-corruption laws and develop proper system of recruitment, hiring, retention, promotion & retirement of public servants, enhance integrity, transparency and accountability in administrations, functioning and decision making process through public reporting to reduce corruption in the public sector.

Procurement being a vulnerable area for corruption, it anchors to strengthen public procurement systems, management of public finances and preserves the integrity of accounting books, records, financial statements and other documents related to public expenditure and revenue through enactments of stringent laws, rules and regulation.

In addition, the Implementation Matrix entails to enhance integrity in the judiciary and prosecution by developing proper service standard or information kiosk, enhancing the capacity of prosecutors, reviewing *Jabmi* Act and establishing the Bar Council.

In the private sector, the Implementation Matrix seeks to enhance accounting and auditing standards, integrity, transparency and accountability through adoption of GAAP and GAAS, developing partnership between government, developing business code of conduct, service standards compatible with the UNCAC and reviewing journalist code of conduct. It also aims to promote and facilitate participation of civil societies, non-governmental organizations and community based organizations in prevention and the fight against corruption through simplified registration system, funding, educating and enhancing capacity of CSOs and NGOs.

The Implementation Matrix proposes to establish a domestic regulatory and supervisory regime to prevent money laundering and to monitor the movement of cash and negotiable instrument across the border by finalizing the enactment of FSB, enactment of AML Act, lowering the threshold limit of STRs and CTRs, providing necessary power to FIUs and by enhancing capacity to fight against money laundering.

Further, the Implementation Matrix recommends criminalizing all forms of corruption and effectively enforcing anti-corruption laws by criminalizing:

* Bribery of national public officials, foreign public officials and officials of public international organizations;
* Embezzlement, misappropriation or the diversion of property by public officials;
* Trading in influence;
* Illicit enrichment;
* Laundering of proceeds crime and the predicate offences;
* Concealment or continued retention of property knowing to have been corruptly acquired;
* Bribery, Embezzlement, misappropriation or the diversion of property in private sector;
* Abuse of function; and
* Attempt of corruption.

It also recommends conducting expeditious and effective investigation, prosecution, adjudication and imposition of sanctions, taking into account the gravity of the offence and enforcing the provisions of ACA and related laws to facilitate freezing, seizure and confiscation of proceeds of crime.

In order to enhance the detection and proof of the case, the action plan provides for enactment of Statute of Limitation, Witnesses Protection Act/Whistleblowers Act to protect witness, experts and informer and to grant immunity. The plan seeks to amend the laws to address the consequences of corruption by cancellation or annulment of contracts, withdrawal of concessions or any other remedial actions to address the consequences of corruption and provide compensation for damages.

The Matrix proposes to provide existence of independent and specialized body to combat corruption by providing necessary independence to ACC to carry out its mandates. In order to enhance and strengthen cooperation between law enforcement authorities, national authorities and with the private sector, the plan suggests drafting specific guidelines.

The Matrix seeks to overcome the obstacles of bank secrecy by amending article 23 of FIA. It also provides to keep criminal records by introduction of specific legislative provision to permit the use of final foreign criminal records and establishing jurisdiction over offences committed within and outside the country by foreigners, where such offences is committed against Bhutanese citizen or Bhutan.

To establish mechanism for international cooperation in the fight against corruption, Bhutan intends to cooperate with other States Parties in criminal matters and assist in investigations of and proceeding in civil and administrative matter relating to corruption, afford one another the widest measure of MLA in investigation, prosecution and judicial proceedings in relation to offences covered by the UNCAC by enacting MLA Act, concluding treaties, or agreements and arrangements, use of SAARC CMACM in criminal matters relating to corruption and also BIMSTEC in corruption offences and to amend Extradition Act to allow the ACC to investigate corruption cases abroad. The action plan also recommends allowing the transfer of criminal proceedings and transfer of sentenced person.

The Matrix also seeks to cooperate with other States Parties in law enforcement by undertaking joint investigation and information sharing between the investigative bodies, facilitating use of investigative techniques and amending Evidence Act to consider the admissibility of evidence gathered by use of a broad range of special investigative techniques.

To establish full mechanisms for asset recovery, the Implementation Matrix intends to enact AML Act which provides for confiscation, freezing and seizure of assets acquired through corrupt means and to dispose the confiscated property or to return to its prior legitimate owner. It also seeks to enter into bilateral and multilateral agreements or arrangements with other countries for international cooperation.

In order to bolster the ACC, the Matrix intends to use technical assistance through training in anti-money laundering, asset recovery, MLA, corruption prevention and investigation, institutional development and promoting information sharing programs in collaboration with other countries, private sector and CSOs.

Further, the Matrix seeks to participate consistently in the Conference of the States Parties, ratify UNCAC and make a reservation that Bhutan is not bound by paragraph 2 of article 66 during the time of ratification or accession to UNCAC.

**Conclusion**

In conclusion, the Bhutan: UNCAC Self-Assessment Report looks at the UNCAC alongside number of the domestic legislations, rules and regulation, institutions, policies and administrative procedures and practices, and identifies the gaps. It further highlights the challenges of enforcement and implementation of existing laws and policies, which dissuade the country from fully achieving the benefits of existing laws and policies. The Report further provides the recommendations and concrete actions laid down in Implementation Matrix that the country intends to undertake to mitigate the gaps identified and fully comply with the UNCAC standards.

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**ACRONYMS AND ABBREVIATIONS**

AA − Audit Act 2006

AB − Administrative Burden

ABTO − Association of Bhutanese Tour Operator

ABSD − Accelerating Bhutan’s Socio-Economic Development

ACA – Anti-Corruption Act 2006

ACAB − Anti-Corruption Amendment Bill

ACC – Anti-Corruption Commission

ACCSR – Anti-Corruption Commission Service Rules 2008

ADB/OECD − Asian Development Bank/Organisation for Economic Co-operation Development

ADR– Asset Declarations Rules 2008

AG – Attorney General

AML – Anti-Money Laundering

ATM − Automatic Teller Machine

BAS − Budget and Accounting System

BC – Bhutanese Constitution

BCCI − Bhutan Chamber for Commerce and Industry

BCSR – Bhutan Civil Service Rules 2006

BICMA –Bhutan Information, Communications and Media Act 2006

BIG – Basel Institute on Governance, Switzerland

BIMSTEC − Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation

BIPS − Bhutan information & Communication Policy and Strategy

BLI − Business Licensing and Inventory

BOB − Bank of Bhutan

BSA − Bhutanese Standard on Auditing

CA – Companies Act 2000

CAB − Construction Association of Bhutan

CBA − Centralised Budget and Accounts

CCPC – Civil and Criminal Procedure Code 2001

CDB − Construction Development Board

COH – Constitutional Offices Holders

CoS − Committee of Secretary

CoSP – Conference of the States Parties

CIPS − Chartered Institute of Purchasing and Supply

CPIB – Corrupt Practices Investigation Bureau

CRM − Corruption Risk Management

CSA – Civil Service Act 2010

CSO – Civil Society Organization

CSOA– Civil Society Organisation Act 20007

CTRs − Cash Transaction Report

DHI − Druk Holding and Investment

DIT − Department of Information Technology

DNB − Department of National Budget

DPA − Department of Public Accounts

DRC – Department of Revenue and Customs

EA – Election Act 2009

EAST–Enabling Act on Suppression of Terrorism 1991

ECB ­– Election Commission of Bhutan

ECB-SR − Election Commission of Bhutan Service Rule

ECC – Ethics and Credential Committee

EGP-E − Government Procurement

EICR – Export and Import of Currency Regulation

ESP − Elementary Service Personnel

ES1 − Specialist Level 1

EX1− Executive Level 1

EXA – Extradition Act 1991

EU − European Union

FATF − Financial Action Task Force

FAM − Finance and Accounting Manual

FER –Foreign Exchange Regulations 1997

FIA – Financial Institutions Act 1992

FIs – Financial Institutions

FIU – Financial Intelligence Unit

FOREX − Foreign Exchange

FSA –Financial Services Act

FSB: Financial Services Bill

FT − Financial Transaction

FY – Fiscal Year

GAAP − Generally Accepted Accounting Principle

GAAS − Generally Accepted Auditing Standards

G2C − Government to Citizen

GGC – Good Governance Committee

GGP – Good Governance Plus

GNH − Gross National Happiness

GNHC − Gross National Happiness Commission

GR – Gifts Rules 2009

GTZ – German Technical Cooperation

HR − Human Resource

HRC − Human Resource Committee

IAR − Integrity Assessment Report

IAS − International Accounting Standard

IAUs – Internal Audit Units

ICAC − Independent Commission Against Corruption, New South Wales & Hong Kong

ICT − Information and Communication Technology

IFRS − International Financial Reporting Standard

IGS – Institute of Governance Studies, BRAC University

INTERPOL – International Criminal Police Organization

IPSAS − International Public Sector Accounting Standards

IPSDS − Improving Public Service Delivery System

ISA − International Standards on Auditing

IT − Information Technology

ITA – Income Tax Act 2001

JA – *Jabmi* Act 2003

JSA − Judicial Service Act 2007

KYC – Know Your Customer

LEA − Law Enforcement Agencies

LG − Local Government

LGA – Local Governance Act 2009

ML − Money Laundering

MLA – Mutual Legal Assistance

MoEA − Ministry of Economic Affairs

MoF − Ministry of Finance

MoFA − Ministry of Foreign Affairs

MoHCA − Ministry of Home and Cultural Affairs

MoIC- Ministry of Information and Communications

MoLHR − Ministry of Labour and Human Resource

MYRB − Multi-Year Rolling Budget

MOU − Memorandum of Understanding

MPs – Members of Parliament

NA ­– National Assembly

NAA – National Assembly Act 2009

NACS – National Anti-Corruption Strategy 2009

NC – National Council

NCA – National Council Act 2009

NDPSSA − Narcotic Drugs, Psychotropic Substance and Substance Abuse Act 2005

NFE − Non Formal Education

NGOs − Non Government Organizations

NJC – National Judicial Commission

NLC − National Land Commission

OAG – Office of the Attorney General

OGAA – Office of the Attorney General Act 2006

P1 − Professional and Management Level 1

P2 − Professional and Management Level 2

PAC – Public Accounts Committee

PC – Pay Commission

PCB − Penal Code of Bhutan 2004

PCS – Position Classification System

PCSM – Position Classification System Manual

PEMS − Public Expenditure Management System

PEFA − Public Election Fund Act 2008

PFA– Public Finance Act 2007

PPPD − Public Procurement Policy Division

PRR – Procurement Rules and Regulations 2009

PR − Prudential Regulation 2002

Q & A session − Question & Answer session

RAA – Royal Audit Authority

RBA − Royal Bhutan Army

RBP – Royal Bhutan Police

RBPA – Royal Bhutan Police Act 2009

RCSC – Royal Civil Service Commission

RGoB – Royal Government of Bhutan

RIA – Regulatory Impact Assessment

RIM − Royal Institute of Management

RJSC –Royal Judicial Service Council

RMA – Royal Monetary Authority

RMAA – Royal Monetary Authority Act 1982

ROA − Religious Organisation Act 2007

RPPOB –Regulation for Possession of Property Outside Bhutan 1993

RRCOs − Regional Revenue and Customs Offices

RSTA − Road Safety and Transport Authority

RSTAA – Road Safety and Transport Authority Act 1999

RTI – Right to Information

RTIB − Right to Information Bill

RUB − Royal University of Bhutan

SAARC – South Asian Association for Regional Cooperation

SAARC CMACM – SAARC Convention on Mutual Assistance in Criminal Matters

SBD-Standard Bidding Documents

SCM − Standard Cost Model

SCTP − Standard Communication Technology Protocol

SDC- Swiss Agency for Development and Cooperation

SDS − Service Delivery Standard

SNV − Netherland Development Organization

SSP − System Study Protocol

STCEA − Sale Tax, Customs & Excise Act 2000

STR − Suspicious Transaction Report

TC − Tender Committee

TEC – Tender Evaluation Committee

TI − Transparency International

TOR − Terms of Reference

TTE –Team of Technical Experts

TV − Television

UN – United Nations

UNCAC – United Nations Convention against Corruption

UNDP – United Nations Development Programme

UNODC – United Nations Office on Drugs and Crime

WTO − World Trade Organization

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**UNCAC CHAPTER 1: GENERAL PROVISIONS**

Article 1: Statement of Purpose

Article 2: Use of Terms

Article 3: Scope of Application

Article 4: Protection of Sovereignty

# UNCAC CHAPTER 1: GENERAL PROVISIONS

# SUMMARY

UNCAC was adopted on December 9, 2003 and entered into force on December 14, 2005, which is the first global legally binding instrument. It is a comprehensive global treaty offering a framework for collective action against corruption and establishing international standards.

The UNCAC article 1 outlines the objectives of UNCAC, which are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To enhance international corporation and technical assistance; and

(c) To promote integrity, accountability and proper management of public affairs and public property.

Bhutan signed UNCAC on September 15, 2005 and is yet to accede to or ratify it. Bhutan took significant step in adopting the measures to prevent and fight corruption which include: Constitution of the Kingdom of Bhutan, PCB 2004, ACA 2006, ADR 2008, PEFA 2008, GR 2009, PRR 2009, Election Act 2009, Establishment of FIU in 2010, NACS and introduction or implementation of preventive measures such as the SCM, CRM, National Integrity Assessment, and Service Delivery Standards. However, there is need to coordinate these legislative, regulatory and administrative measures by RGoB, anti-corruption agencies and other stakeholders.

Among these measures and strategies, ACA took effect on July 3, 2006 which is the only specific anti-corruption legislation. ACA’s preamble, more or less, reflects the scope of UNCAC and aims to effectively prevent and combat corruption, properly manage public affairs and property, and safeguard integrity and foster a culture of intolerance for corruption while respecting every person’s right of ‘equality before the law’.

UNCAC article 2 defines terms used throughout the text which are required to be incorporated into State party’s domestic legislations. In Bhutan, ACA’s definitions of public officials and property are in accordance with UNCAC but ACA does not define certain terms such as foreign public official, official of a public international organization, proceeds of crime, freezing, seizure, and controlled delivery. However, these terms are defined in ACAB.

UNCAC article 3 obligates State Parties to apply their anti-corruption national legislations to prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the criminal proceeds. It also requires State Parties to dispense with the requirement of damage or harm to state property to implement their national laws.

Section 31.2 of CCPC requires damage or harm on state property occasioned by offender’s corrupt conduct because of which some Bhutanese courts are unwilling to admit corruption cases where there is no damage or harm to State property. Few courts have acquitted a person charged for corruption cases in which there was no damage or harm to State property. The ACAB provides that damage or harm to State property as a result of conduct is not required to initiate a lawsuit.

This analysis should be understood from the main article of the UNCAC and the conformity of Bhutanese anti-corruption laws and other measures to the UNCAC provisions as detailed in the matrix. The gaps are identified and thus appropriate recommendations are highlighted to plug the gaps.

**General provisions**

**UNCAC Articles 1-4**

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| **Article 1.**  **Statement of Purpose** | The purposes of this Convention are:  (a)To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; | Measures to prevent and fight corruption include:   * Constitution of the Kingdom of Bhutan. * Penal Code of Bhutan 2004. * Anti-corruption Act 2006. * Assets Declaration Rules 2008 * Public Election Fund Act 2008. * Gifts Rules 2009. * Public Procurement Rules 2009. * Election Act 2009. * Establishment of FIU in 2010. * Introduction or implementation of preventive measures such as the standard cost model, corruption risk management, National Integrity Assessment, and Service Delivery Standards. | Bhutan is one of the least corrupt countries in the Asia Pacific region. There are legislative, regulatory and administrative measures in place to effectively prevent and combat corruption.  However, the ACAB criminalizes bribery of foreign public officials, trading in influence, money laundering and failure to declare conflict of interest.  The Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010, provide a comprehensive anti-money laundering regime. | Implementation of these legislative, regulatory and administrative measures is sometimes not well coordinated. | RGoB, anti-corruption agencies and other stakeholders need to coordinate their anti-corruption measures.  There is need to enact necessary laws to effectively deal with corruption offences.  . |
|  | (b)To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; | Section 55 of ACA empowers ACC to cooperate with international players in its works.  EXA provides for international cooperation in extradition matters for criminal offences carrying a sentence term more than one year. | There is no compliance with this subparagraph.  Section 55 of ACA is insufficient to address all issues required by UNCAC. However, chapter IX of ACAB deals sufficiently with issues in relation to international cooperation and asset recovery. |  |  |
|  | (c)To promote integrity, accountability and proper management of public affairs and public property. | RGoB has introduced far reaching procurement reforms in 2008 supported by the World Bank through the “Institutional Capacity Building Project for Procurement” to create an up-to-date national procurement system recognized by international partners as standard and adequate for all procurement. As a result, PRR and SBD have been revised in 2009.  The capacity building of procurement officials and the training of trainers are going on. | There is partial compliance with this sub-article. |  |  |
| **Article 2.**  **Use of Terms** | For the purposes of this Convention:  (a) “Public official” shall mean:  (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;  (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;  (iii) Any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; | Section 138 (t) of ACA defines a Public servant as:  ‘(i)Person appointed, elected or co-opted into the service or on the pay roll of the government or remunerated by the government by fees or commission for the performance of any public duty;  (ii) Person in the service or on the pay roll of a corporation under the government or a government company as defined in Companies Act;  (iii) Person authorized by a court to perform any duty, in connection with the administration of justice, including a liquidator, receiver or member appointed by such a court; or  (iv) Person who holds an office by virtue of which he is authorized or required to perform any public duty.’ | There is partial compliance with this paragraph. There is no clarity on many aspects such as whether or not public officials should be permanent or temporary, or paid or unpaid.  However, section 176 (kk) of ACAB defines a ‘public servant’ as anyone holding a legislative, executive, administrative or judicial office whether appointed or elected, whether permanent or temporary, or whether paid or unpaid. |  |  |
|  | (b)“Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise; | There is no corresponding legislative provision. | There is no compliance with mandatory obligations of this paragraph. However, section 176 (r) of ACAB defines a ‘foreign public official’ as (i) a person holding a legislative, executive, administrative or judicial office of a foreign country whether appointed or elected; (ii) a person exercising public functions for a foreign country, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign State; or (iii) an official or agent of an international or regional organizations who is authorized by such organizations to act on behalf of those organizations.  This also applies to subparagraph (c) of this article. |  |  |
|  | (c)“Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization; | There is no corresponding legislative provision. | There is no compliance with the mandatory obligation of this subparagraph. |  | Consider defining the term “Official of a public international organization”. |
|  | (d)“Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets; | Section 138 (d) of ACA defines ‘“Asset” as property of all kinds, whether moveable or immovable, tangible or intangible, whether situated in Bhutan or elsewhere, or any document or legal instrument demonstrating, purporting to demonstrate, or relating to ownership or other rights pertaining to such asset’. | There is partial compliance with the mandatory obligation of this subparagraph. Corporal and incorporeal property is outside the ambit of ACA.  However, the definition provided for in section 176 (ee) of ACAB includes both corporeal and incorporeal property**.** |  |  |
|  | (e)“Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence; | There is no corresponding legislative provision. | There is no compliance with the mandatory obligations of this paragraph. However, section 176 (m) of ACAB defines corruption proceeds’ as property derived from or obtained, directly or indirectly, through the commission of an offence. |  |  |
|  | (f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority; | There is no corresponding legislative provision. | There is no compliance with mandatory obligations of this paragraph.However, Section 176 (u) of ACAB defines ‘freezing or seizure’ as temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or the Commission. |  |  |
|  | (g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority; | There is no corresponding legislative provision. | There is no compliance with mandatory obligations of this paragraph. However, section 176 (j) of ACAB defines ‘confiscation’ as the permanent deprivation of asset by order of a court or other competent authority. |  |  |
|  | (h)“Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention; | ACA and PCB broadly cover all UNCAC predicate offences. | There is partial compliance with the mandatory obligations of this paragraph.However, section 176 (cc) of ACAB defines ‘predicate’ as any offence under its chapter IV as a result of which proceeds have been generated that may become the subject of an offence as defined in sections (70) through (72) of this Act. Chapter IV of ACAB criminalizes various corruption offences. |  |  |
|  | (i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence. | There is no corresponding legislative provision. | There is partial compliance with mandatory obligations of this paragraph.However, section 176 (k) of ACAB defines the ‘controlled delivery’ as the technique of allowing illicit or suspect consignments to pass to any individual or out of, through or into the territory of one or more foreign States, with the knowledge and under the supervision of the Commission, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence. |  |  |
| **Article 3.  Scope of Application** | 1. This Convention shall apply,in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention. | Paragraph 5 of ACA’s preamble read with section 2 of ACA, its purposes are to prevent, detect and punish corrupt individuals or entity using public resources. | There is compliance with the mandatory obligations of this sub-article. |  |  |
|  | 2. For the purposes of implementing this Convention, it shall not be necessary**,** except as otherwise Stated herein, for the offences set forth in it to result in damage or harm to State property. | Section 31.2 of CCPC requires a petitioner to have ‘legal standing’ to initiate a lawsuit. | There is no compliance with the mandatory obligations of this sub-article.  However, section 125 of ACAB which has been drafted and tabled before Parliament does not require damage or harm to State property as a result of corruption. | There have been many instances where court was unwilling to admit cases because there was no damage or harm to State property occasioned by the offenders’ corrupt conduct.  Few courts have acquitted offenders because there was no damage or harm to State property occasioned by the offenders’ corrupt conduct. |  |
| **Article 4: Protection of sovereignty** | 1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States. |  | The principle of international law on State sovereignty, territorial integrity and non-intervention in domestic affairs, as espoused in the charter of the UN and other international legal instruments of which Bhutan is a State party, would be applicable for any action under UNCAC. |  | Any bilateral and multi lateral arrangements and agreements that Bhutan enters into to carry out its obligations under UNCAC shall be consistent with the principles of State sovereignty and State integrity and non intervention in domestic affairs of other States.  This also applies to sub-article 2 of this article. |
|  | 2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law. | Section 20 of CCPC vests the Bhutanese Supreme/High Courts with the extraterritorial jurisdictions only based on the international law principles. | There is compliance with the mandatory obligation of this sub-article. |  |  |

**UNCAC CHAPTER 2: PREVENTIVE MEASURES**

Article 5: Preventive anti-corruption policies and practices

Article 6: Preventive anti-corruption body or bodies

Article 7: Public Sector

Article 8: Code of Conduct for public officials

Article 9: Public procurement and management of public finances

Article 10: Public reporting

Article 11: Measures relating to judiciary and prosecution services

Article 12: Private Sector

Article 13: Participation of Society

Article 14: Measures to prevent money laundering

**UNCAC CHAPTER 2: PREVENTIVE MEASURES**

# SUMMARY

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention which is one of the main components of UNCAC. Preventive measures not only expose opportunities for corruption, but also provide appropriate mechanisms for mitigating such opportunities. Undoubtedly, the establishment of an efficient corruption-free environment and system is cheaper than spending inordinate time, energy and resources in investigating isolated cases of corruption that occur due to systemic and organizational weaknesses. It is also less confrontational and socially-divisive to nurture and promote good behavior; than to wait for a crime to occur and punish the offender.

Therefore, UNCAC Chapter 2 is focused on various corruption prevention measures directed at both the public and private sectors. Chapter 2 requires States Parties to adopt coordinated policies to prevent and detect corruption, as well as creating public awareness about corruption, its causes, the gravity and the threats posed by corruption. Bhutanese corruption prevention strategies have focused on tightening law enforcement measures, raising public awareness and establishing viable and effective legal, administrative and institutional frameworks.

**Preventive anti-corruption policies and practices**

UNCAC article 5 requires States Parties to develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs. For this purpose, article 5(4) requires States Parties to collaborate with each other on the one hand, and with relevant international and regional bodies on the other. UNCAC also requires State Parties to periodically review anti-corruption legal instruments and administrative measures to assess their adequacy to prevent and fight corruption.

In Bhutan, NACS, the ownership of which was taken by RGoB, is the anti-corruption policy document being implemented since August 2009 under the auspices of CoS and ACC’s oversight. Though Bhutan adequately complies, there is a weak or lack of implementation of NACS mainly due to lack of proper monitoring, implementation mechanisms, sanctions for failure, external oversight by media and awareness among the general public. The implementing entities need to assess vulnerabilities and develop their own sector specific action plans to effectively implement NACS. There is also need to assess the impact of, create awareness amongst media and develop strategy to engage media to create awareness to general public about NACS.

It is noteworthy that RGoB has initiated numerous reform initiatives that, directly or indirectly, contribute to the prevention of corruption, including the SCM to reduce administrative burdens, service standards to improve public service delivery, integrity assessment to build an integrity data base, CRM to prevent corruption risks, system studies protocol to make system studies effective, ICT programs to improve the efficiency of public services and to reduce face-to-face transactions. Most of these initiatives are, however, isolated pilot programs without concerted efforts and coordination. Therefore, Bhutan should mainstream, implement, oversee and coordinate these initiatives for optimal use of limited resources and for their sustainability.

ACA is being amended by Parliament to make it compatible to UNCAC standards, simultaneously, both PCB and CCPC are being amended. The PR and BCSR are also being revised to strengthen the public procurement and civil service systems. However, there is over all gaps, though not directly related to UNCAC as there is no dedicated body such as a Law Commission to carry out periodical review of legal instrument and administrative measures. Establishment of Law Commission is highly recommended.

While UNCAC requires collaborating with other countries for combating corruption, collaboration with other countries is very limited. Therefore, Bhutan should enhance networking and linkages with relevant international and regional organizations through bilateral and regional cooperation.

**Preventive Anti corruption body or bodies**

UNCAC article 6 requires States Parties to establish an anti-corruption body or bodies to implement; oversee and coordinate preventive policies and practices. It also requires such anti-corruption body or bodies to be given necessary independence, adequate resources and training to enable it to perform its jobs without undesirable outside influences.

Bhutanese laws partially comply with UNCAC requirements. Article 27 of BC and section 3 of ACA provides for the establishment of ACC that oversees and coordinates the implementation of NACS jointly with CoS. As empowered by section 54(i) of ACA, ACC undertakes general advocacy or awareness and behavioral change programs through the use of various tools and strategies such as the production of public education radio and TV programs and delivering lectures to the members of local assemblies. While many Bhutanese citizens now know that corruption is evil, they do not know what conducts constitute corrupt activities. Moreover, there are no standard books, promotional materials, training programs and manuals and the infusion of legal and ethical subjects in the curriculum of training, vocational and religious institutions are non-existent. Therefore, for the foregoing reasons, ACC should develop standard books, promotional materials, training programs and manuals to intensify anti-corruption awareness at various levels and platforms coupled with infusion of legal and ethical subjects like code of conduct, in the curriculum of various institutions through public-private partnerships and the development of human resources and professional capacities.

Sections 3, 5, 6 and 7 of ACA, article 27 (1) and (6), and article 14(13) of BC provide for ACC’s human resources, functional and financial independence. But sections 47, 53, 62 and 64 of CSA and chapter 9 and 19 of BCSR strip ACC of complete independence over recruitment, management and dismissal of its own staffs. Section 2 of CSA repeals all other laws or rules inconsistent with it. Specifically, ACC has no power to recruit university graduatesfor appointment in the professional and management positions, recruit or promote personnel in (EX1) and (ES1) positions, give any kind of fast-track and out-of-turn promotions, train its staffs if the training period exceeds six months and take major disciplinary actions in respect of its staff in executive, specialist and P1and P2 positions. Therefore, necessary independence needs to be granted to ACC to enable it to function effectively and free from any undesirable outside influences.

ACC has been receiving capacity development training for its officials with the assistance from international development partners in diversified areas to combat and prevent corruption effectively. However, there is still a need for capacity development and training in areas such as financial investigation, anti-money laundering, asset recovery, development of public education programs and system studies.

**Public Sector**

UNCAC article 7 requires States Parties to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion, and retirement of civil servants, based on principles of efficiency and transparency, using objective criteria such as merit, equity and aptitude. State Parties must endeavor to include adequate training and education programs for public officials, especially those vulnerable to corruption and promote adequate remuneration and equitable pay scales based on economic development of the country. This article requires States Parties to take appropriate measures for prescribing criteria concerning candidature for and election to public office and to enhance transparency in both the funding of candidates for elected public office and the funding of political parties. UNCAC also requires state party to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Section 47 of CSA, chapter 4 of BCSR, clause 2.4.2 of PCSM and PCS provide that the civil service recruitment shall be based on merit, qualification, fair and open competition. However, seniority is considered for selection for certain positions, for example, in the appointment of district and sub-district judges. This is due to the lack of implementation of merit principle stated in various laws. Therefore, RCSC should consider establishing detailed and transparent recruitment criteria which are strictly based on merit. Such system should provide guided criteria in viva voce evaluations. RCSC should also consider screening previous conducts before appointment and promotion. Lack of proper selection process and appointment system of Gedrung is a concern in LG since the Gedrungs are selected and appointed by the Gups, which increases the risk of collusion. Therefore, DLG should consider proper procedure for appointment of Gedrungs along with Fiscal Framework incorporated by DLG.

RCSC have not conducted any systematic assessment of positions vulnerable to corruption and scrutinize officials in positions venerable to corruption. Therefore, RCSC must assess vulnerable positions and must put in place adequate scrutiny measures for the selection and training of individuals in positions considered vulnerable to corruption. Pre-appointment screening of successful candidates, specific terms and conditions of service, procedural controls such as benchmarking performance, frequent rotation, monitoring of their lifestyles and post employment restriction must be imposed. RCSC should consider training needs assessment and train officers working position vulnerable to corruption.

Bhutan is fully in compliance with the UNCAC requirement of prescribing criteria concerning candidature for and election to public office and to enhance transparency in both the funding of candidates and political parties as article 23(3) of BC prescribes basic criteria concerning candidature for and election to public office. Section 176-178 of EA, section 14 of NAA, and section 13 of NCA prescribes the educational and other qualifications. Article 23(4) of BC and section 179 of EA prescribe several disqualifications for election candidates, including the prohibition to hold any office of profit. Section 213 of EA requires election candidates to file along with their nomination paper an affidavit declaring their profession, assets, income, and liabilities including those of their spouse and/or dependent children.

Bhutan is partially in compliance with respect to UNCAC obligation to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. Bhutan is partially in compliance as the respective codes of conduct of various agencies (ACA, CSA, BCSR, NAA, NCA, LGA, JSA, OAGA, AA and ROA) require them to be transparent and prevent conflicts of interest. However, majority of the codes of conduct do not define what conflicts of interest is and have no procedures as to how and whom to declare the conflicts of interest. Moreover, persons in positions of authority rarely oversee the compliance by themselves and their sub-ordinates with such requirements and there is no training or awareness-raising among the public servants on such requirements. Therefore, there is need to consider defining conflicts of interest succinctly, provide adequate procedures for declaring it in codes of conduct and provide periodic training on such requirement to public servants, including the cabinet ministers and other parliamentarians. There is also need to fix supervisory accountability on persons in positions of authority for failure to ensure the compliance with such requirements.

**Code of Conduct for public officials**

UNCAC article 8 requires States Parties to promote integrity, honesty and responsibility among public officials and calls for codes or standards of conduct for the correct, honorable and proper performance of public functions. State Parties are also required to take note of International Code of Conduct for Public Officials to make compatible with it. State Parties are bound by UNCAC to establish measures and systems that facilitate public officials reporting acts of corruption to appropriate authorities and measures to declare outside activities, employment, investments, assets, and substantial gifts or benefits received from which a conflict of interest may arise. Further, this article requires State Parties to take measures to subject their public officials to appropriate disciplinary measures who violate codes or standards.

The BCSR, JSA, Service Rules of Companies/Corporations and other by-laws in place have exhaustive provisions on Code of Conduct & Ethics for public officials. However, the Codes reflected in these by-laws are not effectively implemented by responsible individuals and agencies alike. Moreover, they do not contain many international standards. Therefore, Bhutan should consider reviewing existing code of conduct covering standards such as accountability for their implementation, treatment of confidential information and the duty to release non-confidential information, conflict of interest declaration and procedures for raising and handling complaints etc. ACC has drafted the Public Service Model Code of Conduct taking note of the International Code of Conduct and the EU code of conduct for public officials. Therefore, agencies are recommended to draft their Code of Conduct based on this Model Code of Conduct.

Section 59 of ACA gives right to a person to lodge a complaint with ACC against a person who has committed or is attempting to commit a corruption offence. A brochure entitled ‘A Basic Information on ACC Act’ provides that corruption offence complaints can be either by post, email, telephone, fax, online or walk-in. However, there are no specific measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities. Moreover, the complaints on violation of code of conduct by civil servants are kept unattended by RCSC. Therefore, RCSC should consider comprehensive reporting guidelines that accepts, walk in, telephone, fax and e-complaints within appropriate timeline. Public agencies must also accept anonymous complaint as long as their truth is established and regularly monitor it.

Section 50, 115, 116 and 127 through 131 of ACA and ADR covers the matters relating to asset and liability declarations by a public servant or any person using public resources, including those of their spouse and/or dependants. The Gifts Rules 2009 govern gifts transactions in the public sector. However, there is no consolidated data to assess exact compliance with ADR and GR and the compliance monitoring of gifts disclosure, is virtually non-existent. Though assets administrators and gifts disclosure administrators have been appointed they are not adequately trained. Moreover, there is no mechanism in place to ensure that the declaration contents are true and measures declare outside activities, employment and investments to competent authority. Therefore, Bhutan should consider developing mechanism to declare outside activities, employment and investments of public officials, proper verification skills and tools to ensure accurate declaration of assets or disclosure of gifts and train asset administrators and gift disclosure administrators. ACC should consider revising ADR to require only selective categories of public servants to declare assets or disclose gifts.

Bhutan is partially in compliance with the requirement to subject public officials to appropriate disciplinary measures for violating codes as under sections 85 and 86 of CSA, civil servants are liable to be terminated or retired from their service if they are convicted of misdemeanor offences and above. Under Article 32 of BC, COHs can be removed by Parliamentary impeachment. However, Bhutan does not have impeachment procedure for removal of COHs for violation of Code of Conduct. Therefore, OAG should consider drafting impeachment procedures in consultations with constitutional offices and various stakeholders. The BCSR (chapter 19) provides disciplinary sanctions and basic procedures for disciplinary sanctions but do not clarify the procedure and when to apply.

**Public procurement and management of public finances**

UNCAC article 9(1) obligates States Parties to take necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision making, which are effective for the prevention of corruption. These steps includes the public distribution of information relating to procurement procedures and contracts, invitations to tender, and the award of contracts, establishment of conditions of participation including selection and award criteria, use of objective and predetermined criteria for public procurement decisions, an effective system of domestic review, including appeal, and rules regarding declaration of interest, in particular public procurements and screening procedures.

UNCAC article 9(2) obligates States Parties to take appropriate measures to promote transparency and accountability in the management of public finances through adoption of the national budget, timely reporting on revenue and expenditure, developing a system of accounting and auditing standards and related oversight and effective and efficient systems of risk management and internal control.

In Bhutan, public procurement regime is governed by PRR 2009. PRR was revised in 2009 after RGoB introduced procurement reforms through “Institutional Capacity Building Project for Procurement” in 2008 along with its subsidiary documents such as SBD for goods, works & Services. However, PRR 2009 does not adequately address all norms of procurement entailed in UNCAC. Moreover, the procuring agencies do not comply with the PRR, either due to ignorance or due to lack of knowledge on PRR. There is lack of monitoring of procurement officials, procurement planning, and independent review body and grievance decision. Therefore, Bhutan should consider making limited bidding more transparent, publicize contract award decision and establish independent review body and grievance mechanism so that all grievances for goods, works and services can be addressed altogether at one stop. Bhutan should also consider centralizing procurement system for specified feasible goods by setting the idea of procurement planning and developing the system of e-procurement and legal framework on it. There is also need for training on general procurement norms and in procurement planning.

In Bhutan, the budget implementation is as per the PFA 2007. Though the budget flow is scrutinized by MPs, it is not done in joint sitting. There is also lack of coordination between the head of LG and the MP of the constituency for framing the budget. Moreover, it is reported that, more than 20% of budget comes back unutilized. Therefore, there is need to develop human capacity in budget preparation and expedite adoption of Internal Audit Manual and strengthen the manpower in Internal Audit Services. The need for parliamentarians to coordinate with LG in budget preparation is highly recommended. However, management of budget will be addressed adequately through introduction of Multi-Year Rolling Budget (MYRB) and completion of developing new accounting software like BAS and PEMS.

**Public reporting**

UNCAC article 10 requires States Parties to enable citizens to access information and encourages State party to publish information particularly with regards to combating corruption.

In Bhutan, there is no legislation as such which provides for adopting procedures or regulations allowing general public to obtain information on the organizational functioning and decision making processes other than article 7 (3) of the Constitution of the Kingdom of Bhutan, which guarantees every Bhutanese to have the right to information, annual report published as required in section 54(g) of ACA and the information on the websites. Right to information Bill which is still in draft form should be expedited. There is a need to introduce legislative provisions which enables citizens to access information, simplifying administrative procedures in order to facilitate public access to competent decision making authorities. This would facilitate free flow of information and expedite the decision making process in the government.

**Measures relating to Judiciary and Prosecution Services**

UNCAC article 11 entails States Parties to take measures to strengthen integrity and to prevent corruption in the Judiciary and Prosecution services. This is bearing in mind the fact that these two institutions play important role in combating corruption.

Chapter 10 of JSA provides code of conduct for judges. The independence of judiciary is guaranteed by article 1 (13) & 21 of BC and Section 5 of CSA separates judges and Drangpon Rabjams from the purview of CSA. However, independence of the judiciary is seriously undermined by CSA as the officials at support levels are under RCSC’s jurisdiction. Moreover, there is lack of legally qualified judges in lower courts and a lack of case management system. The Royal Court of Justice needs to consider publishing judgment of all courts including the appellate courts rather than just posting in their website.

In Bhutan, the prosecution service is a part of the civil service enjoying the functional autonomy. Some of the legislation that provide code of conduct for prosecutors are; OAGA for AG, Section 67 to 75 of the Prosecution Guideline for professional and private conduct of a prosecutor, section 101 of CCPC and chapter 5 of JA for duties and responsibilities of a Jabmi, and chapter 3 of BCSR for civil servants. However, these Codes need to be revised incorporating the international standards.

The lay Jabmis continue to play important roles both within and outside the judicial system as they represent plaintiffs in court proceeding. However, they are not subjected to a proper regulation or code of conduct. Therefore, Bhutan should consider regulating the profession of lay Jabmi (lay advocate) by implementing the Jabmi Act. The Jabmi Act need to be reviewed and amended to ensure the establishment of Bar Council providing necessary independence.

**Private Sector**

UNCAC article 12 obligates State Parties to take appropriate measures to address private sector corruption, to improve preventive and monitoring functions in the private sector through accounting and auditing standards and, where appropriate, to introduce sanctions for non-compliance.

Clause 10.7 of NACS provides that private sector is one of the important stakeholders in fighting corruption. Amongst other provisions in various laws, section 51 & 56 of ACA requires ACC to coordinate with public and private sector to combat corruption and to take measures to prevent corruption in the private sector. However, measures to prevent corruption in the private sectors have been very weak in Bhutan. The provisions in the ACA, Good Governance Plus and the NACS to prevent corruption in the private sector have been very ineffective due to the lack of government and private sector partnership. Therefore, there is need of proper coordination, partnership and cooperation between government, especially law enforcement agencies and private sector, codes of conduct for the private sectors and post employment restrictions for public officials in the private sector. Bhutan should ensure proper accounting and auditing in the private sector. Moreover, Bhutan should consider introducing legislative provisions which provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with measures to prevent corruption in the private sector. Bhutan should also consider legislative provision disallowing bribes as tax deductible expenses as required by UNCAC.

**Participation of Society**

UNCAC article 13 calls on State Parties to promote the active participation of individuals and groups outside the public sector, such as civil society, NGOs, and community based organizations, for the purposes of preventing and combating corruption and to raise public awareness regarding the existence, causes, gravity, and threat posed by corruption. It emphasizes State parties to take measures that ensure public access to the anti-corruption bodies for any kind of reporting or inquiry.

Bhutanese anti-corruption law adequately complies with this article as section 54(j) of ACA requires ACC to promote the active participation of civil societies, NGOs and community based organizations in the anti-corruption preventive measures and fight against corruption. Enhanced prevention of corruption requires collaboration with players outside the public sector. The fight against corruption is a shared responsibility and the need to forge alliance amongst all stakeholders, public and private agencies, citizens, media, private sectors and spiritual institutions is considered very important by the ACC. However, the role of the civil society in terms of combating corruption is very poor in Bhutan. Therefore, there is a need to educate the Civil Society in Bhutan on corruption and involve them in the fight to prevent corruption. Meaningful participation by the public would only be possible where there is delegation of responsibilities of fighting corruption as well as a structured platform for engagement with the civil society.

**Measures to prevent Money Laundering**

UNCAC article 14 requires States Parties to establish a comprehensive national regulatory and supervisory regime to deter money laundering, establish FIUs, implement measures to monitor cash movements across their borders and FIs to collect information on originators of electronic fund transfers, maintain information on the entire payment chain and scrutinize fund transfers with incomplete information on the originator. The convention also requires State Parties to develop and promote global, regional and bilateral cooperation among relevant agencies and exchange information to combat money laundering.

Bhutan has drafted Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 and section 40 of FSA deals with AML and financing of terrorism. However, RMA should consider expediting the adoption of Anti-Money Laundering and Combating the Financing of Terrorism Regulation and ensure that its provisions are in compliance with UNCAC requirements.

FIU have been established by RMA in 2010 to receive reports of suspicious transactions from FIs and other persons and entities, analyze them and disseminate the resulting intelligence to local law enforcement agencies and foreign FIUs to combat money laundering. Bhutan had applied for Egmont Group and Asia/Pacific Group on Money Laundering but is not a member yet. Moreover, FIU need to be granted with necessary autonomy and independence with adequate staff. Bhutan needs to regulate electronic money transfer by appropriate means and expedite the proposed national payment and settlement system to garner accurate information. RMA should be given more resources to harness technological facilities for monitoring and collecting information on electronic fund transfer.

**Preventive Measures**

**UNCAC Articles 5-14**

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| **Article 5: Preventive anti-corruption policies and practices** | 1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. | Section 54(b) of ACA requires ACC to prepare NACS.  Section 45(h) and 54(h) of ACA requires ACC to examine systems, practices and procedures in public entities to identify weaknesses or loopholes therein that facilitate corruption and advice, propose or recommendations corrective measures.  Section 51 of ACA empowers ACC to direct private business entities to develop standards or procedures, including a business code of conduct.  Section 46 of ACA provides that ACC’s powers are coterminous with those of other law enforcement agencies with respect to investigation, arrest, search and seizure.  Sections 104 of ACA confer on ACC immunity necessary for prevention, detection and investigation of corruption offence.  Section 118 of ACA provides for sanctions for entities, which do not comply with recommendations of ACC. | There is compliance with the mandatory obligations of this sub-article.  Lead by ACC, NACS was drafted through an inclusive approach which began as early as 2007. It was adopted in a two-day national consultative workshop in March 2009 which saw the participation of the cabinet ministers, parliamentarians, corporate representatives, civil society organizations and other non-State actors. NACS (available at <http://www.anti-corruption.org.bt/pdf/nacs.pdf>) was finalized by a group of Planning Officers of various Government agencies. NACS intends to prevent and fight corruption by:   1. promoting leadership; 2. ensuring sustained political will; 3. reviewing a legislative framework; 4. reviewing and strengthening institutional capacity; 5. reviewing practices, procedures and systems; 6. developing a long-term public awareness and education strategies; and 7. promoting strategic partnership with stakeholders.   These are seven broad cross-cutting strategic considerations.  Besides, Transparency International’s anti-corruption training manual and anti-corruption handbook, NACS looked at the following:  Corruption Perception Survey 2007 published in September 2008  (available at <http://www.anti-corruption.org.bt/pdf/cpsr.pdf>);  People’s Attitude towards Corruption and Anti-corruption Commission 2009 (available at <http://www.anti-corruption.org.bt/pdf/pac.pdf>);  Corruption in Bhutan & Areas of Improvement published by the Centre for Bhutan Studies (1999);  Good Governance and Gross National Happiness published by the Center for Bhutan Studies (2009); and  Review of the Anti-corruption Commission and Progress on the Development of a National Anti-Corruption Strategy (2007) undertaken by Crown Agents.  RGoB owned NACS and the Prime Minister had made a clarion call to join forces to fully implement it to prevent and fight against corruption in Bhutan.  Extensive processes underpinned the development of NACS. Stakeholders were consulted through a workshop in April 2006, while the actual drafting began in August 2007. In 2008, the draft NACS was reviewed internally as well as externally.  NACS provides a simple monitoring framework. RGoB has given CoS the mandate to monitor NACS implementation by the Government agencies. ACC is initiating NACS implementation monitoring framework in respect of actors outside the public service. ACC had bilateral discussions with the Judiciary and the RBA.  Implementing agencies are required to report to the monitoring authorities on their progress on NACS implementation and status on a quarterly basis. These individual agencies reports form a part of ACC’s annual report to Parliament. | NACS implementation commenced by August 2009 and is scheduled for full implementation by 2012 and in the same year, effectiveness of NACS will be evaluated.  NACS requires relevant agencies both within and outside the public sector to devise their own comprehensive sector-specific assessment of vulnerability and implementation action plan. However, to date, only the ministry of agriculture and forests, and the ministry of health are initiating certain activities specific to NACS implementation.  Implementing agencies don’t own NACS as they often viewed it as an additional responsibility superimposed on them.  Part of the reason is also that NACS doesn’t provide sufficient implementation details for inexperienced implementing agencies.  Monitoring authorities are also unable to effectively monitor implementing agencies. There are no sanction mechanisms in NACS to hold agencies accountable for their failure to implement NACS. CoS has discussed the issues related to NACS implementation only once so far.  CSOs dedicated to anti-corruption are non-existent and the Bhutanese media is uninterested in investigating matters in relation to NACS implementation.  There are no formal arrangements in place on how to coordinate or collaborate amongst anti-corruption agencies, which is vital for coordination and effective use of resources. | It is recommended that all relevant agencies assess vulnerabilities and develop their own sector specific action plans with clearly defined tasks, responsibilities and measurable indicators to ensure that the strategy cascades down into all sectors.  Conduct an assessment of areas where there is need for capacity building.  Consider the capacity building of the various anti-corruption agencies to enhance their capacity to effectively implement various anti-corruption policies and practices.  There is need to create awareness amongst media about NACS and develop a strategy to engage them in covering of NACS implementation to expose the failure of both the oversight body as well as implementing agencies.  It is recommended to train Bhutanese on corruption to enable them to act as partners in preventing and combating corruption.  It is recommended to create awareness on the right to information among the general public as well as media even before the Right to Information Act.  Greater accountability should be fixed through performance appraisals, e.g. signing of COMPACTS between the oversight body and implementing agencies as is being done for agencies under the project “Accelerating Bhutan’s Socio-Economic Development”.  There should be a mechanism for greater collaboration between agencies and CoS and CoS & ACC to draw up implementation action plans. These agencies should regularly meet to exchange ideas on their successes and challenges in performing their functions.  It is recommended that greater accountability be fixed through parliamentary reviews by the Good Governance Committee of the National Council, and the Ethics and Credentials Committee of the National Assembly.  There is need to have a dedicated authority to monitor and evaluate the NACS implementation. As coordinator of national anti-corruption policies, ACC could be designated as such a body to establish a proper system for monitoring and evaluation of NACS.  There is need to develop an assessment tool for assessing the impact of NACS in collaboration with civil society using independent and objective criteria of impact assessment.  Citizens should be sensitized on the principle of rule of law and fight against corruption to promote their active participation in anti-corruption measures. |
|  | 2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption. | RGoB has undertaken a number of reform initiatives that, directly or indirectly, contribute to the prevention of corruption. These include:  SCM to reduce AB. AB which is defined as costs incurred by businesses in meeting obligations to provide information on their activities or production, either to public authorities or to private parties has been measured and estimated by using a pragmatic SCM (available at <http://www.anti-corruption.org.bt/?q=archive/200801>.) in RSTA, MoEA and Thimphu City Corporation.  Corruption Risk Management (CRM). CRM was conducted in ACC and Phuentsholing City Corporation to identify potential corruption risks and potential mitigation thereof.  System Studies. ACC is able to undertake system studies only in relation to mines and minerals management and rural timber subsidies.  Systems Study Protocol (SSP). ACC is in the process of establishing SSP outlining the way systems study should be conducted and followed-up.  Systems Study. ACC is able to undertake systems studies only in relation to mines and minerals management and rural timber subsidies.  Integrity Assessment Report (IAR). According to IAR 2009 (available at <http://www.anti-corruption.org.bt/pdf/ACC.pdf>), while the national integrity score is 7.44, the national potential integrity score is 6.61 on a scale of 0-10.  Service Delivery Standards. Good Governance Affairs of the Cabinet Secretariat in collaboration with ACC has completed compilation of 42 draft service delivery standards which will inform public on types of services, fees, procedure, timeframe, contact points for grievance redressal.  Bhutan Information and Communication Policy and Strategies (BIPS). MoIC has revised BIPS in July 2009 to harness ICT to enhance good governance, for example, through establishing Community Information Centers and Establishment of 261 leaning centre’s under the auspices of the Total Solution Project to facilitate general public access to ICT.  Standard Communications Technology Protocol SCTP. The Government has asked the department of information and technology to devise a SCTP to facilitate development of ICT systems in November 2009.  E-government. ICT is being harnessed in many areas such as: permits related to forest produces, audit and security clearances, online court hearing schedules, ATM services, office procedure automation, laboutNet, and civil service information system, etc. These non-face-to-face transactions help reduce opportunities for corruption.  Accelerating Bhutan’s Socio-Economic Development (ABSD). One of the objectives of ABSD is to improve the efficiency and effectiveness of public services in Government to Citizens (G2C) services. G2C intends to reduce long lead time and increase public accessibility to 110 G2C services through process leaning, customer involvement, operating service points and IT build-out and database linkage. It is scheduled for full implementation by 2013. It is being implemented through signing of performance compacts with various agencies. | There is compliance with the optional obligation of this sub-article.  Before the end of 2010, ACC plans to mainstream in all public agencies. | SCM is experimented in few public agencies and is yet to be mainstreamed in the whole public sector. CoS has given the mandate to mainstream SCM to the department of cottage and small industries under MoEA in collaboration with he Planning and Legal Officers of various public agencies.  Agencies, in which SCM has been conducted, had ignored the findings and recommendations of SCM Report. RSTA has extended the counter closing time for public from 1pm to 3 pm. MoEA expedited the time for obtaining business licenses by doing away with the requirement for clearances from local authorities for 31 cottage and small industries.(available at <http://www.mti.gov.bt/Tender/Exemption_of_Location_Clearance.pdf>  There is no oversight body to coordinate and monitor SCM initiative.  There is no assessment tool and criteria to determine the impact of SCM. | It is recommended that all these reform initiatives be coordinated between various agencies for optimal use of limited resources and for sustainability.  It is recommended that mainstreaming of SCM be expedited by the department of small and cottage industries in all public sectors.  There is need to develop assessment tool for assessing the impact of SCM in collaboration with civil society using independent and objective criteria of impact assessment.  There is need for an oversight body to coordinate and monitor SCM initiatives. Such a body should include representatives from appropriate Parliamentary committees. |
|  | 3. Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. | Section 18(b) of OAGA mandates AG to review laws and propose necessary amendments to the Government.  Section 45 (h) of ACA provides that the Commission shall have the power to examine the system, practice and procedure of public entities in order to advise and revise procedures and practices which may potentially breed corruption.  Section 54 (h) of ACA provides that it shall be the duty of the Commission to advise, propose measures or recommendation to appropriate authority, for the purpose of improving the performance of public service in an endeavour to prevent and control corruption.  Clause 10.3 of NACS requires review of legal frameworks.  Sections 70 and 71 AA provides that RAA shall recommend on how to improve the economy, efficiency and effectiveness of audited agencies.  The Internal Audit Charter 2008 mandates Internal Auditors to review adequacy and effectiveness of the internal control or management systems in their respective agencies. | There is partial compliance with the optional obligation of this sub-article. | OAG is unable to fulfill its legislative review mandates due to lack of sufficient human resources and professional capacities.  Nevertheless, a number of legal instruments and administrative measures are under review which is initiated by individual agencies. These include:   1. Amendment of ACA. ACA is being amended to make it compliant with UNCAC. One house of Parliament has already adopted the Amendment Bill which will be deliberated by the house later this year. 2. Amendment of PCB and CCPC. Both PCB and CCPC are being amended and such amendments will also take into account the amendment to ACA. 3. Public Procurement Reforms. Assisted by the World Bank, PRR and public procurement manuals and/or guidelines have been amended. 4. Civil Service Act and BCSR. CSA has been enacted by Parliament and RCSC is now reviewing BCSR. 5. Regulatory Impact Assessment. MoEA has completed testing RIA in business start-ups, cottage & small Industries, and incentives and improving entrepreneurial skills development and access to finance for cottage & small industries in 2010. The idea is to provide a detailed and systematic appraisal of the potential impacts of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives. However, RIA is yet to be mainstreamed in the whole public sector. CoS has given the mandate to mainstream RIA to the department of cottage and small industries under MoEA in collaboration with he Planning and Legal Officers. There is no oversight body to coordinate and monitor RIA initiative. 6. AB has been measured and estimated by using SCM in MoEA which led to reduction of time for obtaining business licenses by doing away with the requirement for clearances from local authorities for 31 cottage and small industries. 7. Policy Protocol. GNHC is proposing to require every new policy to be formulated by using policy protocol and policy screening tools (available in details at <http://www.gnhc.gov.bt/guidelines/Policy%20and%20Project%20Screening%20Tools.pdf>) to align policies with GNH. This policy protocol and screening tool has been applied in economic development, forestry, national human resource development, youth policies and WTO. | It is recommended that all these reform initiatives be coordinated between various agencies for optimal use of limited resources and for sustainability.  OAG should be staffed and trained adequately in order to carry out its legislative review mandates.  There is need for a Law Review Commission, whether on a permanent or temporary basis, since legislative review requires dedicated body to carry out in-depth and thorough studies.  The department of small and cottage expedite mainstreaming RIA in all public sectors.  There is need for an oversight body to coordinate and monitor RIA. Such a body should include representatives from appropriate Parliamentary Committees and OAG. |
|  | 4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption. | Section 55 of ACA provides a generic power for ACC to collaborate with other countries and international and regional organizations to prevent corruption.  Bhutan is a member of ADB/OECD Anti corruption Initiative for Asia and the Pacific. | There is partial compliance with the mandatory obligation of this sub-article. | Collaboration with other countries is very limited. | It is recommended that networking and linkages with relevant international and regional organizations need to be enhanced through bilateral and regional cooperation for greater efficacy of its national anti corruption drive. |
| **Article 6. Preventive anti-corruption body or bodies** | 1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: | Article 27 of BC and 3 of ACA provide for the establishment of ACC.  There are a host of other agencies that compliment ACC’s works such as NA’s PAC, NA’s ECC, NC’s GGC, RCSC, ECB, NJC, RJSC, RAA, OAG, RBP and IAUs of agencies. | There is compliance with the mandatory obligation of this sub-article. |  |  |
|  | (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; | Issues relating to monitoring of NACS implementation are addressed in connection with article 5. |  |  |  |
|  | (b)Increasing and disseminating knowledge about the prevention of corruption. | Section 54(i) of ACA empowers ACC to undertake public education and awareness programs. | There is adequate compliance with mandatory obligations of this paragraph. | Public Education Division of ACC undertakes the two-pronged approach of advocacy and/or awareness and behavioral change programs with the use of various tools and strategies. These include:   1. interactive sessions and collaborative partnerships. 2. development of a module on corruption as part of Non-Formal Education curriculum. 3. production of radio jingles and TV programs. 4. celebrating international anti-corruption day to raise public awareness about the evils of corruption. 5. Publishing quarterly news updates on corruption. 6. Integrity award is being considered to encourage fundamental increase in honesty, efficiency and fairness of the individuals/civil service.   These programs are yet to be specifically evaluated though ACC surveys mentioned in article 5 above indicate to a certain extend that they have been successful.  However, more is desired in corruption-related research work and the production of books, promotional materials, training programs and manuals.  There is also need to infuse legal and ethical subjects in the curriculum of training, educational, vocational and religious institutions.  Moreover, specific public education programs are required such as typologies, forms, causes and consequences of corruption, including details on how and whom to report.  Such activities are hampered by lack of human resources and professional capacities. | It is recommended that human resources and professional capacities of ACC be developed in relation to public education.  Consider expediting the production of books, promotional materials, training programs, manuals and also to infuse legal and ethical subjects in the curriculum of training, educational, vocational and religious institutions, along with the infusion of GNH values.  ACC should consider developing more specific public education programs to intensify anti-corruption awareness at various levels and platforms.  Consider establishing sustained partnerships between the anti-corruption bodies and those actors outside the public sectors.  All Government agencies should make concerted efforts to beef up the implementation of NACS. |
|  | 2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided. | Article 14(13) of BC require RGoB to provide adequate financial resources for ACC’s independent administration.  Funding for ACC is agreed upon on an annual basis.  Section 2 of CSA repeals all other laws or rules inconsistent with it.  Section 47 of CSA empowers only RCSC to recruit university graduatesfor appointment in the professional and management positions.  Sections 53 and 64 of CSA do not permit ACC to recruit or promote personnel in (EX1) and (ES1) positions.  Section 62 of CSA does not permit ACC to give fast-track and out-of-turn promotions.  Sections 3.2 and 6.2.3 of chapter 9 of BCSR do not permit ACC to train its staffs if the training period exceeds six months.  Section 2.5 of chapter 19 of BCSR prohibits ACC from taking major disciplinary actions in respect of its staff in executive, specialist and P1and P2 positions. | There is no compliance with the mandatory obligations of this paragraph. ACC has no complete independence over recruitment, management and dismissal of its own staffs.  Section 7 of ACAB provides financial security and independence for ACC. | Investigative staff requires financial investigation, anti-money-laundering and asset recovery trainings.  ACC lacks adequate human resources to enable it to fully perform its mandates and there are no attractive schemes to retain staffs.  ACC’s investigative staffs are untrained in financial investigation, anti-money-laundering and asset recovery. | It is recommended that ACC be granted the necessary independence to enable it to carry out its functions effectively and free from any undue influence.  There is need to amend CSA and the Entitlement and Service Conditions Act for the Holders, Members and Commissioners of Constitutional Offices of Bhutan to comply with this sub-article.  There is need to provide more human resources to ACC and put in place attractive retention schemes. The anti-corruption agencies, OAG and Judiciary should be allocated additional resources.  ACC’s staffs responsible for investigations must be trained in financial investigation, anti-money-laundering and asset recovery. |
|  | 3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption. | Bhutan is yet to accede to and ratify UNCAC. |  |  |  |
| **Article 7. Public sector** | 1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:  (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude; | Section 47 of CSA, chapter 4 of BCSR, clause 2.4.2 of PCSM and PCS provide that the civil service recruitment shall be based on merit, qualification, fair and open competition.  Section 47 of JSA provides that PCS principles generally apply to judicial service personnel.  Civil servants and other public officials are recruited, hired, retained, promoted and retired by RCSC and their respective Commissions, Councils or Committees. These include:   * A collegiate body consisting of the Chief Justice, Prime Minister, Speaker, Chairperson of the National Council and Opposition Leader recommends the appointment of the holders of the constitutional offices. * RCSC recruits civil servants in executive and specialist positions, including university graduates at professional and management positions in agencies other than constitutional offices as provided for in sections 47 and 52 of CSA. Similarly, under section 63 of CSA, only the RCSC could effect promotions of civil servants in executive and specialist positions other than the constitutional offices. Section 63 of CSA gives RCSC the power to effect all fast-track and out-of-turn promotions in all agencies. Likewise, under clauses 2.5.1 of chapter 19 of BCSR, only the RCSC could disciplined civil servants in executive, specialist, professional and management positions in all agencies if disciplinary violations are major. Clause 2.2.1 of chapter 20 of BCSR enables only the RCSC to accept the voluntary resignation of personnel in executive and specialist positions. Section 88 of CSA enables the RCSC to establish civil service award to recognize and reward excellent or outstanding contributions of civil servants in the forms of awards, honors, promotion and financial rewards. Clause 5.1 of chapter 11 of BSCR envisages two performance-based annual increments for outstanding performers. There is a revised early retirement scheme in place to allow civil servants to exit from the civil service before reaching a prescribed superannuation age. Sections 82 of CSA also allow RCSC to put in place an early or special retirement schemes in consultation with the government. Section 83 of CSA permits RCSC to resort to compulsory retirement of civil servants as recommended by agencies. * NJC recommends the appointment of the justices of the High Court under sections 11 and 12 of article 21 of BC. Sections 3 and 4 of article 21 of BC provide that the head of the State will consult NJC in appointing the justices of the Supreme Court. * RJSC appoints judges of the Dzongkhag and Dungkhag Courts and Drangpon Rabjams. Appointments are based on seniority and some sort of integrity checks are now being carried out. * HRCs of the constitutional offices which by virtue of sections 53 of CSA recruits up to executive and specialist levels 2 positions, excluding university graduates at professional and management positions and promote these personnel under section 64 of CSA excluding the fast-track and out-of-turn promotion at all levels. Under clauses 2.5.1 to 2.5.3, chapter 19 of BCSR, the constitutional offices have jurisdiction over minor disciplinary violations in respect of all personnel in executive, specialist positions and professional and management positions up to position levels 1 and 2. They, however, have jurisdiction over both minor as well as major disciplinary violations in respect of personnel in position levels 1 and below under clause 2.5.2 and 2.5.3 of BCSR. Clauses 2.2.1(ii) & (iii), chapter 20 of BCSR enables the constitutional offices to accept the voluntary resignation of personnel below executive and specialist positions. * Under section 52 of CSA, HRCs of agencies other than the constitutional offices recruit personnel below the executive and specialist positions, excluding university graduates at professional and management positions. As empowered by section 63 of CSA, these committees promote these personnel, excluding the fast-track and out-of-turn promotion at all levels. Under clauses 2.5.1 to 2.5.3, chapter 19 of BCSR, agencies have jurisdiction over minor disciplinary violations in respect of all personnel in executive, specialist positions and professional and management positions up to position levels GSP/ESP. They, however, have jurisdiction over both minor as well as major disciplinary violations in respect of personnel in position levels 1 and below under clause 2.5.2 and 2.5.3, chapter 19 of BCSR. Clauses 2.2.1(ii) & (iii), chapter 20 of BCSR enables the constitutional offices to accept the voluntary resignation of personnel below executive and specialist positions.   Section 27(g) and (h) of CSA mandates RCSC to carry out a periodic human resources audit and special investigation on human resources actions where necessary. | There is compliance with the optional obligations of this subparagraph. | Relatively, the Bhutanese public service is clean. However, there is a general perception that it is biased, opaque, and fraught with ‘background corruption’ at all levels and in all sectors. Seniority is the general norm and there is no competitive selection process for certain positions, for example, in the appointment of district and sub-district judges. There is no proper screening on previous conducts before appointment and promotion. Academic achievement continues to receive additional mark in the competitive selection process and viva voce.  Section 7.2.4 of chapter 4 of BCSR envisages a briefing for HR committees on the eligibility criteria. But there is no legal requirement to train interviewers in interview techniques.  Though small and compact civil service is the stated policy objective, elementary and general service personnel continued to be a part of the Bhutanese civil service though they could be outsourced.  Measures to retain and recognize public servants are non-existent other than the periodic revisions in salary and other benefits, promotions and decorations, though there is a wide spread fear of losing good civil servants. Even the revised early retirement scheme is not financially attractive and very few civil servants have availed its benefits. RCSC is yet to introduce special retirement schemes.  There are no systemic and coherent training programs on performance evaluation for managers. Though the laws require performance planning to be done biannually and performance evaluation to be done annually, they are rarely done. Performance evaluations are mostly done just before the promotion due to managers’ weak supervision and monitoring. Supervisors’ performance evaluations are not consistent across the agencies leading to situations where those who deserve promotion are denied and vice versa.  There is no regular supervision and monitoring by RCSC of delegated agencies’ recruitment, promotion and other personnel actions. As a result, there have been few instances of ghost employees especially in the lower level positions and/or in projects. RAA’s performance audits have met with strong resistance from RCSC in the past. RCSC plans to appoint human resources auditors to audit agencies but there is still a problem of who is to watch the watchdog. | It is recommended that merit principles Stated in various laws be implemented by establishing more detailed and transparent recruitment criteria such as standard tests and questions for oral interviews. Such a system should not give any consideration to seniority and academic achievement as Stated in PCS and provides for guided criteria in viva voce evaluations.  It is recommended to clarify that the ‘seniority’ and ‘academic qualification’ are only for qualification purposes rather than as criteria for promotion and recruitment.  Proper screening on previous conducts before appointment and promotion should be strictly done.  Bodies responsible for recruitment should be trained in interview techniques.  Elementary and general service personnel should be outsourced in accordance with the small and compact civil service along the lines of security personnel which are now being serviced by the private firm.  Relevant authorities should devise systemic and coherent training programs on performance management for managers to ensure that the performance planning and performance evaluations are done objectively and are consistent across all public agencies.  Measures to retain and recognize public servants should be in place such as performance-based incentives and special retirement schemes to weed out non-performers.  RCSC should expedite the institution of human resources auditors to audit functions delegated to agencies. To overcome the problem of who watches the watchdog, there should be independent body to review RCSC’s action.  It is recommended that RAA should enforce its mandate under its Act to audit HR decisions of RCSC. |
|  | (b)That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions; | There is no corresponding legislative provision governing the selection and training of individuals for public positions considered especially vulnerable to corruption.  Clauses 1.3 and 5.2 of chapter 14 of BCSR provide provision for the transfer of civil servants (finance & accounts, revenue & customs, property management & procurement and immigration in 3-4 years, executive services, audit, general administration, land record, urban development & control, engineering, forestry, and HR & training in 3-5 years, civil registration & census, judiciary support, geology & mines, internal audit, investigation, industrial & environment in 5-6 years and other occupational sub-groups in every 6-8years) subject to clause 5.6 which restricts the transfer of civil servants to another position where the transferred civil servants’ knowledge is inapplicable. | There is no compliance with the optional obligations of this paragraph. | No systematic assessment of positions vulnerable to corruption has been carried out. Though RCSC is planning to do so, it’s unclear when and how it would be done. There is no requirement for additional scrutiny of candidates for positions venerable to corruption and system to check their life styles. Considering the vulnerability of these positions, MoF recommended RCSC to recruit individuals in procurement positions with, at least, bachelor’s degree.  Though there is no specific legal requirement to train individuals in vulnerable positions, in practice, some agencies such as MoF do train those public servants responsible for procurement of works, goods and services. Additionally, RCSC do give an hour or so briefings on BCSR to all officer trainees at the RIM.  As regards transfer, responsible agencies, however, do not always rigorously enforce these transfer provisions.  The system of subordinate feedbacks or subordinate rating in the civil service is not effectively implemented.  Though RCSC has informally started seeking feedbacks on individuals prior to their appointment in senior positions, it is not a part of the civil service performance management system. | RCSC should expedite the assessment process through an inclusive approach.  Adequate additional scrutiny requirements should be put in place for the selection and training of individuals in positions considered vulnerable to corruption. Pre-appointment screening of successful candidates, specific terms and conditions of service, procedural controls such as benchmarking performance, frequent rotation and monitoring of their lifestyles should be done by agencies themselves.    There is need to strengthen the implementation of the training needs assessments tool.  Post-employment restrictions in private entities with which that had dealings during their public service tenure should also be imposed in respect of these categories of individuals.  Selection for training should be need and merit based.  Adequate resources should be allocated for training officers working in various sectors that are vulnerable to corruption.  Need to impose post employment restrictions.  Need to train managers in private entities and interviewers are needed to be trained in interview techniques.  There is need to enhance the enforcement of feedbacks on the supervisors from subordinates in the civil service.  There is need to have a system for peer review in the civil service which should be effectively implemented.  It is recommended to include a procedure in the Local Governments Rules on the appointment of Gedrungs and the Fiscal Frameworks for the Local Governments. |
|  | (c)That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party; | Sections 1.1 of chapter 11 of BCSR and chapter 10 of ACCSR provide that individuals will be paid adequately.  Section 55 of JSA provides that judicial service personnel shall be paid equivalent to other civil service personnel.  Article 7(11) of BC and sections 156 of JSA, 56 of CSA, and 1.2 of chapter 10 of ACCSR require the ‘equal pay for equal value of works’ to be given to the public servants.  Article 30 of BC provides for the establishment of an autonomous Pay Commission which recommends revisions in the structure of salary, allowances, benefits and other emoluments of public service to RGoB.  Chapter 20 sections 164-166 of RBPA entitle pay, allowances and facilities to police personnel.  Section 56 (a) of CSA provides right to equal pay for the work of equal value and (b) for the right of remuneration and allowances. Section 56 determines the remuneration and allowances. Section 102.35 of same entitles promotion with corresponding pay.  Chapter 8 of LEA covers on wages.  Adequacy of remuneration should be revisited with particular reference to lower levels public servants. Once a minimum scales is guaranteed, other benefits must be linked to performance indicators and checked criteria. Unlike present increment regime which linked the annual increment to rank structure, it should be pegged to annual inflation rates. | There is compliance with optional obligations of this subparagraph. | There is periodic review of public service pay scales. However, implementations of the Pay Commission’s recommendations are slow or not implemented by RGoB.  Higher level officials are believed to be adequately paid; however pay commission need to look down at the pay scale of low level civil servants, which may lead to susceptibility for corruption.  Pay scale is pegged to rank structure but annual increment is not pegged to inflation. | It is recommended that the Pay Commission’s recommendations be speedily implemented by RGoB and must be kept in parallel with performance.  There is need to revisit the adequacy of remuneration for civil servants at lower levels.  Organization should have performance indicators and checking criteria to pay equal pay for equal value of work. |
|  | (d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas. | There is no corresponding legislative provision. | There is no compliance with the optional obligations of this subparagraph.  Section 35 of ACAB requires to develop a public service model code of conduct that will apply to all public servants across the Government agencies. | No ethics trainings based on codes of conduct with a focus on corruption have ever been conducted. However, such training is an essential component of the public service model code of conduct under ACAB.  RCSC conducted a two-day familiarization on BCSR-2010 from January 13-14, 2010 for 60 participants consisting of Chief Human Resource Officers, Sr. Human Resource Officers and Human Resource Officers of agencies and Dzongkhags. Such training is required for all public servants, especially on the code of conduct. | It is recommended that RCSC should come out with comprehensive training manual/s for the public sector in general in consultation with various stakeholders, including ACC.  RCSC should also direct agencies to develop sector specific training modules to address specific challenges to foster a culture of integrity.  Impart ethical training to public servants periodically to raise awareness of the risk of corruption posed in their public functions, including the pre-service ethical training course in RIM. ACC needs to be invited to speak in any training programs. |
|  | 2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office. | Article 23(3) of BC prescribes basic criteria concerning candidature for and election to public office.  Further educational and other qualifications are prescribed in section 176-178 of EA, section 14 of NAA, and section 13 of NCA.  Article 23(4) of BC and section 179 of EA prescribe several disqualifications for election candidates, including the prohibition to hold any office of profit.  Section 213 of EA requires election candidates to file along with their nomination paper an affidavit declaring their profession, assets, income, and liabilities including those of their spouse and/or dependent children. | There is compliance with the optional obligation of this sub-article. | In the last Parliamentary elections, there have been no proven complaints of violations of these legal provisions.  Election candidates’ assets declarations were published in newspapers for public viewing and comments. |  |
|  | 3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties. | PEFA and its rules regulate amount of the State funding, limits of contributions by registered members of political parties, way in which campaign bank accounts should be operated, specifies uses and prohibited uses of election funds, weekly monitoring of expenditures by election observers, the manner of filing election returns and how such returns would be audited by ECB and RAA. Election returns are made accessible to public for inspections. | There is adequate compliance with the optional obligations of this sub-article. | In the last Parliamentary elections, there have been no proven complaints of violations of these legal provisions.  Election candidates’ assets declarations were published in newspapers for public viewing and comments. |  |
|  | 4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest. | Respective codes of conduct of various agencies require them to be transparent and prevent conflicts of interest. These include ACA, CSA, BCSR, NAA, NCA, LGA, JSA, OAGA, AA and ROA.  Section 63 of ACAB criminalizes failure to declare conflicts of interest and imposes duty to disclose information that could properly be disclosed to public. | There is partial compliance with the optional obligations of this sub-article. | Bhutanese bureaucracy, however, is as opaque as it could be. Majority of the codes of conduct do not define what conflicts of interest is and have no procedures as to how and whom to declare the conflicts of interest. Moreover, persons in positions of authority rarely oversee the compliance with such requirements.  There is no training or awareness-raising among the public servants on such requirements.  There is no law enabling the citizens to demand the disclosure of information. | Conflicts of interest must be defined succinctly and adequate procedures for declaring it must be provided in codes of conduct.  Public servants, including the parliamentarians, must be trained periodic on such requirements to raise awareness.  Supervisory accountability must be fixed on persons in positions of authority for failure to ensure the compliance with such requirements.  There is need to expedite the enactment of RTIB to enable the citizens to demand the disclosure of non-confidential information. |
| **Article 8. Codes of conduct for public officials** | 1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system. | Various Acts and Rules prescribe codes of conduct, which includes chapters 2 and 3 of CSA and chapter 3 of BCSR for RCSC members and civil servants, chapter 3 of ACA and Ethical Code of Conduct for ACC members and its staffs, chapters 24 and 11 of NAA and NCA for Parliamentarians, chapter 10 of JSA for judiciary service personnel, chapter 6 of RBPA for all the police personnel, chapter 3 of AA for Auditor General, chapter 5 of OAGA for Attorney General and chapter 12 of LGA for members of the local governments. | There is partial compliance with the mandatory obligations of this sub-article. | Despite several codes of conduct that exist, they do not contain many international standards. Some significant omissions are accountability for their implementation, treatment of confidential information and the duty to release non-confidential information, integrity checking for recruitments, protection of the public servant’s privacy, post-employment restrictions, dealing with former public officials, risk assessment of posts or activities vulnerable to corruption, supervisory accountability, and procedures for raising and handling complaints.  Observations made in the enforcement and implementation column in paragraph. (d) of article 7 apply here as well.  Amended ACA empowers ACC to draft public service model code of conduct based on international standards applicable to all public servants across the Government. | Recommendations made in the recommendation column in paragraph (d) of article 7 apply here as well.  Public agencies must involve their staffs in drafting their codes of conduct and their implementation and oversight.  Public agencies must come up with complaint system that accepts walk in, telephone, fax and e-complaints.  Public agencies must accept anonymous complaint as long as their truth is established and regularly monitor it. |
|  | 2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions. | Observations made in sub-article 1 of this article apply. | There is partial compliance with the optional obligations of this sub-article. | Observations made in sub-article 1 of this article apply. | Observations made in sub-article 1 of this article apply. |
|  | 3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996. | Despite several codes of conduct that exist, they do not contain many international standards. | There is no compliance with the optional obligations of this sub-article. | The public service model code of conduct drafted incompliance with section 35 of ACAB, amongst others, took note of the International Code of Conduct for Public Officials and the EU code of conduct for public officials. | ACC must involve all the relevant public agencies in drafting such model code of conduct. |
|  | 4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions. | Article 8 (9) of BC imposes a fundamental duty on every person to uphold justice and to act against corruption.  Sections 430 and 431 of PCB fasten criminal liability on a person who fails to report a commission of a crime to a lawful authority.  Section 59 of ACA gives right to a person to lodge a complaint with ACC against a person who has committed or is attempting to commit a corruption offence.  A brochure entitled ‘A Basic Information on ACC Act’ provides that corruption offence complaints can be either by post, email, telephone, fax, online or walk-in.  RAA has established an online fraud alert system to facilitate a person to report any allegation of fraud occurring in an agency.  Procedural safeguards to protect the source against retaliation are as provided for in articles 32 and 33 below.  ACC Ethical Code of Conduct makes ACC Director responsible for its compliance monitoring. Staffs who know breaches of the code by another staff must report either to the Commissioners, Director or immediate supervisors by written complaint, e-mail, walk-in or telephone. Anonymous complaints can be accepted and the management is responsible for preventing retaliation against such complainant. | There is partial compliance with the optional obligations of this sub-article. | There are no specific measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities.  ACAB imposes duty on public servants in general and a person in position of authority in particular to report to ACC.  Specific guidelines and training with respect to reporting is inadequate. | It is recommended that rather than just providing basic information, comprehensive reporting Guidelines need to be developed and public servants and persons in position of authority must be trained periodically for their reporting obligations. |
|  | 5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. | Matters relating to asset declarations by a public servant or any person using public resources, including those of their spouse and/or dependants are provided for in sections 50, 115, 116 and 127 through 131 of ACA. ADR which implements these sections:   * prescribes declaration frequency and obligations. * specifies the declaration contents and the manner of their audit and investigations. * provides the way in which the declaration processing, registration and maintenance are to be done. * prescribes the consequences for its breaches. * ensures public access to declarations for specified purposes. * prescribes penalties for   unlawful obtain or uses of declarations.  The Gifts Rules 2009 govern gifts transactions in the public sector, which:   * generally prohibit a public servant from soliciting and giving of gifts and restricts their acceptance. * specifies the prohibited sources and provides generally accepted conditioned exceptions thereto. * Sets the procedures for disposal and public disclosure of gifts. * prescribes the penalties for solicitation and acceptance of gifts. | There is partial compliance with the mandatory obligations of this sub-article. | There is no consolidated data to assess exact compliance with ADR and GR. Declarations filed to ACC by senior public servants or heads of agencies have, however, been increased from 50% in 2006 to 72% in 2008. As for the gifts disclosure, compliance monitoring is virtually non-existent.  Assets administrators and gifts disclosure administrators have been appointed in all covered entities but they are not adequately trained and there is no mechanism in place to ensure that the declaration contents are true.  Though heads of agencies are responsible for overseeing ADR and GR implementation, they have not been made aware of their obligations.  ADR and GR cover all public servants which is also one of the reasons why compliance monitoring is difficult.  There are no measures and systems requiring public officials to make declarations to appropriate authorities regarding their outside activities, employment and investments. | There is need for proper verification skills and tools to ensure accurate declaration of assets or disclosure of gifts.  Assets administrators and gift disclosure administrators and agency heads should be trained to develop their capacity.  Consider establishing measures and systems requiring public officials to declare their outside activities, employment and investments.  ADR and GR may be revised to require only selective categories of public servants or persons using public resources to declare assets or disclose gifts. |
|  | 6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article. | Article 32 of BC provides that COHs could be removed by Parliamentary impeachment.  All the codes of conduct mentioned in sub-article 1 of this article prescribe sanctions for their breaches.  Sections 85 and 86 of CSA provide that civil servants are liable to be terminated or retired from their service if they are convicted of misdemeanor offences and above. | There is partial compliance with the optional obligations of this sub-article. | This article is yet to be tested as allegations of incapacity, incompetency or serious misconduct are not reported. There is, however, no impeachment procedure to remove COHs.  Enforcement of codes of conduct is weak for the reasons stated in paragraph (d) of article 7.  The complaints on violation of code of conduct by civil servants are kept in rack by RCSC. | OAG should draft impeachment procedures in consultations with various stakeholders, including the constitutional offices.  BCSR lists the different sanctions but do not clarify when they are applicable and what the procedures are for a decision. It also does not provide sufficient link between the code of conduct (chapters 3 and 18) and the disciplinary procedures.  Only BCSR (chapter 19) provides basic procedures for disciplinary sanctions.  RCSC need to investigate immediately such complaints. |
| **Article 9. Public procurement and management of public finances** | 1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia: | Supported by the World Bank through the “Institutional Capacity Building Project for Procurement”, RGoB has introduced a far reaching procurement reforms in 2008. The aim is to create an up-to-date national procurement system recognized by international partners as standard and adequate for all procurement. The reform is expected to make the Bhutanese procurement system more efficient, effective, fair, and transparent through increased accountability, value for money, and budgetary savings that will lead to rapid economic growth, promote private sector growth, and improve quality of life.  As part of this reform, PRR has been revised in 2009 along with its subsidiary documents such as SBD for goods, works & Services. |  |  |  |
|  | (a)The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders; | PFA, PRR and SBD (works, goods and services) are not distributed to public but they are accessible to any individual on MoF’s website.  Chapter III of PRR requires the establishment of TCs at various levels, including at local governments level with various thresholds.  Clause 5.1.2 of PRR requires procuring agencies to notify or announce invitations to tenders in newspapers, web sites, national radios, TV and other mass media, including display of such invitation to tenders on respective agencies’ notice board.  Clause 5.1.3 provides minimum time limit for each modes of procurement (i.e. 30, 14 and 5 days for open bidding, limited bidding and limited enquiry and by mutual agreement in the case of direct contracting).  Clause 6.1.1.3 of PRR requires PA to notify the decision of the PA on particular tender. | There is partial compliance with the mandatory obligations of this paragraph.  PRR does not address issues relating to needs assessment. Without needs assessment, invitations to tender are done on annual basis and qualified bidders are registered in accordance with chapter II of PRR. Any bidders could attend the tender opening processes and Q & A session is held. TCs evaluate the tenders as per the pre-disclosed criteria in which bidders are not usually present but they can have an access to such decisions and also seek explanations from TCs.  As and when officials require goods or services, they fill up a requisition form which is then approved by respective administration as per the FAM. | As PRR does not require limited bidding to be advertised in mass media, collusive activities are possible because procurement officials have wide discretion to invite to tender from selective bidders.  It is generally perceived that the existing pass & fail evaluation system for the procurement of works is too rigid and leads to retendering in most cases. To overcome this difficulty, a point based evaluation system is being proposed.  Enforcement of PRR has been weak due to the lack of adequate human resources in PPPD. | It is recommended that limited bidding should be made as transparent as possible to minimize the risk of collusion.  There is need to publicize contract award decision including assessment and contracting decision to strengthen the transparency at all stages.  Legislative provision is required to be introduced requiring needs assessment by all proceeding agencies.  Implementation of PRR should be strengthened through monitoring capacity of PPPD by providing adequate human resources. |
|  | (b)The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication; | Chapter 2, clause 2.1 of PRR requires bidders to register with CDB and meet minimum requirement to be eligible for the procurement of works and services. | There is partial compliance with the mandatory obligations of this subparagraph.  There are adequate provisions for procurement of works and services, but lack proper system for procurement of goods.  The present system has adequate provision to set pre-determined selection and award criteria. | Some procuring agency does not comply with this requirement. This is either due to ignorance of the PRR or this is due to lack of knowledge.  PPPD is under process of certification for procurement. | Formulate robust training programs for individuals responsible for public procurement and train them periodically and update them. |
|  | (c)The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures; | Clause 5.4.4 of PRR requires procuring agency to disseminate information relating to (selection and award) evaluation of procurement in question. Further the evaluation criteria is made more objective in the subsidiary documents (SBD). | There is adequate compliance with mandatory obligations of this subparagraph. However, the government is in the process of further developing a (point based) evaluation system for procurement of civil works. | Some procuring agencies do not comply with this requirement. This is either due to ignorance of the PRR or this is due to due to lack of knowledge.  Lack of proper procurement planning as there is no involvement of non-state actors in the needs assessments and procurement planning.  Proposed modules to be in place to be trained by RIM in order to develop capacity. | Formulate robust training programs for individuals responsible for public procurement and train them periodically and update them.  It is recommended to do the followings:  Pre-appointment screening  Monitoring of lifestyle and accounts  Rotation  Rules on post-resignation requirements of all public officials involved in procurement  Need to have centralized procurement system for specified feasible goods.  Responsible agency should make business code of conduct as a part of the conditions for incorporation, licensing or registration.  Need to set the idea of procurement planning and develop the system of e-procurement and legal framework on it.  Need to create separate division for procurement to work on less valued procurement. |
|  | (d)An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed; | Chapter VIII of PR provides for a review and appeal system. Initially, grievances are redressed by a head of procuring agency whose decisions are reviewable by an independent review body and from there aggrieved person could have recourse to a court.  Parties could avail the service of CDB’s arbitration board for resolution of their disputes relating to civil works. | There is partial compliance with the mandatory obligations of this subparagraph.  While some forms of domestic review exist, it is not adequate to address all forms of procurement. | An independent review body is yet to be established.  The review mechanism is either very weak or non-existent. The cases are currently taken care of by PPPD under MoF.  Lack grievance decision.  PPPD is under the process of establishing grievance mechanism and introduction of EGP. | It is recommended that an independent review body be established mechanism so that all grievances mechanism for goods, works and services can be addressed altogether at one stop.  Need to centralize certain items like text book in remote areas and need to do away with point-based system. |
|  | (e)Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements. | Clause 3.1.2.1 of PRR prohibits family members of TC to participate intenders.  There is no corresponding legislative provision which requires screening procedures for recruitment of procurement officials.  The Institutional Capacity Building Project for Procurement has three components. The first component deals with the creation of a people development strategy and focuses on establishing the benchmarks, standards, and competencies required for a potential body of procurement professionals and to establish a qualifications and training regime to support the future development of the body of procurement professionals. The second component envisages the delivery of procurement training and education opportunities to support in-service development of public servants to be delivered jointly by RIM and the project consultants and development of teaching staff from RIM and RUB by the consultants to enable them to deliver procurement training and education in the future. The third component is the mainstreaming of people development strategy: building the “body of knowledge”. It focuses on embedding and mainstreaming of the people development strategy to Bhutanese partner organizations through continued delivery of in-service training and education to stakeholders delivered by RIM; integration of procurement education into the curriculum of RUB/Bhutanese education framework; and development of the body of knowledge and procurement practice in Bhutan through the creation of networks, communities of practitioners, events, and conferences focusing on key procurement topics and case studies. | There is partial compliance with these mandatory obligations of this subparagraph.  While PRR requires the declaration of conflict of interest, there is insufficient guidance on the declaration of conflict of interest. | PRR prohibits families to participate in tenders in which one of their relatives is TC member.  There is weak or lack of enforcement of the declaration of conflict of interest as many procurement officials as well as officials in supervisory positions are ignorant of such requirement. In some instances, conflict of interest is knowingly ignored for lack of a replacement official.  One of the major challenges has been the lack of capacity within the government as well contractor’s capacity.  As the public procurement consumes around 70% of the public fund, this sector is highly vulnerable to corruption. Yet there is no system which requires pre-appointment screening, monitoring of their lifestyle and accounts, and the requirement for frequent transfers. PCS provides for the benchmarks, standards, and competencies required for procurement officials. However, it is yet to be implemented and the general public servants need to handle the procurement system.  The Institutional Capacity Building Project for Procurement envisages only training and education opportunities to support in-service development of public servants and the integration of procurement education into the curriculum of RUB/Bhutanese education framework.  Under the auspices of the Institutional Capacity Building Project, education and training of procurement officials and others have been delivered. Two officials of PPPD, one lecturer from the Gaedug College of Business Studies, and two Lecturers from RIM have qualified a CIPS Level 4 Foundation Diploma in Purchasing and Supply.  The Training of Trainers Workshops were conducted in all twenty districts to train their respective district procurement officials in the future.  Various short courses on procurement have been developed and the 7th Batch of compliance in Procurement Certificate is under way in RIM.  Officials of RAA and ACC will also be educated and trained under the Institutional Capacity Building Project for Procurement.  There is, however, a need to carefully monitor and evaluate the implementation of the new procurement law. | It is recommended that the definition of ‘conflict of interest’ be reviewed to allow the families of TC to participate in tenders.  Establish proper rules to declare the conflict of interest by TC members when their relatives participate in tenders.  Procurement officials’ capacity should be developed.  There is need to introduce a legislative provision requiring:  pre-appointment screening  monitoring of lifestyle and accounts  frequent rotation and  restriction on post-employment activities for all procurement officials on a selective basis.  PCS should be implemented with regard to establishing the benchmarks, standards, and competencies of procurement officials.  The implementation and institutionalization of the three components of the Institutional Capacity Building Project for Procurement should be expedited.  Awareness training, workshops, seminars etc. should be intensified.  There is need to develop monitoring and evaluation mechanisms to carefully monitor and evaluate the implementation of the new procurement law.  CDB should train all contractors on procurement rules. |
|  | 2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia: |  |  |  |  |
|  | (a) Procedures for the adoption of the national budget; | The Chapter 4, Article 42 - 45 of the Public Finance Act requires sound procedures of adopting national budget. As required by PFA, the procedures are defined in the FRR 2001. | There is adequate compliance with the mandatory obligations of this subparagraph. | Budget implementation is as per the PFA 2007.  Though the budget flow is scrutinized by MP, it is not done in joint sitting and there is a lack of coordination between the head of LG and the MP of the constituency for framing the budget.  More than 20% of budget comes back unutilized.  MPs lack capacity to process the budget preparations.  MP walks in asking to include budget for his constituency which the department of budget cannot do. | Further improvement in the management of budget will be addressed through the introduction of Multi-Year Rolling Budget (MYRB) System. This is a real-time system and it is expected to address fund requirement for multiyear projects and spillover programs.  Parliamentarians need to coordinate with LG in budget preparation.  There is a need to submit procurement planning along with budget proposal.  Human capacity for budget preparations should be developed. |
|  | (b) Timely reporting on revenue and expenditure; | Article 14 (8 – 9) of the Constitution of Kingdom of Bhutan requires Finance Minister to present national budget report to the Parliament. The PFA article 67 also requires Finance Minister to report the audited financial statement of the financial year, budget policy and fiscal framework statement and budget and appropriation bills to Parliament during each summer session. The report consists of statement of sources and application of funds.  Further, Revenue Accounting Manual 2004, Chapter 1, Part B has detailed requirements of reporting the revenue collection. E.g. Clause 1.3 of Revenue Accounting Manual requires all BoB branches to submit a bank statement and deposit challans for deposits made by Agencies by 10th of the following month to the respective RRCOs. Based on the bank statement and deposit challan, all RRCO’s shall compile the monthly deposit account for the region and submit to DRC by 20th of the following month. At the national level, clause 1.4 requires DRC to compile and submit monthly deposit accounts to the MoF by the 30th of each following month and a consolidated annual deposit account shall be submitted at fiscal yearend by first week of August every year. Based on the funds made available by the MoF (DPA) to the budgetary bodies, expenditure accounts are compiled by the agencies in an accounting software called Budget and Accounts (BAS) and submitted to the DPA both in hard and soft copies. The expenditure statements so received from the Budgetary Bodies are again compiled by the DPA in National Level and presented to Parliament by the Finance Minister in the form of Annual Financial Statements. | There is adequate compliance with mandatory obligations of this subparagraph. | While there is no gap in rules and regulations, the reporting by the DRC to the MoF does not happen as mandated by the Revenue Accounting Manual 2004. Therefore, the report to the MoF by the DRC happens as and when required.  Presently there are two accounting systems: Centralized Budget and Accounts (CBA) and Budget and Accounting System (BAS). While CBA is being used by DNB (dept. of National Budget) and DPA (Dept. of Public Accounts), agencies use BAS and both these systems are desktop application systems with each user agency having its own database. As a result there are differences in approved budget and expenditures reported.  Tax, customs, sales tax and revenue information are maintained by their respective divisions as there is no centralized database system to capture all the information at one stop. | To have one accounting system, DPA is now developing new accounting software called Public Expenditure Management Systems (PEMS). It is an online system with one central database in DPA and is web based. This system will be put in use from July 2010 where all the reporting will be on a real time basis and there will be no differences in budget and expenditures.  Need to develop capacity to ensure the reforms are properly implemented.  Need to establish centralized data base system to capture all the information at one stop. |
|  | (c) A system of accounting and auditing standards and related oversight; | Section 122 of the PFA 2007 requires all budgetary bodies to follow the accounting system prescribed by the MoF  Section 25 of PFA 2007 – MoF shall provide leadership in the promulgation of Accounting Standards  Section 56 of the Audit Act of Bhutan 2006 requires the RAA to establish auditing and reporting standards and practices that will meet the auditing and reporting standards. | There is adequate compliance with the mandatory obligations of this subparagraph. | Ministry of Finance is taking a lead role in developing Bhutanese Accounting Standards (BAS) and Bhutanese Standards on Auditing (BSA) consistent with International Accounting Standards (IAS) / International Financial Reporting Standards (IFRS) / International Standards on Auditing (ISA) for the Corporate & Private entities. For the Public Sector, DPA, MoF has taken initiatives to consolidate the Annual Financial Statements in the Cash Basis IPSAS Format – Part I  The RAA is in the process of finalizing the various manuals that will ensure effective implementation of standards. | To finalize the manuals at the earliest and impart sensitization workshops and trainings to the field auditors. |
|  | (d)Effective and efficient systems of risk management and internal control; and | Chapter 6 of PFA requires MoF to manage the funds irrespective of the sources of fund as per the FRR.  Section 122 of the PFA requires all budgetary bodies to base the accounting records on the accounting standards prescribed by MoF.  Chapter III, Section 23, sub-section “O” of the PFA 2007 requires MoF to administer and issue internal Audit guidelines. Internal Audit Charter & Standards. In Internal Audit Standards, section 20.1.1 (a, c, d, e, f, j) & 20.2.2 (a & b)requires Internal Audit Services to use risk management & Internal Control effectively & efficiently.  The AA Act of Bhutan 2006 requires timely auditing. | There is compliance with mandatory obligations of this subparagraph.  Further, MoF is in the process of drafting internal audit Manual. | While there are adequate requirements by legislations, there is shortage of manpower in Internal Audit.  Enforced & implemented in all Ministries for the uniformity & consistency of Internal Audit Services.  Not possible to conduct audit of all the agencies every year.  Cash management at the agency level is not adequately defined in the Financial Rules and Regulations. | Adoption of Internal Audit Manual which is under preparation by World Bank. Strengthen the manpower in Internal Audit Services  To strengthen internal auditors.  With the adoption of accounting software (BAS and PEMS), many clauses in the Financial Rules and Regulations have become redundant and obsolete. The FRR is being revisited by DPA and a revised version is expected to be released in July 2010. Cash management such as retention of huge cash balances at the end of the fiscal year, closed Work Transactions, Refundable and Non Revenue Transactions and Closing cash balances have been adequately explained and proper guidelines have been incorporated to deal with such aspects so that Government funds are properly managed. |
|  | (e)Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph. |  |  |  |  |
|  | 3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial Statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents. | Article 51 of FIA requires all financial institutes to keep record of financial transaction and position.  Section 46 (1) of RMAA requires to keep book of accounts and records to check the accounting books, documents and accounts under section 35(1), 34(1) & 33(2) of RMAA  Under section 3.2.4 of Prudential Regulations 2002, all Financial institutes are to keep integrity of financial Statements, records and transaction. | There is adequate compliance with the mandatory obligations of this sub-article. |  |  |
| **Article 10. Public reporting** | Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: | Article 7 (3) of BC provides that a Bhutanese Citizen shall have the right to information.  Section 54(g) of ACA, provides for the publishing of its annual performance report for public information.  Draft RTIB  Various Ministries and agencies publish annual report. | There is partial compliance with the mandatory obligations of this article. | Although the law provides for public reporting, accessibility of information is very limited.  RTIB is not disclosed to the public by the council of ministers.  Difficult to get information which is not available on the website or on their annual performance reports.  Lack of proper procedure for reporting by general public. Anonymous reporting is not entertained by other agencies except for ACC. | Expedite the enactment of draft RTIB.  Decision making process should be made more transparent to public so that the organizations can be more open and responsive to the needs of the community.  Need to introduce proper procedure to obtain the available information. |
|  | (a)Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; | There is no specific law allowing the public access to information on public bodies. | There is no compliance with the mandatory obligations of this subparagraph.  Some basic information could be obtained from various agencies’ web-sites. | Such web-site can be useful only to those with IT knowledge.  Most of the time information posted on the web is not detailed and also outdated.. | Introduce legislative provisions to enable the public to access information held by public institutions and raise awareness about the provisions.  Designate focal person in the institutions who should be responsible for disseminating information of public interest. |
|  | (b)Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and | No corresponding legislative provisions | There is no compliance with the mandatory obligations of this subparagraph. |  | Consider introducing sunset clauses or review clauses in all legislation on licenses, permissions, or concessions to ensure that procedural complexity is reduced as much as possible. |
|  | (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration. | Anti-Corruption report.  Corruption Perception survey.  Radio jingles, TV programmes and political corruption awareness road show to educate the public.  Integrity Assessment.  ACC quarterly news update.  Audit Annual Report.  International Anti-Corruption Day. | There is partial compliance with the mandatory obligations of this subparagraph.  Some institutions publish annual reports but do not include report on risks of corruption in their public administration.  Accessibility of such reports is not known to many people. | Lack web link to corruption perception survey, integrity assessment and peoples’ attitude towards corruption and ACC reports. The annual report does not cover the investigated, prosecuted and sentenced status.  ACC lack to disseminate information of the percentage of complaint and type of anonymous report received.  Lack staff in public education division to conduct public education programs. | Besides the periodic report, relevant information in particular with regard to combating corruption should be published and distributed to citizens.  Such reports should be made accessible to everyone.  To effectively disseminate the various reports on corruption, simplified versions of the reports should be developed and translated into commonly used language.  Public bodies should periodically undertake self assessments and publish information regarding the likelihood of corruption occurring.  Awareness raising and sensitization could be enhanced by using both the print and electronic media. Need to conduct various public awareness campaigns to educate on how to report corruption and the right of the accused.  Need to come up with behavioral change programs and its implementation action plan.  ACC may look for technical assistance in developing programs in public education. |
| **Article 11. Measures relating to the judiciary and prosecution services** | 1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary. | Article 1 (13) and Article 21 of BC provides for independence of Judiciary.  All sections of CSA mentioned in connection article 5 apply here as well.  Section 5 of CSA separates judges and Drangpon Rabjams from the purview of CAS.  Chapter 10 of JSA provides for the code of conduct of the judges.  Section 6.1 (c) of CCPC provides that a Drangpon/Rabjam shall disqualify himself/herself or be disqualified from presiding or dealing with a case where his/her act contravenes the code of conduct. | There is partial compliance with the mandatory obligations of this sub-article. | There has never been an assessment of the vulnerabilities of the existing judicial system (from judicial appointment to tenure and promotion and disciplinary proceedings against judges and clerks, but also practical issues such as securing evidence, expedition of cases and backlog of cases)  Code of conduct does not contain many international standards. Some significant omissions are accountability for their implementation, treatment of confidential information and the duty to release non-confidential information, integrity checking for recruitments, protection of the judicial personnel’s privacy, post-employment restrictions other than practice, dealing with former public officials, risk assessment of posts or activities vulnerable to corruption, supervisory accountability, and procedures for raising and handling complaints.  CSA seriously undermines the independence of the judiciary as the officials at support levels are subject to RCSC’s jurisdiction.  There is a lack of legally qualified judges at the sub-district courts.  Bench Book provides reasonably good guidelines on judicial process (available at <http://www.judiciary.gov.bt/html/education/BENCH%20BOOK2ndedition.pdf>).  There is no case management system. Courts use a case information system that captures case details, including pending cases and the information therein are submitted to the Chief Justice on a monthly basis. However, it’s not accessible to the general public though a **summary of cases are available online (available at** <http://www.judiciary.gov.bt/html/case/statistic.php>**) which provides a very good overview of cases decided by courts.**  **However, Courts’ judgments are not published in Bhutan though some High Court’s judgments are available online (available at**  <http://www.judiciary.gov.bt/html/case/judgment.php>)  The information brochure entitled “The Judiciary of the Kingdom of Bhutan” provides information on the Bhutanese judiciary. | It is recommended that CSA be amended to ensure judicial independence in compliance with this sub-article.  There is need to undertake a comprehensive assessment of vulnerabilities of the existing judicial system.  A proper case management system should be developed and information in such a system should be made accessible to the general public to further enhance the judicial transparency.  Judgments of, at least, all Dzongkhag Courts and above should be published to help Courts themselves as well as litigants. The creation of law reviews that analyze and comment on jurisprudence should be encouraged. Information on the backlog of cases should be posted on website for easy accessibility to the public.  Integrate the case management systems of Judiciary, OAG and ACC.  There is need to have a proper service standards or information kiosk.  As there are no specialized anti-corruption courts, there should be a special training on corruption cases for judges to foster their understanding of the nature of corruption cases.  A more detailed code of conduct, may be in congruence with Bangalore principles of judicial conduct, should be developed that takes into account international best practices. Regular training programs on code of conduct should be conducted by integrating into judicial training programs.  Introduce legislative provision to the effect that the budget of the judiciary shall be charged on the Consolidated Fund of Bhutan. |
|  | 2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service. | OAGA prescribes Code of Conduct for AG.  The Bhutanese prosecution service is a part of the civil service rather than a part of the judiciary but enjoys functional autonomy. The following are the applicable codes of conduct:  1.Section 67 to 75 of the Prosecution guideline provides for professional and private conduct of a prosecutor.  2. Chapter 5 of JA provides for duties and responsibilities of a Jabmi.  3. Chapter 3 of provides for the Code of Conduct and Ethics of civil servants.  4. Section 101 of CCPC prescribes professional conduct of conduct for Jabmis. | There is partial compliance with the mandatory obligations of this sub-article. | These codes of conduct do not contain many international standards. Some significant omissions are accountability for their implementation, treatment of confidential information and the duty to release non-confidential information, integrity checking for recruitments, protection of the judicial personnel’s privacy, post-employment restrictions other than practice, dealing with former public officials, risk assessment of posts or activities vulnerable to corruption, supervisory accountability, and procedures for raising and handling complaints.  Lay jabmis continue to play important roles both within and outside the judicial system who are not subject to a proper regulation or code of conduct.  Representatives of plaintiff or accused persons also represent the latter in courts who are not subject to a proper regulation or code of conduct.  There is not enough capacity within the Office of the Attorney General.  Lack of coordination between police prosecutors and Office of Attorney General.  Police also prosecutes petty misdemeanor criminal cases that carry sentence terms less than one year but they lack the capacity and skills to effectively undertake prosecutions. | A more detailed code of conduct should be developed that takes into account international best practices. Regular training programs on code of conduct should be conducted on a regular basis.  Lay Jabmis as well as the personal representatives of plaintiffs or accused persons should be made subject to the same standards of conduct as the prosecution service.  Review and implement the *Jabmi* Act to ensure the establishment of the Bar Council and its independence.  There is need to develop the capacity of the prosecution service, including the police prosecutor. |
| **Article 12. Private sector** | 1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures. | Article 27(1) of BC requires ACC to take necessary steps to prevent and combat corruption.  Private sector as one of the important stakeholder in fighting corruption is provided under Clause 10.7 of NACS.  Section 75 of CA provides for the auditing standards for registered companies.  Schedule XIV of CA provides for the general TOR for the auditors and minimum audit examination and reporting requirements.  Chapter 10 of ACA provides for offences and penalties for those involved in corruption. | There is no compliance with the mandatory obligations of this sub-article.  Bhutan does not have standard national accounting systems and different regulatory authorities adopt different standards. Also, no guideline or document on disclosure requirements exists to elaborate international accounting standards (IAS) to be adopted by companies or institutions and their auditing firms in preparing financial Statements. This creates a sense of non clarity and lack of homogeneity in statutory financial reporting. In most cases, accounting and auditing professionals are brought in from India, and financial reporting standards have followed Indian GAAP and GAAS practices. National accounting standards and policies are necessary to ensure comparability of reports, reliability of information, and transparency of financial information and so promote good corporate governance and prevent corrupt practice in Bhutan. |  | It is recommended that Bhutan should establish a standard GAAP & GAAS.  Introduce legislative provisions which provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with measures to prevent corruption in the private sector. |
|  | 2. Measures to achieve these ends may include, inter alia:  (a)Promoting cooperation between law enforcement agencies and relevant private entities; | Section 56 of ACA requires ACC to coordinate with public, private or any other entity in the overall effort towards combating corruption, promoting public participation in combating corruption and studying the best practice in other countries or organizations.  Section 54(k) of ACA provide for ACC to coordinate with public entities/law enforcement agencies in combating corruption. | There is partial compliance with the optional obligations of this sub-paragraph.  Cooperation between law enforcement agencies and private entities are weak. | Weak implementation  Lack of awareness raising amongst the private sectors. | There is need for partnership between the Government and the private sector especially when it comes to information sharing.  Consider engaging law enforcement agencies in awareness raising activities in the private sector.  Consider having corporate compliance programs which can be defense for criminal prosecution.  Need to have protocol between tax authorities and law enforcement agencies.  Need to ask for anti- corruption measures during listing.  Consider introduction of provisions that encourage or oblige legal persons to report corruption-related crimes to law enforcement authorities. |
|  | (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State; | Section 51 of ACA requires ACC to take measures to prevent corruption in the private sector, including codes of conduct to promote  correct, honorable and proper conduct of business and for promotion of good commercial practice.  As a part of the ACC’s initiative for Public-Private Partnership Program in February 2007, BCCI has develop a model Business Code of Conduct for adoption and implementation by the business entities by developing specific codes suitable to their own entities.  Articles of Association 2002 of the Construction Association of Bhutan, Bhutan Exporters Association, ITAB Service Rules 2005, and Association of Bhutanese Tour Operators have developed codes of conduct for their members.  Journalist code of conduct governs journalists.  MoLHR’s Model Internal Service Rules for Enterprises. | There is no compliance with the optional obligations of this subparagraph.  Except for the ITAB Service Rules 2005 which deal with theft, fraud, misuse of ITAB’s revenue or property and taking bribes or illegal gratifications, these codes do not address issues related to prevention of corruption. | There is no assessment of how these codes are being implemented.  The Journalist Code of Conduct has been met with a strong resistance from journalists. Nevertheless, media houses have been penalized for code violation.  Media Foundation has been established by a Royal Decree with a corpus of Nu. 15 million in February 2010, among others, to strengthen the Bhutan media through trainings, scholarships and support of the Journalists’ Association of Bhutan.  MoLHR’s model Internal Service Rules for Enterprises do not have a provision related to prevention of corruption in the private sector.  As directed by the Government, corporate bodies are taking initiatives to develop a corporate governance framework for corporations.  As with training of leaders of the cooperatives and farmers’ groups by SNV, corporations and business entities should be trained on the business code of conduct  There is no UN Global Compact Chapter in Bhutan which is an initiative to encourage businesses worldwide to work against corruption by not only avoiding bribery, extortion and other forms of corruption, but also by adopting policies and concrete programs to address corruption, among other issues. | It is recommended that the existing model business code of conduct be reviewed by BCCI in collaboration with MoEA, MoLHR, CDB, DHI, and non-state actors such as the existing business associations. Such a model code should be made a part of the Internal Service Rules for business entities and also licensing regulation and other incentive schemes, and condition for CDB registration for construction industries.  Develop the capacity of BCCI in the development of service standards for the business entities.  MoIC should review the existing Journalist Code of Conduct to make it more acceptable to journalists in collaboration with BICMA, Media Foundation, and the Journalists’ Association of Bhutan.  There is need to develop service standards for business entities such as CAB and ABTO.  Such a corporate governance framework should address business code of conduct.  UN Global Compact Chapter may be established in Bhutan. |
|  | (c)Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities; | Section 5 of CA provides for the registration of the companies.  Section 57 of CA provides for annual return of a company. | There is partial compliance with the optional obligations of this subparagraph. |  | Enhance transparency with respect to identities of persons who play an important role in the creation and management or operations of corporate entities. |
|  | (d)Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities; | Section 52 of ACA provides that ACC shall also take measures to prevent misuse of procedure regulating privatization, subsidy and license granted by the government for commercial activity.  Licensing rules and regulation by MoEA  Business Licensing Inventory (BLI). Supported by the World Bank and the International Finance Corporation’s South-East Asia Development Corporation, MoEA has completed the draft Business Licensing Inventory in Bhutan to promote information sharing, assessing legality, document requirements, costs involved and processing time, central registry, duplication of activities. | There is compliance with the optional obligations of this subparagraph. | Ineffective monitoring mechanism. | There should be effective monitoring mechanism. |
|  | (e)Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure; | Section 24 of JA provides that no retired Drangpons shall practice as a Jabmi before any court. | There is no compliance with the optional obligations of this subparagraph.  Except for JA, there are no legal provisions to deal with post employment restriction for public officials in the private sector.  There are opportunities for corruption created by lack of specific legislation that defines post public sector employment | JA is not implemented at all. | There is need for a legislative provision imposing restrictions on post public sector employment.  There is need to implement the JA. |
|  | (f)Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial Statements of such private enterprises are subject to appropriate auditing and certification procedures. | CA provides for auditing within the companies.  Section 92 (b) of PFA requires State enterprise to maintain internal auditing system.  Schedule II (1) of Prudential Regulation 2002 requires having internal audit.  Article 12-1(c) of FIA requires all banks to conduct internal auditing. | There is partial compliance with the optional obligations of this paragraph.  Internal auditing controls in the private enterprise are insufficient and optional. There is no internal reporting mechanism for corruption in the private sector. | MoF instituted a broad to explore uniform accounting system for public sector including public corporations.  Lack internal sanction system within the corporations. | If Bhutan wants to rectify and comply with this UNCAC article it needs to review the existing CA to include strengthening of audit control for private enterprise. However since the liability of the private company is unlimited this may be left to the concerned person for having a sufficient internal auditing control system. |
|  | 3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial Statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:  (a) The establishment of off-the-books accounts;    The making of off-the-books or inadequately identified transactions;  (c)The recording of non-existent expenditure;  (d) The entry of liabilities with incorrect identification of their objects;  (e) The use of false documents; and  (f)The intentional destruction of bookkeeping documents earlier than foreseen by the law. | Section 24.1 of ITA provides that all tax payers shall maintain and submit accounts and any other documents relevant for assessment as prescribed in the rules by the Ministry.  Section 27 of ITA States that the tax authority shall have the power to investigate any taxpayer having disproportionate assets or any un explained expenditure to the known sources of income.  Chapter 5 of the ITAFines and penalties a person shall be held liable to fines and penalties for default committed under the provision of the act on the 1) late filing of tax return 2) late payment of tax 3) Non filing of tax return 4) Failure to maintain books and documents 5) failure to comply with notice 6) withholding agents and 7) concealment.  Section 36(g) of ITAalso States that the offender shall be liable for imprisonment for- making false Statement or deliver false accounts. | There is partial compliance with the mandatory obligations of this paragraph.  ITA does not have specific provisions stating the requirement for the intentional destruction of bookkeeping documents earlier than foreseen by the law. | Lack of effective enforcement | There is need to review the ITA and there is also a need for effective enforcement in laws relating to maintenance of books and records, financial Statements and disclosures.  Through proper training, enhance the keeping of the financial statements and books of account by the business entities. |
|  | 4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct. | There is no corresponding legislative provision. | There is no compliance with the mandatory obligations of this sub-article. | 2 % of business income is exempted from taxation as entertainment expenses. It is generally perceived that huge chunk of this income is spent on questionable purposes. | It is recommended that a legislative provision be introduced to disallow bribes as tax deductible expenses. |
| **Article 13. Participation of society** | 1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:  (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;  (b) Ensuring that the public has effective access to information;  (c)Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula; | Sections 56 and 54(j) of ACA requires ACC to promote the active participation of public and civil societies, NGO and community-based organizations in its works.  CSOA was enacted only in 2007 which permits the formation of CSOs and set the framework and parameters within which they should operate. CSO Authority which registers CSOs was established only in 2009.    NACS envisages forging alliances with CSOs in preventing corruption.  NACS (10.6 – Develop long-term educational strategy in building an awakened citizenry) | There is partial compliance with the mandatory obligations of this article.  There are very few CSOs in Bhutan, and none that deal with corruption issues.  The CSO Act was enacted in 2007 and the CSO Authority was established only in 2009.  As defined in CSOA, CSO mostly includes welfare oriented organizations. | There is no CSO engagement in the prevention of and the fight against corruption.  There is no structured platform for cooperation between the Government and CSOs.  CSOs lack resources to engage in public or civic awareness raising programs.  CSOs also lack awareness on the existence, causes and gravity of and the threat posed by corruption. | It is recommended that the formation of CSOs be encouraged to deal with corruption issues.  There is need to simplify/clarify CSO registration procedures.  Conduct training needs assessments in CSOs to build their capacity in financial management and procurements.  CSOs should be made aware of the existence, causes and gravity of and the threat posed by corruption.  There is need to evaluate the current resources of CSOs to assess their ability to engage and participate in the fight against corruption.  Government should consider funding CSOs to enable them to play a more effective and important role in raising public awareness on the threat posed by corruption.  The community based anti-corruption programs should be intensified. |
|  | (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:  (i) For respect of the rights or reputations of others;  (ii) For the protection of national security or *ordre public* or of public health or morals. | Monthly Meet the Press Program of the Cabinet.  MoIC has developed a Policy Guideline on Information Sharing to promote transparency in agencies’ affairs.  MoIC’s proposal to designate a spokesperson for each public agency.  ACC, in consultation with MoE, has developed and formalized ethical curricula in the Non-formal Education Centers. ACC, in consultation with MoE, RUB and other agencies, is in the process of developing and formalizing ethical curricula in schools, institutions and colleges.  ADR allows the public to have an access to asset declarations upon application to ACC. | There is partial compliance with the mandatory obligations of this subparagraph. | The proposal to appoint a spokesperson was resisted by public agencies. | It is recommended that the public agencies adopt an open door policy and participatory method in their affairs so that the public is informed of decisions affecting them subject to exceptions in the interests of national security or *ordre public* or of public health or morals.  Develop code of conduct for CSOs based on international best practices. |
|  | 2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this convention. | Section 54(d) of ACA empowers ACC to receive and investigate complaints.  Article 9(9) of BC imposes fundamental on every person to act against corruption.  Section 59 of ACA provides for the right to lodge complaints to ACC.  Section 65 of the ACA allows ACC to accept anonymous complaints. | There is partial compliance with the mandatory obligations of this sub-article. ACA does not obligate any person to report incidences of corruption to ACC. However, section 77(1), (2) and (3) of ACAB imposes duty on every person, public servants and persons in position of authority to report to ACC their knowledge of corrupt incidences.  ACC has published and posted on its website “ACC Brochure” and “Basic Information on ACA” (available at <http://www.anti-corruption.org.bt/?q=node/24>)  Complaints to ACC can be lodged by personal delivery, letter, fax, Hot Line and e-mail through its web-based complaint system.  ACC undertakes massive awareness raising programs nationwide to create awareness among the general public. As a result, several cases of corruption have been reported and necessary actions have been taken. | People in remote parts of the country have limited access to ACC as it’s office is in Thimphu only and the web-based information are accessible only to those who have internet facilities.  Similarly, ACC’s web-based complaint system is accessible only to those who have internet facilities. | It is recommended that accessibility to ACC be enhanced through various out-reach programs and the public distribution of information on ACC. |
| **Article 14. Measures to prevent money-laundering** | 1. Each State Party shall:  (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions; | RMA with the assistance of Professor John Broom, University of Wollongong, Australia, is working on, among others, AML reforms.  The Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 provides measures for preventing money laundering by financial institutions. Section 3 of this regulation provides for anti-money laundering and measures to counter financing of terrorism programs.  FIArequires FIs to reveal to RMA any evidence of serious criminal activity, with the use of bank account or its proceeds, investments criminal proceeds either in Bhutan or abroad.  Section 1 of Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 provides regulations for customer identification and ‘KYC’ requirements as effective measures to combat money laundering and the financing of terrorism.  Section 17 of PR issued by RMA provides a basic framework for ‘KYC’ principles and information on cash transactions (above a specified limit required to be reported to RMA).  There is no requirement for reporting of STR in the existing laws, but section 40(1) of FSA requires reporting STR.  Section 2 of Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 provides the obligations of reporting entities to report STR, CTR and physical currency movement to FIUs.  Section 40 (4) of FSA also provides that all FIS and any other person, whether licensed by RMA or not whom it reasonably designates or describes in a regulation as conducting activities subject to use in money-laundering or financing of terrorism, should establish appropriate measures like KYC, unusual or large transactions, reporting STR, develop internal training program for ML & FT, ensure institutions foreign branches, subsidiaries or operations observe appropriate requirements to combat ML & FT.  Section 96 of NDPSSAA criminalizes money laundering.  Section 277 & 278 of PCB criminalizes money laundering.  Section 7 of Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 provides regulation for record keeping requirements. | There is partial compliance with the mandatory obligations of this subparagraph.  The definition of money laundering in Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 covers only the offences in section 277 of PCB and 96 of NDPSSAA 2005.  There is no requirement for reporting entities to maintain necessary records on transactions, implement enhanced customer due diligence for higher risk customer or transactions and avoid or prohibit any dealing with shell banks. Law does not require reporting entities to observe that they should not open any accounts, commence business relations or perform any transactions for customers who fail to meet their customer due diligence requirements.  Bhutanese AML regime covers only the financial sector. | These legal provisions are rarely enforced as both RMA as well as FIs lack necessary capacity to implement them.  There have been no reports of suspicious transactions so far and the threshold of Nu. 0.5 million to Nu. 1 million is too high for STRs. The information is received from FIs relating only to CTR on a quarterly basis. CTRs are never analyzed RMA lacks capacity to do so.  RMA has completed drafting the AML Regulations which also includes other ‘regulated sectors’ such as money lenders, charities etc. | It is recommended that a Statute on Anti-money Laundering be enacted in the long run. As immediate measures, there is need to expedite the adoption of Anti-Money Laundering and Combating the Financing of Terrorism Regulation to effectively prevent money laundering.  Need to redefine money laundering covering the aspects provided by section 70-72 of ACAB in Anti-Money Laundering and Combating the Financing of Terrorism Regulation.  Proposed Anti-Money Laundering and Combating the Financing of Terrorism Regulation should comply with the requirements of this article, including details on customer due diligence (KYC principles) which cover accounts of natural as well as legal persons, identification and verification of beneficial owners, politically exposed persons, non-face-to-face transactions, and monitoring of transactions and risk management.  There is need to introduce a legislative provision requiring all suspicious transactions, including attempted transactions, to be reported regardless of the transactions amount and such reports should be required as and when transactions take place rather than on a quarterly basis.  Reporting entities should be required to maintain all necessary records on transactions for, at least, five years or longer if necessary, implement enhanced customer due diligence for higher risk customer or transactions and avoid or prohibit any dealing with shell banks. They should be required to observe that they should not open any accounts, commence business relations or perform any transactions for customers who fail to meet their customer due diligence requirement.  RMA and reporting entities should be trained to develop their capacity to properly perform their functions in preventing money laundering.  Other designated non-financial businesses and professions such as real estate agents, lawyers, notaries, mobile business, car hiring, etc. should be brought within the ambit of AML law. |
|  | (b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. | There is no corresponding legislative provision.  However, section 40(1) (c) of FSA provides for the creation of FIU.  Section 9 of Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 provides regulations for access to FIU information. | There is compliance with the optional obligations of this subparagraph. | FIU has been established under RMA in 2010 to receive reports of suspicious transactions from FIs and other persons and entities, analyze them and disseminate the resulting intelligence to local law enforcement agencies and foreign FIUs to combat money laundering.  FIU’s coordinating committee and the working/operations committee have formed and trained on AML and financing of terrorism in a two-day workshop in 2010.  Bhutan is not a member of Egmont Group, an international gathering of FIUs. | It is recommended that FIU be provided with the necessary powers, resources, and sufficient operational independence and autonomy to ensure that it is free from undue interference or influence.  Bhutan could consider applying for membership in the Egmont Group and Asia/Pacific Group on Money Laundering.  These recommendations also apply to sub-article of this article. |
|  | 2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments. | RMA Regulation requires FIs to maintain information on cash transactions both in foreign and local currencies. Section 2.8 of Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 provides for reporting the movement of physical currency and negotiable instrument.  FOREX regulation empowers RMA to import and export cash and securities subject to a declaration of value at the customs point of entry into and departure from Bhutan. Foreign currency notes, traveler’s cheques, bank drafts, and cheques purchased from authorized banks, or declared on entry, may be exported freely.  EICR requires persons carrying USD cash in excess of 10,000 or its equivalent to be declared at the custom point of entry into Bhutan. This restriction does not apply to persons who are not residents of Bhutan and they are permitted to take out of Bhutan other foreign currencies bought by them even in excess or equivalent to USD 10,000 subject to declaration in the exit point.  Section II External Payment and Remittances also addresses the issue.  Chapter eleven of NDPSSAA deals with drug related money laundering regulatory measures. | There is adequate compliance with the mandatory obligations of this sub-article. | There is no proper enforcement of FOREX Reg. by DRC and also there is no coordination with other law enforcement agencies in this regard.  There have been no reported cases of drug related money laundering. | It is recommended that the enactment of FSB be expedited which will empower RMA to issue appropriate regulations to prevent the use of Bhutan’s financial system for money laundering or the financing of terrorism.  This recommendation also applies to sub-article 4 of this article. |
|  | 3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:  (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator; | Under section 17 of PR, RMA had issued regulation requiring FIs to maintain information on Cash Transaction both in foreign and local currencies.Sections I and II of FOREX regulation also deal with this issue. Section 5 of Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010 provides regulations for remittance services. | There is partial compliance with the mandatory obligations of this sub-article. RMA licensed only commercial banks which transfer money and the other organizations or individual who transfer money are outside RMA’s purview.  However, RMA’s Payment and Settlement Department is in the process of drafting appropriate regulations on electronic money transfer and national payment and settlement system. | There is lack of supervision and regulation by RMA, of money transfer institutions except commercial banks.  RMA also lacks technological facilities for monitoring and collecting information on electronic fund transfer. | There is need to regulate electronic money transfer by appropriate means and expedite the proposed national payment and settlement system which should be in compliance with the requirements of this sub-article. Such proposal should also cover money transfer institutions other than commercial banks.  RMA should be given more resources to harness technological facilities for monitoring and collecting information on electronic fund transfer.  These recommendations apply to subparagraphs (a) and (b) of this sub-article as well. |
|  | (b)To maintain such information throughout the payment chain; and |  |  |  |  |
|  | (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator. |  |  |  |  |
|  | 4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. | FSA is patterned after international best practices.  PR is also modeled on the principles of the Basel Accord for banking supervision and on FATF to certain extent. | There is partial compliance with the optional obligations of sub-article. There is no comprehensive AML law and RMA’s PR is insufficient to address all aspects of money laundering. |  |  |
|  | 5. States Parties shall endeavor to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering. | Bhutan is not a member of any group on combating money laundering. | There is no compliance with the mandatory obligations of this sub-article. | Officials of RMA, including those of other relevant agencies attended the Asia-Pacific Money Laundering Group as the observer in October 2010. | Bhutan should participate in various international and regional fora on money laundering and bilaterally cooperate among judicial, law enforcement and financial regulatory authorities. |

**UNCAC CHAPTER 3: CRIMINALISATION AND LAW ENFORCEMENT**

Article 15: Bribery of national public officials

Article 16: Bribery of foreign public officials and officials of public international organizations

Article 17: Embezzlement, misappropriation or other diversion of property by a public official

Article 18: Trading in influence

Article 19: Abuse of functions

Article 20: Illicit enrichment

Article 21: Bribery in the private sector

Article 22: Embezzlement of property in the private sector

Article 23: Laundering of proceeds of crime

Article 24: Concealment

Article 25: Obstruction of justice

Article 26: Liability of legal persons

Article 27: Participation and attempt

Article 28: Knowledge, intent and purpose as elements of an offence

Article 29: Statute of limitations

Article 30: Prosecution, adjudication and sanction

Article 31: Freezing, seizure and confiscation

Article 32: Protection of witnesses, experts and victims

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Article 34: Consequences of acts of corruption

Article 35: Compensation for damage

Article 36: Specialized authorities

Article 37: Cooperation with law enforcement authorities

Article 38: Cooperation between national authorities

Article 39: Cooperation between national authorities and the private sector

Article 40: Bank secrecy

Article 41: Criminal record

Article 42: Jurisdiction

# UNCAC CHAPTER 3: CRIMINALIZATION AND LAW ENFORCEMENT

# SUMMARY

One of the basic objectives of UNCAC is the criminalization of corrupt practices. UNCAC requires States Parties to take a wide range of measures to promote and strengthen the fight against corruption. It requires States Parties to criminalize various forms of bribery both in the public and private sectors.

**Bribery both in the public and private sectors**

UNCAC article 15, 16 & 21 requires State Parties to criminalize both active and passive bribery of national public officials, foreign public officials and officials of public international organizations, and persons in the private sector.

In Bhutan, legislative provisions that criminalizes giving or offering, soliciting or accepting of bribe by national public officials and persons in the private sector are; section 138(h) (i) and 109(a) & (b) of ACA, section 289, 290 & 192 of PCB, section 264(i) of NAA, section 279(e) of NCA and section 71 of the RSTAA. Section 2.12 of chapter 3 read with chapter 19 of BCSR and section 117 of JSA provides a disciplinary framework for dealing with a civil servant or judge accepting a benefit, donation, favour, gift or presents. Section 138(h) (ii) of ACA criminalizes election fraud. Sector 438(a) and (b) of PCB and section 518(a) of Election Act 2008 prohibits offering, giving or promising a bribe in connection with elections.

However, the penal provisions mentioned above, do not cover promise and solicitation of bribe regarding active and passive bribery in the public and private sectors as required by UNCAC. Moreover, Bhutanese law does not categorically criminalize active bribery of foreign public officials and officials of public international organizations. However, the ACAB categorically criminalizes active and passive bribery of foreign public officials and officials of public international organization.

**Embezzlement of property both in the public and private sectors**

UNCAC article 17 & 22 requires States Parties to mandatorily criminalize embezzlement, misappropriation or other diversion of property by a public official and person in the private sector. Bhutan is in full compliance with UNCAC as section PCB and ACA criminalize embezzlement by public officials while section 182 of the Public Finance Act 2007, section 99(6) of the Bhutan Postal Corporation Act 1999, sections 119 and 120 of CSOA, and sections 532, 528 and 529 of the Election Act 2009 criminalize embezzlement in private sector.

These provisions are resorted to by the prosecuting agencies with remarkable success. Since these legislative provisions are scattered in different laws, harmonization and consolidation of these provisions are recommended.

**Trading in influence**

UNCAC article 18 obligates States Parties to criminalize active and passive trading in influence. However, ACAB explicitly criminalizes active and passive trading in influence in the public sector.

**Abuse of functions**

UNCAC article 19 requires States Parties to criminalize public officials who intentionally abuse their functions or positions by acting or failing to act in violation of laws in the discharge of their functions to obtain an undue advantage for any person or entity.

Section 138(a) & (h)(ii) of ACA, 294 of PCB, 113 of JSA, 29(b) of AA, 45(e) of OAGA, 184 of PFA and section 2.6 of chapter 3 of BCSR adequately comply with UNCAC obligations. Many corrupt public officials have been successfully prosecuted and punished under section 294 of PCB. However, section 138(h) of ACA has never been used as there is no charging section. As legal provisions relating to abuse of functions is littered in many laws, harmonization and consolidation of these provisions in a single Criminal Act is recommended.

**Illicit enrichment**

UNCAC article 20 obligates States Parties to criminalize illicit enrichment, which is a significant increase in the assets of public officials that they cannot reasonably explain in relation to their lawful income. The establishment of illicit enrichment as an offence has been found helpful in a number of jurisdictions. It is very difficult to prove the actual transaction of corruption. However, a significant increase in the assets of public officials, if disproportionate to their lawful income, always conveys a *prima facie* (on the face of it) presumption that the public officials concerned benefited from their illicit conduct. The creation of the offence of illicit enrichment has also been found useful as a deterrent to corruption among public officials.

Bhutanese laws sufficiently address illicit enrichment. Section 107 of ACA criminalizes possession of pecuniary resources or of property disproportionate to known sources of income by Public Servant or any of their close relatives, for which no explanation is furnished. Apart from section 107 of ACA, ADR provides disciplinary framework for dealing with the cases of illicit enrichment by public servants. Section 6 of ADR requires all public servants to declare and file their assets and liabilities within three months of joining the service, annually thereafter and three months before leaving the service. Failing this, public servants are liable for disciplinary action and sections 16-18 of ADR provide that illegal acquisitions of income or asset by a person shall be a State property.

In practice, however, these penal and disciplinary provisions are rarely been used in combating corruption except in respect of a person under investigation due to lack of adequate staff with necessary skills and limited cooperation among law enforcement agencies and other Government agencies. Therefore, investigators need to be trained in asset tracing to effectively and efficiently deal with illicit enrichment.

**Laundering of proceeds of crime**

UNCAC article 23 obligates State Parties to criminalize: Conversion or transfer of criminal proceeds; Concealment or disguise of the nature, source, location, disposition, movement or ownership of criminal proceeds; Acquisition, possession or use of criminal proceeds; and Participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counseling the commission of any of the offences.

Section 64, 65, 120-124, 125, 126, 127-133 and 277 of PCB partially covers the UNCAC as stated in this article. However, it fails to address conversion, concealment or disguise of the true nature, source, location, disposition, movement or ownership of criminal proceeds explicitly. There is ambiguity in section 277 as it does not state or make any distinctions about the purposes of conversion, transfer, concealment or disguise of criminal proceeds. It also does not cover the use of property constituting criminal proceeds. However, the ACAB criminalizes conversion, use or disguise of criminal proceeds including the instrumentalities of crime and intermingled assets.

**Concealment of Criminal Proceeds**

UNCAC article 24 requires States Parties to criminalize intentional concealment or continued retention of criminal proceeds. Sections 277(c) and 255 of PCB criminalize the concealment of criminal proceeds and the receipt, retention, or disposal of stolen property for, direct or indirect, benefit or to impede the recovery of such property by an owner. However, in Bhutanese law the property that constitutes criminal proceeds is the result of stealing rather than the result of any corruption offence. Therefore, legislative provisions to criminalize the concealment or continued retention of criminal proceedsis recommended.

**Obstruction of Justice**

UNCAC article 25 requires States Parties to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage either to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to offences covered by the Convention. It also requires States Parties to criminalize the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to UNCAC offences.

In Bhutan, section 118 of ACA penalizes failure to comply with lawful demand of ACC and Section 418 of PCB criminalizes various acts such as harboring, concealing or aiding suspects, including threat or intimidation to witness, or concealment or destruction of evidence. Chapter 16 of CCPC provides for both civil and criminal liabilities for contempt of courts and associated offences. Section 422 and 428 of PCB criminalizes obstruction of lawful authority in the execution of lawful duty and failure to assist lawful authority.

However, these provisions do not expressly cover the use of physical force against witness and others nor is the promise; offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence is not an offence. Accordingly, it is recommended that legislative provisions be introduced to address all aspects of obstruction of justice, including coverage of reporting persons, victims and other Government collaborators.

**Liability of legal persons**

UNCAC article 26 requires States Parties to take the necessary steps to provide for criminal, civil or administrative liability of legal persons without prejudice to the criminal liability of the natural persons who have committed the offence.

Bhutanese laws partially comply with these requirements as the aspect of liability of legal person is covered in sections 138(p) of ACA, 509, 511& 512 of PCB and 108.1 of CCPC. However, a legal person that does not use public resources are outside the ambit of section 2 and subsections (g), (p), (r) and (t) (ii) of section138 of ACA as they only refer to the Government corporations or entities using public resources. Moreover, corporate criminal liabilities are confined to acts of its board of director or a high managerial agent and those acts must be committed in the course of their employment. Therefore, it is recommended that Bhutanese laws impute corporate criminal liabilities beyond the acts of board of director or a high managerial agent if those acts are committed in the course of their employment. It is also recommended that ACC should expedite the adoption of the Debarment Rules in consultation with stakeholders.

**Participation and attempt**

UNCAC article 27 obligates States Parties to criminalize an accomplice, assistant or instigator, attempts or the preparation to commit offences. Bhutanese laws substantially comply with these requirements as sections 120-124, 125, 126, and 127-133 of PCB, cover criminal attempt, aiding and abetting, solicitation and criminal conspiracy. Sections 64 and 65 of PCB provides for the criminal liability of an accomplice. Section 138(h) (i) and (ii) of ACA, among others, criminalizes an attempt to obtain a bribe, attempt to commit, conniving in or acquiescing to commit, aiding or abetting commission of any act in the schedule.

There is no specific provision in either the PCB or ACA which criminalizes the preparation of corruption offences. It is, therefore, recommended that legislative provisions be considered to criminalize the preparation of corruption offences.

**Knowledge, intent and purpose as elements of an offence**

UNCAC article 28 provides that knowledge, intent or purpose required for the commission of an offence be inferred from objective factual circumstances. However, In Bhutan, PCB requires purpose, knowledge, reckless, or negligent as ingredients of offence which are to be inferred by the courts’ objective judgment based on factual circumstances. Under section 138(h)(i) of ACA ‘corrupt intention’ is established by any action motivated by or resulting in unethical and dishonest act, abuse of authority, use of position of trust for dishonest gain, preferential treatment, or abuse and misuse of public resources. Therefore, it is recommended that the ACA’s definition of “corrupt intention” be revised in compliance with generally accepted international standards.

**Statute of limitations**

In recognition of the inherent difficulties associated with investigating corruption, UNCAC article 29 requires States Parties to establish a longer period of limitations in which to commence criminal proceedings or to provide for the suspension of the statute of limitations where the alleged offenders have evaded the administration of justice.

In Bhutan, there is no statute of limitations in which to commence criminal proceedings other than section 68 of ACA which proscribes investigations of offences by ACC falling below petty misdemeanor in respect of persons who had vacated their office more than five years ago. However, OAG is currently drafting a statute of limitation inclusive of criminal aspect of corruption and civil and administrative liabilities. Therefore, statute of limitation is recommended to be drafted in compliance with of UNCAC.

**Prosecution, adjudication and sanctions**

UNCAC article 30 requires States Parties take into account the gravity of the offence while prescribing punitive measures without prejudice to any disciplinary action that competent authorities may take against civil servants. They are also required to establish or maintain an appropriate balance between any immunities or privileges accorded to their public officials and the possibility of effectively investigating, prosecuting and adjudicating offences. States Parties must take appropriate measures to ensure the presence of any defendant released during trial at subsequent criminal proceedings and to take into account the gravity of the offences concerned when considering early release or parole of persons convicted of an offence under the Convention. They should also endeavor to ensure that discretionary powers relating to prosecution are exercised to maximize the effectiveness of law enforcement measures and to consider establishing mechanisms through which a public official accused of an offence may be removed, suspended or reassigned. States Parties should also consider establishing procedures for the disqualification from public office of persons convicted of an UNCAC offence.

In Bhutan, the punishments prescribed for corruption related offences are proportionate to the gravity of those offences. Most of the offences relating to corruption are value-based which would mean that the penalty imposed would vary depending on the value or the amount involved in the crime i.e. higher the amount involved, more severe would be the corresponding penalty. Such punishments do not preclude any disciplinary action taken by competent authorities against civil servants.

ACA provides for the suspension of public servants until the period of detention and until the proceeding of the case is over the alleged involvement in any offences. Moreover, according to BCSR, a civil servant shall be terminated from service if convicted by a court for an offence of misdemeanour relating to his power and function or corruption. The Constitution disqualifies a person convicted for any criminal offence and sentenced to imprisonment from participating as a candidate or a member holding an elective office (Article 23). The *Election Act 2008* also provides for disqualification of a candidate or a member holding an elective office under the Constitution, if he/she has been found guilty of corrupt practice at an election or has been convicted for any criminal offence and sentenced to imprisonment. Similar provisions dealing with such disqualifications are contained in various other acts such as AA, CA, NAA and NCA. The requirements of this article are adequately addressed in the domestic laws. However, drafting of sentencing guidelines, guidelines for suspension of those who have been arrested under suspicion of serious corruption offences and guidelines on disqualification should be considered.

**Freezing, seizure and confiscation**

The most successful ways to prevent benefiting from the acts of corruption is have strong legislative provisions that provide for the identification, freezing, seizure and confiscation of illicitly acquired properties. UNCAC article 31 obligates State party to measures for confiscation of property into which proceeds of crime are intermingled by way of transformation or conversion, and income or other benefits derived from proceeds of crime. It also obligates to take necessary measures to enable the identification, tracing, freezing or seizure of such property and to regulate the administration of frozen, seized or confiscated property.

Section 46 of ACA provides the power of ACC to conduct search and seizure for law enforcement. Sections 123 and 21 of ACA and PCB provide for the confiscation of any property constituting criminal proceeds, articles used or any benefit derived through corruption. However, it does not cover the confiscation of instrumentalities of the crime, transformed and intermingled assets. Further, the ACC can search and seize or attach property of an alleged person in accordance with section 181, chapter 32 of CCPC. On the whole, it appears that domestic standards are compatible with the UNCAC. However, the provisions dealing with search, seizure and confiscation are not provided for specifically in the ACA and instead it cross references to the CCPC. However, provisions for search and seizure, freezing and confiscation is incorporated in ACA since having such provision on freezing, seizure and confiscation will render the crime of corruption less attractive and thus play an important deterrence in the fight against corruption.

**Protection of witnesses, experts, victims and informer**

UNCAC article 32 calls for protection of witnesses, experts, and victims, including taking appropriate measures against potential retaliation or intimidation and strengthen these protective measures by providing procedural and evidentiary rules. Similar protective measures should be extended to reporting persons under article 33.

In Bhutan, protection of witnesses, experts, victims and informer are governed by ACA (sections, 65, 66, 89-103), AA (sections 87-91, 101, 112, and 198), EA (sections 33, 53 and 113-114), CCPC (sections 4 and 199.2), and RBPA (section 101, 112, 198), CSA (section 54). There is neither specific Witness Protection Law nor specific implementing agency in Bhutan. Moreover, ACA provides that the protection of informants is unavailable if the information provided is false irrespective of whether or not such information was reported in good faith. Therefore, Bhutan should consider enacting a Witness Protection Law that will apply to all State witnesses which should also identify its implementing agency. Such proposed law should also amend section 103 of ACA to ensure compliance with UNCAC articles 32 and 33.

**Consequences of acts of corruption**

The UNCAC article 34 requires State party to adopt measures with due regard to the rights of third parties acquired in good faith to address consequences of corruption. For this purpose UNCAC suggest that States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

Bhutanese laws adequately comply with obligations of this article. Section 45 of ACA provides for cancelation or revocation of right or document of title; blacklisting or debarment of corrupt firms from government tender; and revocation of work order, license, lease and contract on the grounds of corrupt acts. Section 20 of PCB and section 209 of CCPC also provides that Courts may order forfeiture of property, suspend or cancel a license or a transaction, impound the documents, or remove a person from an official position, judicial sale of property, financial penalty or impose any other appropriate penalty. However, the protection of third party who had acquired in good faith is unclear. Therefore, ACC should expedite the adoption of the Debarment Rules and such Rules should also protect the rights of third parties acquired in good faith.

**Compensation for Damage**

The UNCAC article 35 obligates State party to take appropriate measures to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

There is no specific provision in Bhutanese laws. However, CCPC (sections 198 and 208) and PCB (sections 21, 36-42) empower Courts to award damages or compensatory damages to the victim. Section 212 of CCPC permits civil suit to be filed by victims upon completion of a criminal trial. Relaying on the principles of criminal jurisprudence, while few courts have been unwilling to admit cases, others have acquitted offenders on the ground that there is no damage as a result of an act of corruption. Therefore, Bhutan should consider introducing specific legislative provision conferring the rights to victims to initiate legal proceedings against those responsible for damage in order to obtain compensation. The need to draft Judicial Sentencing Guideline covering the compensation for damage is highly recommended.

**Special Authorities**

The UNCAC article 36 requires State party to ensure the existence of a body or bodies or persons specialized in combating corruption which must be granted the necessary independence, training and resources to carry out their functions effectively and without any undue influence.

Bhutanese legal regime is in compliance with this obligation, however ACC need have specialized personnel for financial investigation, auditing and for requesting mutual legal assistance.

**Cooperation with Law Enforcement Authorities**

The UNCAC article 37(1) call on State party to take appropriate measures must be taken to encourage persons involved in corrupt offences to supply information to competent authorities for investigative and evidentiary purposes and to provide factual and specific help that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. Article 37(2) and (3) requires State party to consider for the possibility of providing mitigating punishment and immunity from prosecution of an accused person who provides substantial cooperation in the investigation or prosecution of an offence and article 37(5) requires State party to cooperate each other in this regard.

In Bhutan, section 179 and subsections 179.1 to 179.3 of CCPC make provisions for plea bargaining and sections 17, 23, 66, and 67 of PCB provides for the mitigating and aggravating circumstances and approver or accomplice evidence. These are, however, general provisions which do not specifically address the issues of corruption. Under section 48 of ACA, ACC could, on a reasoned decision, permit controlled delivery enjoying the immunity from prosecution provided in section 112 of ACA. Section 111 of ACA provides immunity from prosecution to a person who reports the receipt of a bribe to ACC within 24 hours in connection bid rigging. However, substantial cooperation in investigation and prosecution of corruption offences is not considered as mitigating factor nor granted immunity. Therefore, Bhutan should provide legislative provision considering substantial cooperation as mitigating factor and provide for immunity from prosecution and investigation.

**Cooperation between National Authorities**

The UNCAC article 38 requires State party to take measures to encourage cooperation between their public authorities and law enforcement such as informing law enforcement authorities when there are reasonable grounds to believe that UNCAC articles 15, 21 and 23 offences have been committed or providing such authorities all necessary information, upon request.

In Bhutan, sections 54(k), 56, 94 and 96 of ACA provides for cooperation with public entities. Sections 70 and 75 of ACA requires a person to attend before or produce books or documents to ACC to assist in its investigations and the law enforcement agencies to provide assistance for the purposes of investigation, seizure, search and arrest. Section 24(f) of ACAB provides for exchange of information with law enforcement agencies.

While sections (9) and (10) of article 8 of BC imposes a fundamental duty on every person to uphold justice, to act against corruption and to act in the aid of the law, section 59 of ACA confers on a person the right to provide information on the commission of corruption offences. Section 48(b) of AA imposes on the Auditor-General the duty report to ACC corruption offences. Under section 161.1 of CCPC, a person may make a complaint to the police or other appropriate public authorities and section 426 of PCB criminalizes a failure to report a crime. Section 12(d) of OAGA provides for cooperation and assistance of any Government officers or employees.

In practice, however, there is only a limited cooperation between Bhutanese authorities and there are no clear mechanisms on how ACC is to secure cooperation from other agencies. Section 206 of PA may impede cooperation between law enforcement agencies because Court Order is required for seeking RBP assistance. Therefore, Bhutan should consider signing of MOUs and drafting of guidelines on inter-agency cooperation to facilitate more information sharing among stakeholders, joint programmes and creation of synergies between them. Additionally, a standard procedure for obtaining such assistance may be helpful.

**Cooperation between National Authorities and the Private Sectors**

The UNCAC article 39 requires States Parties to take measures to encourage cooperation between law enforcement authorities and its private sector entities, particularly FIs, relating to matters involving the commission of UNCAC offences and consider encouraging its national and habitual residents to report the commission of such offences to its law enforcement authorities.

Bhutanese laws partially comply with obligations of this article. Sections 56 and 95 of ACA provides for cooperation or coordination with private entities or persons in performing its duties. Similarly, section 100 of PA provides that RBP may obtain the assistance of any person in criminal investigations. Article 59 of FIA requires notification by FIs to RMA of evidence of serious criminal activity in Bhutan or abroad which it suspects is associated with the use of bank accounts or its proceeds.

In practice, there is limited cooperation between the law enforcement agencies on the one hand, and between these law enforcement agencies and the private sector on the other. Though the law enforcement agencies are receiving cooperation whenever they seek it and specific penal provisions are ensuring such cooperation and BC makes it a fundamental duty of every person to act against corruption, persons are not very forthcoming due to fear of potential retaliation or intimidation and also because there is limited accessibility to anti-corruption bodies by the public at grass roots level. Even FIA is silent on cooperation between the law enforcement agencies and the private sector entities, in particular with financial institutions.

Therefore, Bhutan should consider legislative amendments or regulations to provide for clear rules of engagement between law enforcement and prosecuting agencies and private sector entities. There is also a need to expand the campaigns and programmes to all parts of the country and make accessible to anti-corruption bodies by the public at grass roots level.

**Bank Secrecy**

The bank secrecy law may impede the investigation and prosecution of serious crimes with financial aspects. Therefore, the UNCAC article 40 requires State party to ensure that, in case of domestic criminal investigation of UNCAC offences, their legal system has appropriate mechanism to overcome obstacles arising out of bank secrecy laws.

In Bhutan, under sections 70(b) of ACA and 50 of AA, ACC or RAA could have access to bank records and Statements for the purposes of corruption investigations or audits. Additionally, under sections 2 of STCEA and 26 of ITA, DRC could order FIs, to furnish information relating to taxable entities. However, Article 23 of FIA prohibits the disclosure of financial information of bank customers without their consent though the same article of FIA and section 18(1) of RMAA permits the disclosure of information obtained by the employees in the course of their employment to administrative or judicial authorities under procedures provided by law. Section 56 of CCPC States that a person’s financial information may not be subject to discovery except when punitive damages are sought.

There is adequate compliance with mandatory obligations of this article. Nevertheless, access to the financial information requires prior judicial authorization which sometimes renders investigation fruitless when there is an imminent danger of destruction or removal of required information. Therefore, Bhutan should remove article 23 of FIA and consider legislative provisions in ACA to permits ACC access to bank records and Statements without customer consent and prior judicial authorization in situations where there is an imminent danger of destruction or removal of required information to facilitate effective investigation, subject to due process of law.

**Criminal Records**

The UNCAC article 41 requires State party to consider using foreign criminal records of an alleged offender in their own criminal proceedings against that offender.

Bhutanese legal regime complies with optional obligations of this article because section 103(h) of EA provides for the presumption of authenticity of certified copy of any judicial record of any country. However, it may be clarified that criminal records refer to final judgment to minimize doubt.

**Jurisdiction**

The UNCAC article 42 requires States Parties to establish territorial and flag jurisdictions with respect to the UNCAC offences committed in their territory or on board aircraft and vessels registered under their laws. It also requires State Party to consider establishing jurisdictions in cases where their nationals are victimized, the offence is committed by a national or Stateless person residing in their territory, where the offence is linked to money laundering planned to be committed in their territory, or the offence is committed against the State. In addition, States Parties require establishing jurisdictions in cases where they cannot extradite a person on the grounds of nationality or for any other reasons.

Bhutan comply with obligation expressed by UNCAC article 42 as section 20 of CCPC vests extraterritorial jurisdiction with the Bhutanese Supreme/High Court in terms of territoriality, nationality, passive personality, protective, universality, flag jurisdiction, and airspace.

**Criminalization and Law Enforcement**

**UNCAC Articles 15-42**

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| **Article 15 Bribery of national public officials** | Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; | Section 138(h) (i) of ACA criminalizes corruptly giving or agreeing to give or offering an undue gratification to national public officials.  The other laws that criminalize active bribery of a national public official are section 290 of PCB, section 264(i) of NAA, section 279(e) of NCA and section 71 of the RSTAA. | There is partial compliance with mandatory obligation of this subparagraph.  ACA does not criminalize promise of an undue gratification.  There is no clarity as to coverage of an act or omission outside a public official’s assigned functions.  There is also no clarity whether or not offering or giving of an undue gratification should actually influence the public official’s act or omission.  None of these laws, however, criminalize promise of a bribe, define what gratification is and cover a bribery offered or given for the benefit of another person or entity.  They also do not address offering or giving a bribe through an intermediary and are unclear whether offering a bribe should actually influence the public official’s acts or omissions.  While the PCB, the NCA and RSTAA do not criminalize giving a bribe; NAA do not cover offering a bribe.  While the PCB does not define a public official and cover an act or omission outside public official’s assigned functions, others are unclear as to coverage of an act or omission outside public official’s assigned functions.  While RSTAA and NCA do not explicitly require corrupt intention, NAA do not explicitly require corrupt intention as well as quid pro quo relationship.  However, amended ACA is in compliance with this subparagraph. Section 42 of ACAB specifically criminalizes promise, offering or giving of a bribe to a public official, directly or indirectly.  Sections 46, 48 and 50 of amended criminalize, directly or indirectly, promise, offering or giving of a bribe in the contexts of auctions, bids and contract. | This provision has never been used in prosecuting and punishing corrupt individuals as there have been no bribery investigations. Presently, a few corrupt individuals are being charged and prosecuted. | It is recommended that all active bribery provisions should be consolidated in a single anti-corruption Statute.  It is recommended to clarify that acts or omissions need not fall within assigned functions and that they need not actually be influenced by offering or giving of a bribe. |
|  | (b)The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. | Section 138(h)(i) of ACA criminalizes accepting or obtaining or agreeing to accept or attempting to obtain an undue gratification by a national public official.  Section 289 of PCB criminalizes passive bribery of national public officials, and section 2.12 of chapter 3 read with chapter 19 of BCSR and section 117 of JSA provides a disciplinary framework for dealing with a civil servant or judge accepting a benefit, donation, favour, gift or presents. | There is partial compliance with mandatory obligation of this paragraph.  Soliciting a bribe is not explicitly criminalized though section 138(h)(ii) which criminalizes ‘coercing a person to commit an offence of corruption’ may imply.  There is no clarity as to coverage of an act or omission outside a public official’s assigned functions.  There is also no clarity whether or not offering or giving of a bribe should actually influence the public official’s act or omission.  None of these laws or regulation addresses solicitation of a bribe, definition of gratification, acceptance of a bribe for another person or entity’s benefits and acceptance of a bribe through intermediaries.  While both PCB and BCSR are unclear as to whether or not an act or omission is required to be within or outside a public official’s assigned functions, both BSCR and PCB do not cover an omission.  However, ACAB is in compliance with this subparagraph. Section 43 of ACAB criminalizes the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage.  Sections 47, 49 and 51 of ACAB criminalize, directly or indirectly, soliciting or accepting a bribe in relation to auctions, bids, and contract. | This provision has never been used in prosecuting and punishing corrupt individuals as there have been no bribery investigations. Presently, a few corrupt individuals are being charged and prosecuted. | It is recommended that all passive bribery provisions should be consolidated in a single anti-corruption Statute.  It is recommended to clarify that acts or omissions need not fall within a public official’s assigned functions and that they need not actually be influenced by offering or giving of a bribe. |
| **Article 16 Bribery of foreign public officials and officials of public international organizations** | 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. | There is no corresponding legislative provision. | There is no compliance with this mandatory obligation of this sub-article.  However, ACAB is in compliance with this sub-article. Section 44 of ACAB criminalizes the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage. |  | It is recommended Bhutanese legislation must comply with this article. |
|  | 2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. | There is no corresponding legislative provision. | There is no compliance with the optional obligation of this sub-article.  However, amended is in compliance with this sub-article. Section 45 of ACAB criminalizes the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage. |  | It is recommended that Bhutanese legislation must comply with this article. |
| **Article 17 Embezzlement, misappropriation or other diversion  of property by a public official** | Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. | Section287 (a) and (c)-(d) of PCB criminalize embezzlement in the public sector.  Section 138(h) (ii) of ACA criminalizes, amongst others, acquisition of property wrongfully, leaking revenue and abuse or misuse of public resources.  Section 240 of PCB criminalizes larceny generally.  Section 241 of PCB criminalizes larceny by deception.  Section 251 of PCB criminalizes illegal transfer of immoveable property.  Section 262 of PCB criminalizes unauthorized use or operation of property.  Section 265 of PCB criminalizes an act contrary to terms of trust and dishonest misappropriation or conversion of property to one’s own use (breach of trust)  Section 267 of PCB criminalizes dishonest misappropriation or conversion of property to one’s own use (criminal misappropriation)  Section 182 of the Public Finance Act 2007 criminalizes loss occasioned as a result of acts of fraud or negligence by a person using public resources. | There is compliance with mandatory obligations of this article.  ACA, however, fall far short in complying with obligations of this article and has many ambiguities, such as coverage of benefits for another person or entity.  Section 52 & 53 of ACAB addresses these gaps. | These provisions have been successfully used in prosecuting and punishing an offence of embezzlement, misappropriation or other diversion of property. As of September 2009, of the 50 odd cases investigated by ACC, 19 pertained to embezzlement or criminal misappropriation. Of the 19, three cases of embezzlement were committed in the private and/or corporate sector. | It is recommended that all embezzlement provisions be consolidated in a single anti-corruption Statute. Such law must cover embezzlement committed for the benefits of another person or entity. |
| **Article 18 Trading in influence** | Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; | There is no corresponding legislative provision.  . | There is no compliance with optional obligations of this subparagraph.  However, ACAB is in compliance with this subparagraph. Sections 54 and 55 of ACAB criminalizes the promise, offering or giving of an undue advantage to public officials in return for using their influence. |  | It is recommended that Bhutanese legislation should comply with this paragraph. |
|  | (b)The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage. | There is no corresponding legislative provision. | There is no compliance with optional obligations of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Sections 56 and 57 of ACAB criminalizes the solicitation or acceptance, of an undue advantage by public officials in return for using their influence. |  | It is recommended that Bhutanese legislation should comply with this paragraph. |
| **Article 19. Abuse of functions** | Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity. | Schedule to subsection (h)(ii) read with subsection (a) of section 138 of ACA specifically criminalizes abuse of authority.  Section 138(h)(a) of ACA criminalizes, amongst others, abuse of authority, abuse of privileged information, use of position of trust for dishonest gain, acting with malafide intention to derive wrongful gain, delaying decisions and actions deliberately for wrong motives or giving or enabling a person to receive preferential treatment.  Section 294 of PCB criminalizes official misconduct, that is, an act relating to the office constituting an unauthorized exercise of the official functions or unauthorized divulging of restricted official information or secrecy, or refraining from performing a duty, which is imposed upon a person by law.  The other laws prohibiting abuse of functions or authority are section 2.6 of chapter 3 of BCSR, section 113 of JSA, section 29(b) of AA, section 45(e) of OAGA and section 184 of the PFA criminalizes abuse of powers by a person using public resources. | There is compliance with optional obligation of this article. It is, however, unclear about the coverage of indirect undue advantage.  Ambiguities exist in ACA as section does not address all aspects of offences, e.g. corrupt intention, omission, advantage and whether or not abuse is required to be committed in the discharge of functions.  There is no clarity as to coverage of both acts and omissions and coverage of indirect advantage for another person or entity. | Section 138(h) of ACA has never been used in prosecuting and punishing corrupt public officials as there is no charging section (sentence). ACC has so far used only section 294 of PCB and many corrupt public officials have been successfully prosecuted and punished.  Though section 294 of PCB defines an offence of ‘official misconduct’, it has been used to charge individuals for abuse of functions as the abuse of function is not criminalized by PCB. | It is recommended that all provisions on abuse of functions must be consolidated in a single anti-corruption Statute.  It is recommended Bhutanese legislation must comply with this article and address the issues of corrupt intention, omission, advantage and whether or not abuse is required to be committed in the discharge of functions. |
| **Article 20. Illicit enrichment** | Subject to its constitution and the fundamental principles of its legal system, Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income. | Section 107 of ACA criminalizes possession of pecuniary resources or of property disproportionate to known sources of income by a person using public resources or any of their close relatives, for which no explanation is furnished.  Section 54(e) of ACA empowers ACC to inspect any disproportionate changes in income, assets and liability of the person.  Sections 16-18 of the ADR provide that illegal acquisitions of income or asset by a person using public resources shall be a State property. | There is compliance with the optional obligations of this article. Legislative provisions are broader in scope as they cover not only public officials but also any person using public resources. | This provision has rarely been used as tools to fight against corruption except in respect of a person under investigation.  ACC has completed drafting the Asset Verification Protocol to enable agencies to verify the accuracy of declarations.  ACC’s staff and Asset Administrators in various agencies do not have skills or capacity to verifying the declarations.  Limited cooperation and collaboration in exchange of information between ACC and other agencies such as the RCSC, DRC, FIs, and other Government agencies have hampered effective enforcement and implementation.  Sections 60 and 61 of ACAB addresses these gaps. | It is recommended that incremental approach should be taken, initially focusing on those public officials in vulnerable positions until appropriate assets verification skills are developed and then gradually in other positions.  It is recommended to do a “proactive’ verification of asset declarations rather than taking up as part of investigations process.  Information sharing and cooperation between the relevant Government agencies and FIs should be enhanced to facilitate investigations of illicit enrichment cases.  Law enforcement agencies must cooperate and collaborate in sharing information, for example, tax records by DRC to prove the possession of disproportionate assets.  It is recommended that training be given to asset administrators and law enforcement agencies to see what other jurisdictions have done with their systems and how are such mechanisms used in the fight against the corruption. |
| **Article 21 Bribery in the private sector** | Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:  (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; | There is no corresponding legislative provision. | There is no compliance with the optional obligation of this paragraph.  However, ACAB is in compliance with this subparagraph. Sections 66 of ACAB criminalizes active bribery in the private sector. |  | It is recommended that Bhutanese legislation must comply with this paragraph. |
|  | (b)The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting. | Section 292 of PCB criminalizes soliciting, accepting or agreeing to accept a bribe by a person. | There is partial compliance with the optional obligation of this sub-article. Section 292 of PCB has limited application because it applies only in five fiduciary relationship situations. It is also unclear as to the coverage of soliciting or accepting a bribe through intermediaries.  However, ACAB is in compliance with this subparagraph. Sections 67 of ACAB criminalizes active bribery in the private sector. | This provision is yet to be tested. | It is recommended that Bhutanese legislation must comply with this paragraph and also criminalize soliciting or accepting a bribe through intermediaries. |
| **Article 22. Embezzlement of property in the private sector** | Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position. | Section287 (b) and (c)-(d) of PCB criminalizes embezzlement in the private sector. | There is compliance with the optional obligations of this article. It, however, lacks clarity as to coverage of benefits for another person or entity and also coverage of *de minimis* offences.  However, amended ACA provides more clarity. Sections 68 & 69 of ACAB criminalizes active bribery in the private sector. | A few private individuals have been successfully prosecuted and punished for embezzlement. | It is recommended that Bhutanese legislation must comply with this article and also criminalize embezzlement committed for the benefits of another person or entity, excluding the *de minimis* offences. |
| **Article 23.  Laundering of proceeds of crime** | 1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a)(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; | Section 277(a) of PCB criminalizes transfer of criminal proceeds. | There is partial compliance with mandatory obligations of this subparagraph.  Conversion of property constituting criminal proceeds is not explicitly covered though section 277(b) prohibits financial transactions related to the proceeds of crime, directly or indirectly.  PCB is unclear about the purposes of conversion of criminal proceeds.  However, amended ACA is in compliance with this subparagraph. Section 70 of ACAB criminalizes money laundering by converting or transferring corruption proceeds. | Section 277(a) of PCB is yet to be tested. | It is recommended that an incremental approach should be taken. Initially money laundering issues may be addressed in Anti-Corruption law in compliance with this paragraph.  As a long-term strategy, it is recommended that there should be a free standing Act on money laundering that would also incorporate the UNCAC offences. These recommendations also apply to all the following paragraphs of this article. |
|  | (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; | Section 277(c) of PCB criminalizes concealment of criminal proceeds. | There is partial compliance with mandatory obligations of this sub-paragraph.  Disguise of property constituting criminal proceeds is not explicitly covered though section 277(b) prohibits financial transactions related to the proceeds of crime, directly or indirectly.  PCB is unclear about the purposes of concealment of criminal proceeds.  However, amended ACA is in compliance with this subparagraph. Section 71 of ACAB criminalizes money laundering by concealing or disguising corruption proceeds. | Section 277(c) of PCB is yet to be tested. |  |
|  | (b) Subject to the basic concepts of its legal system:  (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; | Section 277(a) of PCB criminalizes acquisition and possession of criminal proceeds. | There is partial compliance with mandatory obligations of this sub-paragraph.  Use of property constituting criminal proceeds is not explicitly covered though section 277(b) prohibits financial transactions related to the proceeds of crime, directly or indirectly.  However, amended ACA is in compliance with this subparagraph. Section 72 of ACAB criminalizes money laundering by acquiring, possessing or using corruption proceeds. | This paragraph is yet to be tested. |  |
|  | (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article. | Section 120-124, 125, 126, and 127-133 of PCB, cover criminal attempt, aiding and abetting, solicitation and criminal conspiracy in relation to all offences in PCB.  Sections 64 and 65 of PCB provides for the criminal liability of accomplice. | There is compliance with mandatory obligations of this sub-paragraph. However, sections 134-136 of PCB prescribe a sentence which is less or half of the respective offences attempted, aided, abetted, solicited or conspired.  However, amended ACA is in compliance with this subparagraph. Section 75 of ACAB addresses the issue. | These provisions are yet to be tested. |  |
|  | 2.For purposes of implementing or applying paragraph 1 of this article:  (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences; | Section 277 of PCB relates to all offences in PCB. This also applies to sub-paragraph (b) of this sub-article. | There is partial compliance with mandatory obligations of this subparagraph. However, amended ACA is in compliance with this subparagraph. Section 176(cc) of ACAB defines predicate offence as any offence under chapter IV of ACAB as a result of which proceeds have been generated that may become the subject of a money laundering offence.  These also apply to sub-paragraph (b) of this sub-article. |  | It is recommended that Anti-corruption law must comply with this sub-paragraph. This recommendation also applies to sub-paragraph (b) of this sub-article. |
|  | (b)Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention; |  |  |  |  |
|  | (c)For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there; | ACA (section 1(c), PCB (section 1(c)) and CCPC (section1.1(c)) extends to whole of Bhutan or apply to all persons throughout the territory of Bhutan or otherwise within the judicial reach of the Royal Courts of Justice. | There is partial compliance with mandatory obligations of this sub-paragraph.  However, amended ACA is in compliance with this subparagraph. Section 76 of ACAB States that for the purposes of money laundering, predicate offences include offences committed within Bhutanese territory or offences committed outside Bhutanese territory provided that such offences constitute predicate offences only when the relevant conduct is a corruption offence under the domestic law of the State where it is committed and would be a corruption offence under the Bhutanese law had it been committed in Bhutan. |  | It is recommended that Bhutanese legislation must comply with this sub-paragraph. |
|  | (d)Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; | As Bhutan is yet to accede to ratify UNCAC, there are no such obligations. |  |  |  |
|  | (e)If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence | Section 277 of PCB criminalizes laundering of proceeds of crime per se. | There is no compliance with optional obligations of sub-paragraph.  As section 277 of PCB criminalizes laundering of proceeds of crime per se, offences under it may also apply to predicate offences established under it.  However, amended ACA is in compliance with this subparagraph. Section 76(2) of amended ACA prohibits prosecution of an offender for both the predicate offence and the laundering of corruption proceeds from that offence. | Section 277 of PCB is yet to be tested. | It is recommended Bhutanese legislation must comply with this sub-paragraph. |
| **Article 24. Concealment** | Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention. | Section 277(c) of PCB criminalizes concealment of criminal proceeds.  Section 255 of the same Code criminalizes receipt, retention, or disposal of stolen property for, direct or indirect, benefit or to impede the recovery of such property by an owner. | There is partial compliance with optional obligations of this article.  PCB, however, is limited in coverage as it criminalizes the receipt, retention, or disposal of only stolen property rather than property which is result of all offences established under PCB.  Also, under PCB, the receipt, retention, or disposal of stolen property must be for, direct or indirect, benefit or to impede the recovery of such property.  However, amended ACA is in compliance with this article. Section 73 of ACAB criminalizes entering into or causing to be entered into any dealing, using or causing to be used, or retaining, receiving or concealing of a property constituting a corruption proceeds. | Section 277(c) of PCB is yet to be tested. | It is recommended Bhutanese legislation must comply with this article. |
| **Article 25. Obstruction of justice** | Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a)The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention; | Section 418 of PCB, among others, criminalizes various acts such as harboring, concealing or aiding suspects, including threat or intimidation to witness, or concealment or destruction of evidence.  Section 118 of ACA criminalizes person or public entity who fails to comply with the lawful demand of the  Commission including implementation of anti-corruption strategy and measures and makes difficult the execution of its tasks shall be guilty of an offence. | There is partial compliance with the mandatory obligations of this subparagraph.  The use of physical force against witness and others is not specifically addressed though other provisions such as those relating to assault or battery may generally cover.  The promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence is not an offence. These provisions also do not cover reporting persons and Government collaborators.  However, amended ACA is in compliance with this subparagraph. Section 74 of ACAB criminalizes various acts or omissions constituting offences relating to witnesses. | Sections 118 of ACA and  418 of PCB have been used in few instances successfully. | It is recommended that Bhutanese legislation must comply with this subparagraph. |
|  | (b)The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. | Chapter 16 of CCPC provides for both civil and criminal liabilities for contempt of courts and associated offences. | There is partial compliance with the mandatory obligations of this paragraph.  The use of physical force against a justice or law enforcement official is not specifically addressed though other provisions such as those relating to assault or battery may generally cover.  However, ACAB is in compliance with this subparagraph. Section 113 of ACAB criminalizes omissions constituting obstruction of justice. | There is no reliable consolidated data to assess the extent of its enforcement and implementation | It is recommended that Bhutanese legislation must comply with this subparagraph. |
|  | Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official. | Section 422 of PCB criminalizes obstruction of lawful authority in the execution of lawful duty.  Section 428 of PCB criminalizes failure to assist lawful authority. | There is compliance with the mandatory obligations of this paragraph. |  |  |
| **Article 26  Liability of legal persons** | 1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. | Section 138(p) of ACA defines ‘person’ as an individual, partnership, corporation, organization, enterprise, agency, or other legal entity whether public or private and successor, representative, or agent of one of them.  However, section 2 and subsections (g), (p), (r) and (t)(ii) of section 138 of the same Act are limited to Government corporations or entities using public resources.  Sections 508 and 509 of PCB imputes liability to a corporation or business association due to its omissions, failure to create and maintain corporate compliance culture, and for acts of its board of director or a high managerial agent acting for it within their employment or scope of office. As most of the corruption offences are covered by PCB, it also applies to corruption offences. | There is partial compliance with the mandatory obligations of this sub-article.  Corporate criminal liabilities are confined to acts of its board of director or a high managerial agent and those acts must be committed in the course of their employment.  Section 508 of PCB only covers breach of certain duties under relevant laws.  However, amended ACA is in compliance with this subparagraph. Section 165 of ACAB criminalizes (i) the promise, offering, or giving a bribe;(ii) directing or authorizing the promise, offering or giving a bribe; or (iii) knowingly fails to prevent a lower level persons from bribing, including through a failure to supervise them through a failure to implement adequate internal controls, ethics and compliance programs or measures. |  | It is recommended that Bhutanese legislation must comply with this sub-article. |
|  | 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. | Section 511 of PCB provides for the forfeiture or revocation of charter, certificate, or license corporations or business associations, including dissolution of such corporations or business associations if the public interest so requires or the board of directors or high managerial agents have persistently engaged in criminal conduct in the course of their employment.  Section 20 of PCB provides for the forfeiture of property and suspension or cancellation of business license or transactions, including impounding of documents and removal of a person from official positions.  Sections 208-9 of CCPC provides for a fine or financial penalty, compensation or damages, restitution, forfeiture of property, cancellation of licence or other penalties as may be appropriate.  Section 45(i) and (j) of ACA provides for the debarment of a corrupt firm, irrespective of its nationality, from participating in the Government tender; and revocation of work order, license, lease and contracts on corruption grounds.  PRR requires all individuals or entities to enter into an Integrity Pact with procuring RGoB agencies as part of contractual terms and conditions. | There is compliance with the mandatory obligations of this sub-article.  The Debarment Rule is in the advanced stage of drafting which will guarantee the parties involved a minimum due process. | Section 45 of ACA is an indispensible tool used by the Government in preventing and combating corruption with remarkable success. ACC, upon finding a prima facie case of corruption, ask accused person to show a cause why their business license should not be suspended. If there is no explanation in response to the show cause within a stipulated time or if explanations are unsatisfactory, ACC effect the suspension of the license. Thereafter, ACC informs CDB, a regulatory authority who revokes the license.  Upon conviction of a person or entities, court also revoke or suspend a business licence. However, there have been instances where, for example, courts have refused to do so because the matter being administrative in nature. | It is recommended that the drafting of the Debarment Rules should be expedited. |
|  | 3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences. | Section 512 of PCB provides that Board of Directors or high managerial agent of a corporation or business associations are civilly and/or criminally liable apart from such corporations or business association.  Section 108.1 of CCPC provides that Board of Directors or agents or employees of a corporation or business associations are civilly and/or criminally liable apart from such corporations or business association. | There is compliance with mandatory obligations of this sub-article.  Section 165(1) of ACAB provides that where a legal person commits a corruption offence; every chairperson, chief executive, director or officer or partners of the legal person shall be deemed to have committed that offence. |  |  |
|  | 4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions. | Those legal provisions cited in relation to sub-article 2 of this article apply here as well. | There is compliance with the mandatory obligations of this sub-paragraph. |  |  |
| **Article 27  Participation and attempt** | 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention. | Section 138(h)(i) and (ii) of ACA criminalizes an attempt to obtain a bribe, attempt to commit, conniving in or acquiescing to commit, aiding or abetting commission of any offence under ACA.  Sections 64 and 65 of PCB provides for criminal liability of accomplice.  Sections 125, 126, and 127-133 of PCB criminalize aiding and abetting, solicitation and criminal conspiracy. | There is compliance with the mandatory obligations of this sub-article. |  |  |
|  | 2 Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention. | Sections 120-124 of PCB deal with the criminal attempt. | There is compliance with the mandatory obligations of this sub-article. |  |  |
|  | 3 Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention. | There is no corresponding legislative provision. However, sections 120-124 of PCB and section 138(h)(i) and (ii) of ACA may apply. | There is compliance with the optional obligation of this sub-article. |  | It is recommended that a legislative provision be introduced in Bhutanese legislation to minimize the doubt. |
| **Article 28  Knowledge, intent and purpose as elements of an offence** | Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances. | Sections 54 and 55 of PCB define ‘purpose’ and ‘knowledge’ respectively.  Section 138(h)(i) of ACA states that “corrupt intention” includes any action motivated by or resulting inter alia in the following:   * unethical and dishonest act; * abuse of authority; * use of position of trust for dishonest gain; * giving or enabling a person to receive preferential treatment; or * misuse of public resources. | There is compliance with the optional obligation of this article. |  |  |
| **Article 29  Statute of limitations** | Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice. | There is no Statute of Limitation. | There is compliance with the mandatory obligations of this article.  However, OAG is in the advanced stage of drafting the Statute of Limitation. |  | It is recommended that such Limitation Bill provides for no limitation period or sufficiently longer limitation periods for corruption offences. |
| **Article 30  Prosecution, adjudication and sanctions** | 1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence. | Under section 111 of ACA whoever reports to ACC within 24 hours of receipt or giving of bribery in connection with tender enjoys immunity from prosecution.  PCB prescribes sentences ranging from a minimum fine of Bhutanese Nu.9000 to life imprisonment.  ACA does not to prescribe sanctions for a corruption offence but relies on PCB which prescribes ‘value-based sentences’ for most corruption offences such as money laundering, embezzlement, bribery, criminal misappropriation, etc. To illustrate, if the value or amounts involved in the offence is Bhutanese Nu.36000, then sentence term would be 12 months using the going minimum national wage rate of Bhutanese Nu. 100 per day.  Sections 23 and 24 of PCB define mitigating and aggravating circumstances.  Section 124 of ACA permits *thrimthue* i.e. pay fine in lieu of imprisonment by a convict person if the conviction is for offences carrying a sentence term above three years except for a recidivist or habitual offender. | There is partial compliance with the mandatory obligations of this sub-article. | Judges have a wide discretion in deciding sentences within sections 23 and 24 of PCB. Sections 23 and 24 of PCB do not take care of the sentencing issues relating to corruption offences, for example, the severity of the breach of trust. Similar corruption cases attract varying degrees of sentences both within and among the courts attracting a wide spread public criticisms.  Value-based sentence considers only the value of the property involved in offences.  There is no separate sentencing hearing and the prosecution does not pray for the type of sentence to be awarded by courts.  With the exception of few cases, courts have generally handed down sentences below three years and made eligible for *thrimthue*. | It is recommended that an independent body be established charged with drafting a Sentencing Guidelines to guide courts and to ensure that similar cases are treated similarly.  Consider also mandating OAG to pray for the type of sentence to be awarded by courts.  It is recommended to do away with *thrimthue* with respect to corruption offences and proposes sentencing provisions and prescribes severe sentence terms taking into account the gravity of offences. |
|  | 2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention. | Article 10 (22) of BC provides that immunities granted to MPs, including the Prime Minister and ministers with regard to inquiry, arrest, detention or prosecution do not cover corrupt acts committed by them in connection with the discharge of their duties or cover other acts of accepting money or any other valuables in consideration to speak or to vote in a particular manner.  Similar provisions are contained in NAA and NCA.  Generally, there exists no immunities to other public officials and all are subject to the criminal justice system like any other citizen but ACA, OAGA and AA grant immunities to their employees for discharging their duties but to the extent it is done lawfully and in good faith. | There is compliance with the mandatory obligation of this sub-article. | These provisions are yet to be tested. |  |
|  | 3.Each State Party shall endeavor to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences. | Under Article 29(5) of BC, AG has the power to institute, initiate, or withdraw any case in accordance with the law. Similar discretion is also given to AG under OAGA.  Under section 91 of ACA, the Commission can prosecute a person charged with corruption or take over a prosecution process from the prosecuting agency, when the case is delayed without a valid reason, manipulated or hampered by interference.  Under section 202 of the CCPC, the prosecutor can request the Court to allow the prosecution to be withdrawn if there is an insufficient legal basis to make a compelling case to prove a suspect’s guilt beyond a reasonable doubt.  OAG issued a Prosecution Guidelines in 2010 according to which prosecution will be pursued if there is sufficient evidence and the prosecution would serve the public interest.  ACC has its own similar Prosecution Referral Guidelines in draft form. | There is partial compliance with the requirements of this sub-article. | Both OAG’s Prosecution Guidelines and the ACC’s Prosecution Referral Guidelines do not provide a legal standing to victims and CSOs to judicially review their decisions not to prosecute or not to refer for prosecution.  Some RGoB agencies are required to refer their cases to OAG for prosecution through the Cabinet Secretariat for prosecution. | It is recommended that these Guidelines be reviewed generally to ensure proper definitions on public interest and more expected criteria on when not to prosecute or when not to make prosecution referrals and to allow victims or CSOs to judicially review the OAG and ACC’s decisions.  Consider protocol arrangements between OAG and ACC in relations to prosecution or prosecution referral decisions.  It is also recommended that the possibility of attachment of prosecutor with ACC for a fix term on a case-by-case basis be explored. |
|  | 4. In the case of offences established in accordance with this Convention, Each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings. | Chapter 41 of CCPC provides for the release of offenders pending trial on bail.  Under section 188.2, an arrested or detained person can be released on bail, provided he/she makes available to the police as and when required during the course of the investigation and remain within the limits of any particular area as prescribed in the bail order.  Section 125 of ACA provides for bail as per the provisions of CCPC. | There is compliance with the mandatory obligation of this sub-article. |  |  |
|  | 5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences. | Section 172 of the Prison Act 2009 provides for the early release of a convict by way of amnesty or remission of sentence on grounds of good conduct, old age and terminal illness.  Section 32 of PCB provides for grant of amnesty, pardon, leniency, reprieve or remission of punishment or suspension of sentence*.*  Section 31 of PCB lays down the conditions to be fulfilled by a defendant who is released on probation or when his sentence is suspended. Such a person would be required to make oneself available to the court as and when required; remain within the limits of any particular area as prescribed in the order; and abstain from doing any act, which violates the conditions of the release. | There is compliance with the mandatory obligations of this sub-article. |  |  |
|  | 6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence. | Under sections 77 and 78 of ACA, a person alleged of an offence of corruption shall be suspended and/or his business frozen until the period of detention and until the proceeding of the case is over if a case is filed against him.  BCSR provides detailed provisions relating to suspension, removal, reinStatement and appeal.  Section 20 of PCB also provides for the removal of a person from an official position. | There is compliance with the optional obligations of this sub-article. | ACC has asked agencies to suspend their public officials. While most agencies have complied with, few have refused to do so on the ground that doing so impinge upon their independence. RCSC takes a stand that the suspension of officials should be according to BCSR, not because of ACC’s request. | It is recommended that an appropriate guidelines for suspension of those who have been arrested (and so prior to conviction) under suspicion of serious corruption offences should be put in place in consultation with various stakeholders. |
|  | 7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:  (a)Holding public office; and    (b)Holding office in an enterprise owned in whole or in part by the State. | Article 23(4) of BC disqualifies a person from contesting elections if the person is convicted for any criminal offence and sentenced to imprisonment.  Section 179(b) of the Election Act 2008 disqualifies a candidate or a member holding an elective office under BC, if he/she has been found guilty of corrupt practice at an election.  Section 6.1 of chapter 4 of BCSR makes a person ineligible for civil service employment upon conviction for any criminal offence.  Section 6 of AA makes ineligible a person for appointment as the Auditor General upon conviction for any criminal offence.  Section 79 of COSA disqualifies a person from being a Chief Executive Officers or director upon conviction for a criminal offence.  Similar provisions are contained in NAA and NCA. | There is partial compliance with the optional obligations of this sub-article. Though these disqualifications could be permanent, there is no uniform approach.  While BC and the Election Act require conviction as well as imprisonment, others just require conviction.  Disqualifications of those who have been arrested under suspicion of serious corruption offences are not covered by any law. | These legal provisions have been enforced especially in relation to elections and civil service recruitment systems.  The phrase ‘…sentenced to imprisonment’ under BC and the Election Act has generally been interpreted as synonymous with ‘serving jail term’. As a result, former convicts who have not served jail term could still hold elective offices. Section 28 of PCB makes a convict eligible for payment of a fine in lieu of serving a prison sentence if the conviction is for an offence carrying sentence term less than three years. On the other hand, public servants who had been removed or dismissed from public service is ineligible for contesting elections. | It is recommended that the interpretation of the phrase ‘…sentenced to imprisonment’ under BC and the Election Act should be reconsidered.  It is recommended that disqualification of those who have been arrested under suspicion of serious corruption offences may be considered.  Appropriate Guidelines on disqualification may be considered. |
|  | 8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants. | Section 85 of CSA provides that civil servants could still be disciplined notwithstanding criminal or civil proceedings against them. | There is compliance with the mandatory obligation of this sub-article. | Civil servants are rarely disciplined once they are acquitted by courts. |  |
|  | 9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law. |  |  |  |  |
|  | 10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention. | Sections 143 and 144 of the Prison Act envisage juvenile reformative programs, including measure to enable them to continue their education.  Sections147-149 of the same Act provides for reformatory programs such as vocational skills development and counseling of prisoners. | There is partial compliance with the optional obligations of this sub-article. | RBP has conducted various reformatory activities such as religious discourses, non-formal education and the construction of reformatory centers. | It is recommended that RBP should have in place rigorous reformatory programs and implement them in consultation with MoF. |
| **Article 31  Freezing, seizure and confiscation** | 1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:  (a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds; | Section 46 of ACA provides that ACC’s powers with regard to investigation, arrest, search and seizure are coterminous with those of other law enforcement officials under laws.  Section 87 of ACA provides that ACC can search and seize or attach the property of an alleged person in accordance with CCPC.  Section 108 of ACA provides that under certain circumstances possession of pecuniary resources or of property by a person close to an accused person could be considered as belonging to that accused person in the absence of contrary evidence. | There is partial compliance with mandatory obligations of subparagraph. ACA does not have detailed provisions relating to investigation, arrest, search and seizure but cross-refers to CCPC. | Most of these provisions only give generic powers and lacks detailed procedures.  ACAB provides more details on investigation, search, seizure and arrest.  Proceeds of crime derived from corruption offences or property the value of which corresponds to that of such proceeds are generally confiscated upon conviction.  However, as asset recovery is a complex issues, Bhutanese law enforcement agencies are not adequately equipped with necessary skills. This also applies to paragraph (b).    Section 176 (m) of ACAB defines the corruption proceeds and provides more clarity. | It is recommended that anti-corruption law must be in compliance with this sub-article.  It is recommended that investigation agencies, prosecutors and judges be provided capacity development training. This also applies to paragraph (b). |
|  | (b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention. | Section 123 of ACA makes any property constituting criminal proceeds, articles used or any benefit derived from such an offence liable to confiscation or recovery if an offender is convicted.  Section 181 (Chapter 32) of the CCPC contains provisions relating to seizure.  Section 21 of PCB provides that the court in addition to the sentence awarded, order restitution, recovery, confiscation, of any property or article. | There is partial compliance with mandatory obligation of this subparagraph.  Property or equipment used in corruption offences cannot be confiscated under the Bhutanese laws unless they constitute corruption proceeds. Moreover, property, equipment or other instrumentalities destined for use in corruption offences cannot be confiscated. | Instrumentalities used in the commission of corruption offences are generally confiscated upon conviction of accused persons. | It is recommended that legislative provisions be introduced to confiscate property or equipment used in or destined for use in the commission of corruption offences. |
|  | 2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation. | Under section 49 of the ACA, ACC can freeze the asset including financial account of a person under investigation or seize and impound travel document to prevent the person from fleeing the country. | There is compliance with the mandatory obligations of this sub-article. However, section 49 of ACA does not address all issues relating to identification, tracing, freezing or seizure.  ACAB addresses all these issues. |  | It is recommended that the Anti-corruption law address identification, tracing, freezing or seizure of property, equipment or other instrumentalities destined for use in corruption offences cannot be confiscated. |
|  | 3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article. | Section 69 of CCPC provides for the appointment a receiver when there is substantial danger that the property will be lost, damaged or removed from its jurisdiction. | There is partial compliance with the mandatory obligations of this sub-article. However, there are no statutory provisions directly dealing with the issue. |  | Introduce legislative provisions to deal with these issues. |
|  | 4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds. | There is no corresponding legislative provision. This applies to sub-articles 5-6. | There is no compliance with the mandatory obligations of this sub-article. |  | It is recommended that anti-corruption law must be in compliance with this sub-article. This applies to sub-articles 5-6. |
|  | 5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds. |  |  |  |  |
|  | 6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime. |  |  |  |  |
|  | 7. For the purpose of this article and article 55 of this Convention, Each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy. | Section 70 of ACA empowers ACC to order any person to produce before it any book, document or any certified copy thereof, or any other article which may, in its opinion, assist in the investigation into the offence.  It further States that bank secrecy law shall not apply.  In relation to the international cooperation for purposes of confiscation, section 143 of ACAB empowers ACC to obtain judicial authorization direct any person or FIs to deliver relevant information, document or material.  Section 51 of AA provides for the right of access to records, bank Statements of agencies audited, suppliers, taxpayers and other third parties relevant to the audit of the entity. | There is compliance with the mandatory obligations of this sub-article. | Notwithstanding section 70 of ACA, ACC is always required to obtain judicial authorization to have access to information relating to accounts of suspects.  There have been instances of threat of judicial sanctions for accessing financial information without judicial authorization. It creates a problem as it enables the suspects to destroy evidence before warrants are issued by courts rendering the investigation futile. | It is recommended that legislative provisions be introduced in Anti-corruption law where there is no need for judicial authorization in case of imminent danger of destruction of evidence. |
|  | 8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings. | Section 107 of ACA, States a public servant or a person having served or serving under a non-governmental organization or such other organization using public resources maintains a standard of living that is not commensurate with his lawful source of income or is in control of pecuniary resource or asset disproportionate to his lawful source of income shall unless he gives a satisfactory explanation to the Commission or the court, be guilty of an offence.  Sections 50 and 127 of ACA deal with asset declaration requiring a public servant or a person serving under a non-governmental organization or such other organization using public resource to declare his income, asset and liability, including that of his spouse and dependent. | There is adequate compliance with the optional obligations of this sub-article. | This provision is yet to be tested. |  |
|  | 9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties. | There is no corresponding legislative provision. | There is no compliance with the mandatory obligation of this sub-article.  However, amended ACA is in compliance with this sub-article. Section 130 of ACAB protects the rights of bona fide third parties. |  | It is recommended that bhutansese legislation must comply with this sub-article. |
|  | 10.Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party. |  |  |  |  |
| **Article 32.  Protection of witnesses, experts and victims** | 1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them. | Section 99 of ACA provides for identity protection of informer.  Section 99 of ACA requires State to protect informer and witness and their family from physical, economic, other threats.  Section 100-101 of ACA provides for procedural protection of informer.  Section 33, 113 and 114 of EA provides for procedural protection with regard a source of evidence or a witness.  Section 101 of RBPA prohibits the disclosure of information acquired in the course of duty by RBP.  Section 112 of RBPA prohibits the disclosure of personal source of information under any circumstance to any person or entity. | There is partial compliance with the mandatory obligations of this sub-article. There is no explicit legislative provision on the protection of experts.  However, amended ACA is in compliance with this article. Section 119 of ACAB provides for the protection of experts as well, including prohibition on victimization under section 116(5). | Identity protection of witness and informer has been a very useful tool. Courts permit witnesses or informers to testify in camera proceedings.  There is no comprehensive Witness Protection Programs and dedicated agency which hampers effective witness protection. | It is recommended that a Witness Protection Statute be drafted in compliance with this article, which would apply to all State witnesses, including in other criminal cases.  Consider identifying the OAG and RBP as lead agencies to implement or administer such Statute.  These recommendations also apply to sub-article 2-4 of this article. |
|  | 2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:  (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons; | Section 99 of ACA requires State to protect informers and witnesses, including their families from physical, economic or other threats.  Section 198 of RBPA requires RBP to give physical protection to any vulnerable State witness. | There is partial compliance with optional obligations of this paragraph. However, there is no established procedure in this regard in any of the law enforcement agencies.  Section 117 of ACAB requires the State to provide an effective physical protection of complainants, informer and witnesses and their family, including economic and other threat. |  |  |
|  | (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means. | Section 4 of CCPC empowers courts to exclude the press and the public from trials or proceedings, wholly or partially, if the parties’ privacy or the interest of justice so requires. | There is partial compliance with optional obligations of this subparagraph. There is no guideline on the use of evidentiary rules and what are those evidentiary rules. | This section is yet to be tested. | It is recommended that evidentiary rules be provided to permit the use of communications technology such as video or the use of screens to protect witness from identification. |
|  | 3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article. | There are no agreements or arrangements with other States for the relocation of witnesses. | There is no compliance with the optional obligations of this sub-article. |  | It is recommended Bhutan should consider entering into agreements or arrangements with other States for the relocation of witnesses on a case-by-case basis. |
|  | 4. The provisions of this article shall also apply to victims insofar as they are witnesses. | There is no corresponding legislative provision. However, all witness protection provisions would apply to victim witnesses as well. | There is partial compliance with the mandatory obligation of this sub-article. | There is case law on this issue. | It is recommended that a Witness Protection Programs should cover the victims insofar as they are witnesses to minimize doubt. |
|  | 5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence. | No specific legislative provisions. However, section 199.2 of CCPC requires courts to consider the victim’s views in determining bail and bail amounts. | There is no compliance with mandatory obligations of this sub-article. |  | It is recommended that a specific legislative provision be introduced to enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings. |
| **Article 33.  Protection of reporting persons** | Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention. | Under section 65 of ACA, anonymous complaint is acceptable.  Section 98, 100 and 101 of ACA require agencies responsible for investigation and adjudication, including a witness in corruption proceedings to protect, or is prohibited from disclosing, an identity of reporting persons if their identities are disclosed.  Section 66 of ACA provides that reporting persons who, directly or indirectly, maliciously gives false or misleading information is liable.  Section 102 of ACA provides that such identity protection could be withdrawn only if information provided is false or if disclosure is essential in the public interest.  Section 103 of ACA prohibits retaliatory actions against a reporting person.  Under section 99 of ACA, the State is obligated to give protection to reporting persons and witnesses, including their family members, from physical, economic or other threat.  Sections 113 and 114 of EA prohibit a person from compelling a judge, public officer or revenue officer to disclose sources of information of an offence.  Section 54 of CSA also prohibits victimization of civil servants who reports breaches or alleged breaches of code of conduct.  Chapter 19 of BCSR (Section 5.2), however, renders anonymous and ‘improper’ complaints unacceptable whether or not such complaints are made in good faith and on reasonable grounds.  Section 33 of EA provides that a person’s identification shall be not be revealed, if the person is the source of evidence or a witness to the issue and the Court believes that his identification needs to be protected. | There is partial compliance with mandatory obligations of this article.  However, section 102 of ACA provides that protective measures could be withdrawn if information provided is false, whether or not such information is given in good faith or on reasonable grounds.  Section 116 of ACAB requires a person who reports in good faith and on reasonable grounds be protected even if the information turns out to be false. | Protection of reporting persons in terms of non-disclosure of their identity is being used effectively. However, other protective measures, including the physical protection of reporting persons has never been implemented as there is neither a responsible nodal agency nor a coordinated and coherent national policy framework.  As BCSR requires civil service agencies not to accept anonymous complaints, files containing such complaints are simply piled up in file racks though information contained therein may be true. | It is recommended that Bhutanese legislation must comply with this article.  It is recommended that a Witness Protect Statute must also address issues relating to protection of reporting persons.  It is recommended that BCSR be amended to permit acceptance of anonymous complaints. |
| **Article 34.  Consequences of acts of corruption** | With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action. | Section 45 of ACA provides for the cancelation or revocation of right or document of title; blacklisting or debarment of corrupt firms from government tender; and revocation of work order, license, lease and contract.  Section 20 of PCB also provides for the forfeiture of property, suspend or cancel a license or a transaction, impound the documents, or remove a person from an official position.  Section 209 of CCPC also provides for the forfeiture of property, judicial sale of property, financial penalty, cancellation of license or imposes any other appropriate penalty. | There is partial compliance with the mandatory obligations of this article. There is no exception for the protection of the rights of third parties who has acquired a contract in good faith. |  | It is recommended that there must be a legislative provision to protect the rights of third parties acquired in good faith.  Expedite drafting of the Debarment Rules and such Rules should also protect the rights of third parties acquired in good faith. |
| **Article 35.  Compensation for damage** | Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. | There is no corresponding legislative provision. However, CCPC (sections 198 and 208) and PCB (sections 21, 36-42) empower Courts to award damages or compensatory damages.  Section 212 of CCPC permits civil suit to be filed by victims upon completion of a criminal trial. | There is partial compliance with the mandatory obligations of this article. | Sections of CCPC and BPC are yet to be tested in relation to corruption. | It is recommended that a legislative provision be introduced conferring the rights to victims to initiate legal proceedings against those responsible for damage in order to obtain compensation.  It is also recommended that a Judicial Sentencing Guideline covering the compensation for damage be drafted. |
| **Article. 36 Specialized authorities** | Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their task. | All legislative provisions cited in relation to UNCAC Article 6 apply here as well. | There is partial compliance with the mandatory obligation of this sub-article. Gaps as indentified in relation to UNCAC Article 6 apply here as well. | Gaps as indentified in relation to UNCAC Article 6 apply here as well. | Those recommendations made in relation to UNCAC Article 6 apply here as well. |
| **Article 37.  Cooperation with law enforcement authorities** | 1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. | Section 48 of ACA empowers ACC to permit any person to accept or give a bribe if there is solicitation.  Section 179 of CCPC allows the prosecution to consider a plea bargain.  Sections 66 and 67 of PCB provides for approver or accomplice evidence. | There is partial compliance with the mandatory obligations of this sub-article.  Section 115 (3) of ACAB incentivizes complainants, informers, witnesses and other collaborators if the information supplied by them results in the conviction of another person. | Section 48 of ACA has been used only once and the bribe-taker is under trial now.  In relation to corruption cases, section 179 of CCPC was used twice. | It is recommended that a specific guideline for the ACC and judiciary be drafted to enhance cooperation. |
|  | 2.Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention. | Sections 17 and 23 of PCB cover the consideration of mitigating circumstances during sentencing, as well as what the circumstances are. | There is partial compliance with optional obligation of this sub-article. However, a substantial cooperation in the investigation or prosecution of a corruption offence is not the mitigating factor. | Courts generally used sections 17 and 23 of PCB. | It is recommended that a legislative provision be introduced to grant discretionary power to ACC or Judiciary to permit ‘substantial cooperation in the investigation or prosecution of a corruption offence’ as a mitigating factor in compliance with this sub-article. It should be used in rare circumstances subject to judicial consent. |
|  | 3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention. | Section 111 of ACA provides immunity from prosecution to a person who has reported the receiving or giving of a bribe from or to another person to ACC within 24 hours in connection bid rigging.  Section 112 provides immunity from prosecution to a person who is authorized by ACC under section 48 of ACA to accept or give a bribe if there is solicitation. | There is partial compliance with optional obligations of this sub-article. However, section 111 of ACA is limited in scope as it applies only to bribery transactions.  However, amended ACA is in compliance with obligations of this sub-article. Section 135 of ACAB provides that a person who receives or gives an undue advantage from or to another person, reports this matter to the Commission or to another law enforcement authority, before the commencement of any corresponding procedure, will be exempt from punishment, provided that no more than twenty four hours have passed since the date of the receipt or giving of such a bribe. | In other criminal matters, there have been instances where a person has been granted immunity from prosecution because of his substantial cooperation in the investigation or prosecution of an offence. | It is recommended that a legislative provision be introduced to provide for immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of a corruption offence, including in other criminal offences. |
|  | 4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention. | All legislative provisions cited in relation to UNCAC Article 32 apply here as well. | Gaps as indentified in relation to UNCAC Article 32 apply here as well. | Gaps as indentified in relation to UNCAC Article 32 apply here as well. | Those recommendations made in relation to UNCAC Article 32 apply here as well. |
|  | 5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article. | Bhutan is yet to enter into such agreements or arrangements with other States. | There is no compliance with the optional obligation of this sub-article. |  | It is recommended that Bhutan should consider entering into such agreements or arrangements with other States on a case-by-case basis. |
| **Article 38. Cooperation between national authorities** | Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:  (a)Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or | Section 54(k) of ACA provides for coordination with public entities, in particular, with law enforcement agencies in performing its duties.  Sections 56, 94 and 96 of ACA provides for cooperation with public entities in performing its duties.  Section 59 of ACA confers on a person the right to provide information on the commission of corruption offences.  Section 48(b) of AA imposes on the Auditor-General the duty to report to relevant authority corruption offences.  Section 161.1 of CCPC provides that a person may make a complaint to the police or other appropriate public authorities.  Section 426 of PCB criminalizes a failure to report a crime.  Section 206 of RBPA sets the production of Court Order as precondition to seek police assistant by a government agency. | There is partial compliance with the mandatory obligations of this sub-article.  Section 206 of RBPA may hamper cooperation between ACC and RBP as the latter’s cooperation is conditional upon judicial authorization.  There are no clear mechanisms on how ACC is to secure cooperation from other agencies.  However, ACAB is in compliance with this sub-article. Section 77 of ACAB imposes a duty to report corruption at three levels. Firstly, a person has the duty to report to ACC against any person or entity that has committed or is attempting to commit a corruption offence. Secondly, where public servants suspect that a corruption offence has been committed or is about to be committed within or in relation to their public agency, they shall forthwith report to ACC. Finally, a person who holds a position of authority and who knows or oughtreasonably to have known or suspected that another person has committed a corruption offence shall report such knowledge or suspicion or cause such knowledge or suspicion to be reported to ACC.  Section 81 of ACAB requires law enforcement agencies to provide assistance to ACC upon request. | Though there is a policy of ‘zero tolerance’ for corruption and the election of the present Government into power on anti-corruption platforms, cooperation between public agencies as well as public officials, and the law enforcement agencies continued to be a daunting task.  Preventing and fighting corruption is widely perceived as the ACC’s lone responsibility and if they do so, it is seen as impinging upon their independence and makes their office a mere extension of ACC. | It is recommended that MoUs, or guidelines on inter-agency cooperation be drafted in consultation with stakeholders and signed.  There should be joint investigation programs and the creation of synergies between agencies.  There is need to clarify that section 206 of RBPA applies to arrests and searches with warrant, not to other areas. |
|  | (b)Providing, upon request, to the latter authorities all necessary information. | Section 70 of ACA requires a person to attend before or produce books or documents to ACC to assist in its investigations.  Section 75 of ACA requires law enforcement agencies to provide assistance for the purposes of investigation, seizure, search and arrest.  Section 12(d) of OAGA provides for cooperation and assistance of any Government officers or employees.  Section 46 of CA requires any agency or law enforcing body to provide full cooperation to the customs officers. | There is partial compliance with mandatory obligations of this sub-article. Section 12(d) of OAGA and section 46 of CA requires only agency or law enforcement agencies to provide cooperation.. | There is no or limited cooperation between law enforcement agencies. However, section 206 of the RBPA may impede cooperation between law enforcement agencies as the production of Court Order may be unnecessary in certain situations. | It is recommended that a legislative provision be introduced to empower OAG to request for information necessary for prosecution from any person or entity.  There is need for a standard procedure for obtaining such assistance or cooperation. |
| **Article 39. Cooperation between national authorities and private Sector** | 1. Each Sate Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this convention. | Sections 56 and 95 of ACA provides for cooperation or coordination with private entities or persons in performing its duties.  Section 100 of the RBPA 2009 provides that RBP may obtain the assistance of any person in criminal investigations.  Article 59 of FIA requires notification by FIs to RMA of evidence of serious criminal activity in Bhutan or abroad which it suspects is associated with the use of bank accounts or its proceeds | There is no compliance with optional obligations of this sub-article.  Section 77 of ACAB imposes a duty on a person to report corruption to ACC against any person or entity that has committed or is attempting to commit a corruption offence. | Not much cooperation in practice. | It is recommended that a legislative amendments or regulations be made to provide for clear rules of engagement between law enforcement and prosecuting agencies and private sector entities.  There is need for a consensual relationship between the private sector and a national authority as its instrumental to the effective fight against corruption. |
|  | 2. Each State party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established accordance with this convention. | As required by the National Assembly, ACC is formulating robust anti-corruption campaigns and programs to create awareness and educate public of all the 205 Gewogs of the country. | There is no compliance with mandatory obligations of this sub-article. | There is need to expand the campaigns and programs to all parts of the country including remote areas.  There is limited accessibility to anti-corruption bodies by the public at grass roots level. | It is recommended that the public campaigns and programs be stepped up to make aware of and educate about the need to report acts of corruption.  There is need for the development of a rigorous and coherent public education and awareness programs .  A Whistleblowers Act may be drafted and identification of the agency responsible for enforcing this legislation may be made. |
| **Article 40 Bank Secrecy** | Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy. | Sections 70(b) of ACA lifts bank secrecy (access to bank records and Statements) for the purposes of corruption investigations.  Section 2 of STCEA and section 26 of the Income Tax Act (Both general provisions), DRC could order FIs, to furnish information relating to taxable entities.  FIA (Art.23) prohibits the disclosure of financial information of bank customers without their consent though the same article of FIA and section 18(1) of RMAA permits the disclosure of information obtained by the employees in the course of their employment to administrative or judicial authorities under procedures provided by law.  Section 56 of CCPC States that a person’s financial information may not be subject to discovery except when punitive damages are sought. | There is compliance with mandatory obligations of this article. | There is no requirement for judicial authorization to see whether or not a subject of investigation has account in the financial institutions. However, the access to information contained in such accounts still requires prior judicial authorization, which sometimes renders investigation fruitless when there is an imminent danger of destruction or removal of required information. | It is recommended that FIA (Art.23) be amended to remove a requirement of bank customers consent to facilitate effective investigation.  It is recommended that a legislative provision be introduced to permit ACC access to bank records and Statements without prior judicial authorization in situations of an imminent danger of destruction or removal of required information.  There is need for ACC to be empowered to apply *ex parte* for judicial authorization.  Section 56 of CCPC may be amended to allow investigating and prosecuting agencies access to a person’s financial information, not only when punitive damages are sought. |
| **Article 41**  **Criminal Record** | Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention | There is no corresponding legislative provision. However, section 103(h) of EA provides for the presumption of authenticity of certified copy of any judicial record of any country. | There is partial compliance with optional obligations of this article. | This section is yet to be tested. | It is recommended that a specific legislative provision be introduced to permit the use of final foreign criminal records to minimize doubt. |
| **Article 42 Jurisdiction** | 1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:  (a)The offence is committed in the territory of that State party; or | Section 20(a) of CCPC vests territorial jurisdiction with the Bhutanese Supreme/High Court when the offence is committed in the Bhutanese territory. | There is compliance with the optional obligations of this subparagraph. |  |  |
|  | (b)The offence is committed on board a vessel that is flying the flag of that State party or an aircraft that is registered under the laws of that State party at the time that offence is committed. | Section 20(f) and (g) of CCPC vests jurisdictions with the Bhutanese Supreme/High Court when the offence is committed on board a vessel that is flying the Bhutanese flag or an aircraft that is registered under the Bhutanese laws at the time of commission of that offence. | There is compliance with the optional obligations of this subparagraph. |  |  |
|  | 2. Subject to Article 4 of this Convention, a State Party may also establish its jurisdiction over such offences when: |  |  |  |  |
|  | (a)The offence is committed against a national of that State Party; or | Section 20(b) of CCPC vests jurisdiction with the Bhutanese Supreme/High Court when the offence is committed against a Bhutanese national. | There is compliance with the mandatory obligations of this subparagraph. |  |  |
|  | (b)The offence is one of those established in accordance with Article 23, paragraph 1 (b)(ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a)(i) or (ii) or (b) (i), of this Convention within its territory; or | These issues are addressed in article 27.  Section 277 of PCB criminalizes concealment or aiding concealment of criminal proceeds. | There is compliance with the mandatory obligations of this subparagraph. |  |  |
|  | (c)The offence is committed against the State Party, | Section 20(d) of CCPC vests jurisdiction with the Bhutanese Supreme/High Court when the offence is committed against Bhutan. | There is compliance with optional obligations of this subparagraph. |  |  |
|  | 3. For the purpose of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals. | There is no corresponding legislative provision. However, section VII of EXA provides that RGoB could refuse extradition of offenders if it desires to prosecute such offenders in Bhutan, irrespective of the nationality.  Article III of the 1987 SAARC Convention for offences set forth in Article 4 of the Additional Protocol to the SAARC Convention on Suppression of Terrorism requires State Parties to either extradite or prosecute.  These legislative provisions also apply to sub-article 4 of this article. | There is compliance with mandatory obligations of this sub-article. This also applies to sub-article 4 of this article. |  |  |
|  | 4. Each State party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her. |  |  |  |  |
|  | 5. If a State party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other State Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those State Parties shall, as appropriate, consult one another with a view to coordinate their actions. | Section 55 of ACA provides a basis for collaboration with other countries and international regional organizations in combating corruption.  Section III (B) of EXA requires a requesting State to furnish relevant evidence and information.  Section 5 of EAST and article 12 of EAST Protocol provide for mutual assistance between the SAARC member States. | There is compliance with optional obligations of this sub-article.  Chapter IX of ACAB makes further provisions on international cooperation. |  |  |
|  | 6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law. | Section 19 of CCPC provides that the Bhutanese Supreme/High Court has inherent power to assume original jurisdiction over offences which are not covered or partially covered by CCPC or any law in force. | There is compliance with mandatory obligations of this sub-article. |  |  |

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**UNCAC CHAPTER 4: INTERNATIONAL COOPERATION**

Article 43: General statement

Article 44: Extradition

Article 45: Transfer of sentenced person

Article 46: Mutual legal assistance

Article 47: Transfer of criminal proceedings

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Article 49: Joint investigations

Article 50: Special investigative techniques

# UNCAC CHAPTER 4: INTERNATIONAL COOPERATION

# SUMMARY

Corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential. UNCAC binds States Parties to cooperate with each other in every aspect of the fight against corruption. The prevention, investigation, prosecution, and punishment of corruption, and recovery and return of illicit gains cannot be achieved without effective international cooperation.

The UNCAC article 43 requires States Parties to cooperate in criminal matters in accordance with Part IV of UNCAC, that is, extradition, mutual legal assistance, transfer of criminal proceedings, transfer of sentenced persons and law enforcement, including joint investigations and special investigative techniques. It also requires States Parties to consider such cooperation also in investigations of and proceedings in civil and administrative matters relating to corruption matters.

In Bhutan, Section 55 of ACA provides for cooperation by ACC with any foreign government, regional or international organization in the performance of its functions. However, the implementation of ACA in this regard has not been effective. There is need to enact a MLA Statute on international cooperation.

**Extradition**

Globalization has made it easier for offenders to commit crimes in one jurisdiction and escape prosecution by escaping to other jurisdictions. It has also made it easier for offenders to hide the trail of crimes that they have committed, and to transfer the criminal proceeds to other jurisdictions.

The UNCAC article 44 imposes on States Parties the obligation to grant extradition of alleged offenders with respect to UNCAC offences, provided that the dual criminality test is met or in cases where the UNCAC offences do not provide dual criminality, to regard all UNCAC offences as extraditable offences for the conclusion of extradition treaties. The UNCAC also requires States Parties to not to consider these offences to be political offences. States Parties can either take UNCAC as the legal basis for extradition to another State Party regarding corruption offences after notifying the Secretary-General of the United Nations on whether they will permit the Convention to be used as a basis for extradition or, where appropriate, conclude treaties on extradition with other States Parties. The States Parties are required to simplify the evidentiary requirements and ensure the presence of the offender at proceedings. If the extradition is refused on the ground of offender being it’s national, the State Party is obliged to submit the case to competent authorities without delay for prosecution and must provide cooperation in procedural aspect and evidentiary requirement. In the event of refusal on the grounds that the accused is the requested State Party’s own national, the requested State Party should enforce the sentence imposed by the domestic law of the requesting State Party. States Parties are required to safeguard the rights of the offenders and ensure fair treatment during proceedings in the event of refusal. A State Party may refuse extradition if there is discriminatory treatment and not on the sole ground which involves fiscal matters in the offence. The UNCAC also obligate to consult requesting State Party to present its opinion and information relevant to its allegations before refusal of extradition.

In Bhutan, extradition is governed by the EXA 1991 which defines extraditable offences as ones that carry a sentence term exceeding 12 months imprisonment and imposes a dual criminality requirement (section II (B) of EXA). This Act covers most corruption offences except for *de minimis* offences. Under section VI (A) of EXA, the political nature of an offence is not extraditable offence.

While section I(C) of the EXA requires the existence of a bilateral treaty between Bhutan and the requesting State to form the basis of extradition, the Act may even apply to Non-treaty States if the Government considers it expedient to do so. Though EXA suffices aspect of extradition, whether or not there are treaties and multilateral agreements, Bhutan may conclude treaties with other States Parties that will provide for international cooperation in criminal matters, including extradition. The proposed mutual legal assistance law should comply with the requirements of Article 44, however, amendment of EXA to empower ACC to investigate corruption related matters is recommended.

**Transfer of Sentenced Persons**

Article 45 of UNCAC permits States Parties to exercise discretion on whether or not to conclude treaties, or bilateral or multilateral agreements to provide for the transfer to their country of persons sentenced to imprisonment or other deprivation of liberty for offences established under UNCAC.

Bhutanese law does not make specific provision for transfer of sentenced persons nor has Bhutan concluded any treaties or agreements. Therefore, Bhutan should consider provisions for the transfer of sentenced persons for offences under UNCAC need to be included in the ACA or in CCPC in for other offence. Bhutan also needs to conclude bilateral and multilateral agreements.

**Mutual Legal Assistance**

Article 46 of the UNCAC requires States Parties to establish widest measure of mutual legal assistance in investigations, prosecutions, judicial proceedings, and asset confiscation and recovery in relation to corruption offences. The MLA is specifically for the purposes of taking evidence from persons, identifying and tracing the proceeds of crime, providing documents and records, and recovery of assets along with providing assistance in investigations, prosecution and judicial proceedings in relation to offences for which a legal entity may be held liable under article 26 of UNCAC. States Parties may transmit information on criminal matters without prior request to another State Party, which they believe can assist in inquiries, criminal proceedings or the formulation of a formal request from that State Party.

The States Parties may decline to render MLA in the absence of dual criminality and if a request is likely to prejudice the sovereignty requested country. However, assistance cannot be refused on the grounds of bank secrecy and for offences that involves fiscal matters. The UNCAC also suggest applying UNCAC as a basis to administer the modalities of MLA in the absence of a MLA treaty with another State Party (article 46 paragraphs 7and 9-29). Finally, UNCAC obligate States Parties to consider entering into bilateral or multilateral agreements or arrangements for the purpose of MLA.

Bhutan do not have specific statute on MLA though ACC could invoke section 55 of ACA and the EXA to cooperate with foreign governments or regional organizations in the discharge of its functions as a basis for making requests for mutual legal assistance. However, this section has not been tested. Therefore, Bhutan should consider drafting a comprehensive MLA law complying with UNCAC article 46. Bhutan may extend the use of SAARC Agreement on Mutual Administrative Assistance in customs matters to corruption matters. Conclusion of bilateral or multilateral agreement and arrangement to enhance effective cooperation in MLA is highly recommended.

**Transfer of criminal proceedings**

The UNCAC article 47 requires States Parties to consider transferring the prosecution proceedings of an offence established in accordance with the UNCAC to one another if such transfer is considered to be in the interest of the proper administration of justice, particularly where multiple jurisdictions are implicated.

Bhutan does not have legislative provision allowing the transfer of criminal proceedings. Taking into account the possibility of constitutional challenges being raised against a provision permitting transfer of criminal proceedings, it is recommended that Bhutan carefully consider the necessity of such provisions. The provisions should be enacted only if it is possible to have sufficient safeguards to ensure the constitutionally guaranteed rights and freedoms of alleged offenders will not be contravened.

**Law Enforcement Cooperation**

The UNCAC article 48 obligates States Parties to cooperate closely to enhance the effectiveness of law enforcement action to combat offences establish under UNCAC through cooperation in exchanging information about persons and the movement of proceeds and instrumentalities of crime and by exchanging means and methods including professionals and experts for the purpose of early identification of offences. States Parties are also required to consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies, in the absence of which UNCAC may be used as a basis for such cooperation.

In Bhutan, section 55 of ACA provide legal basis to collaborate with other countries and international regional organizations for law enforcement cooperation. Moreover, Bhutan being member of INTERPOL provides it with law enforcement assistance from other member countries and sub-regional bureaus. However, Bhutan has not entered into any bilateral or multilateral agreements or arrangements on direct cooperation with foreign law enforcement agencies other than signing of MOU with National Anti-corruption Commission of Thailand. Bhutan would benefit greatly by relying on UNCAC as the legal basis for cooperation between Bhutan and other States Parties law enforcement agencies. Bhutan needs to identify strategic partner and sign MOUs to facilitate effective law enforcement cooperation at international level.

**Joint investigations**

The UNCAC article 49 requires that the States Parties to conclude bilateral or multilateral agreements or arrangements to establish joint investigative bodies to conduct joint investigations, prosecutions and proceedings in one or more State party. In absence of such agreements, States Parties may undertake joint investigations on a case-by-case basis.

There is no legislative provision in Bhutan to establish joint investigative bodies to undertake joint investigations or to do so, on a case-by-case basis though ACC could invoke section 55 of ACA for investigation assistance and information sharing at international level. Therefore, Bhutan must provide for the establishment of such joint investigation body to undertake joint investigation, prosecutions and proceedings in combating corruption. Bhutan should also consider concluding bilateral or multilateral agreements or arrangements to establish joint investigative bodies and, in absence of such agreements, it should undertake joint investigations on a case-by-case basis.

**Special Investigation Techniques**

The UNCAC article 50 requires State party to allow their competent authorities to use special investigative techniques such as electronic or other forms of surveillance and undercover operations within its territory, and to make evidence obtained through such techniques admissible in court. States Parties are also encouraged to conclude appropriate bilateral and multilateral agreements or arrangements for using special investigative techniques where necessary, in the context of international cooperation.

Though there is provision in Evidence Act (section 3 read with 43) that permits the admissibility of electronically generated evidence, there is no legislative framework allowing the use of specialized techniques and equipment in Bhutan. However, section 112 of ACA authorizes ACC to engage in controlled delivery. ACC employs some forms of modern, specialized techniques and equipment in its surveillance and undercover operations but had met with challenges from some subjects of investigations though without success. Therefore, Bhutan should consider legislative provision and developing guidelines on the use of specialized techniques and equipment. Bhutan should also consider concluding bilateral and multilateral agreement or arrangement for using special investigative technique.

**International Cooperation**

**UNCAC Articles 43-50**

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| **Article 43. International cooperation** | 1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption. | Section 55 of ACA provides a generic power to ACC in international cooperation.  EXA generally provides a legal basis for cooperation in extradition.  There is no expressed legislative provision for international cooperation in civil and administrative matters. | There is no compliance with mandatory obligations of this sub-article.  Neither are there treaties in place or regional programs that might act as a legal basis for international cooperation.  However, amended ACA is in compliance with this sub-article. Chapter IX of ACAB is dedicated to international cooperation. | These legislative provisions are yet to be tested. | It is recommended that SAARC CMACM may be used for SAARC countries in respect of criminal matters relating to corruption and BIMSTEC in respect of its member States.  With respect to international cooperation in civil and administrative matters relating to corruption, consideration should be given to other regional arrangements in the SAARC region and South East Asia.  In the long run, it is recommended that a comprehensive and effective Act be drafted covering all aspects of international cooperation, not only relating to corruption cases but also other civil and administrative matters. |
|  | 2.In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties. | There is no corresponding legislative provision. | There is no compliance with the mandatory obligation of this sub-article. |  | It is recommended that a specific Act be drafted on this matter to overcome these technicalities. |
| **Article 44.**  **Extradition** | 1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party. | Sections I(C) and (D) of EXA provides for the extradition of offenders to a foreign State whether or not there is a treaty with Bhutan.  Section II (B) of EXA establishes a dual criminality requirement for the extradition of persons to foreign States. | There is compliance with mandatory obligations of this sub-article.  Section 169 of ACAB provides that extradition requests shall be subject to EXA which shall be applied as if an offence under ACAB is an offence for which extradition may be granted.  Section 144(3) of ACAB provides that for the purpose of international cooperation, a relevant offence is an offence constituted by an act or omission which, had it occurred in or within Bhutan would have constituted a corruption offence. | RGoB has neither requested nor received any extradition requests pertinent to corruption cases as of date. However, there has been an instance where Bhutan made request to India for extradition of its citizen to Bhutan which was refused on political ground. |  |
|  | 2.Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law. | Under section II (B) read with the schedule 2 of EXA, the extraditable offences are those that carry sentence term exceeding 12 months or offences specified in an extradition treaty or arrangement with a foreign State. | There is adequate compliance with optional obligations of this sub-article as most UNCAC offences are covered by the EXA except for *de minimis* offences.  **This also applies to sub-article 7.** | This section is yet to be tested. |  |
|  | 3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences. | Section II (B) read with the schedule 2 of EXA provides that the extraditable offences are those that carry sentence term exceeding 12 months or offences specified in an extradition treaty or arrangement with a foreign State. | There is compliance with optional obligations of this sub-article. As most UNCAC offences are covered, situations where some offences are extraditable and others are not will arise only in cases of *de minimis* offences. | This section is yet to be tested. |  |  |
|  | 4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties.  States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.  A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence. | Section VI (A) of EXA makes the political offence as not extraditable offence. | There is partial compliance with the mandatory obligations of this sub-article. | This section is yet to be tested. | It is recommended that ACC should consider using UNCAC as a basis for extradition and determine the offences that should be included as extradition offences while entering into agreements with other countries. This recommendation applies to sub-article 6 of this article. |
|  | 5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies. | Section I (D) of the EXA provides that RGoB may surrender an offender to a requesting State even if there is no extradition treaty with that State. This applies to sub-articles 6 and 7 of this article. | There is compliance with the optional obligation of this sub-article. | This section is yet to be tested. |  |
|  | 6.A State Party that makes extradition conditional on the existence of a treaty shall:  (a)At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and |  |  |  |  |
|  | (b)If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article. |  |  |  |  |
|  | 7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves. |  | Gaps identified in sub-article 2 apply here as well. |  |  |
|  | 8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition. | Section II (B) read with the schedule 2 of the EXA fixes more than 12 months minimum penalty requirement.  Section VI of the EXA provides that Bhutan could refuse extradition of persons for political, trivial or time barred offence; extradition request is not made in good faith or in the interest of justice or otherwise unjust; and until the completion of a trial or sentence if a person to be extradited is undergoing trial or serving sentence in Bhutan.  Section VII of the EXA provides that RGoB could refuse extradition of offenders for prosecution in Bhutan. | There is compliance with mandatory obligations of this sub-article. | These sections are yet to be tested. |  |
|  | 9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies. | Section III (A) of EXA provides that extradition request should be made through diplomatic mission of the either countries or make direct request to RGoB.  Section IV of EXA provides that the Bhutanese High Court investigates and submits its findings and recommendations to RGoB.  Section V (C) of EXA provides that a person can pray the High Court for acquittal if extradition order is not implemented within 60 days of such order.  Section VIII of EXA provides for the admissibility of evidence, proof and documents of a foreign State.  Section 103(f) and (j) of EA provides for the presumption of authenticity of a document certified by any representative of foreign State, or report or decision of any country. | There is compliance with optional obligations of this sub-article. | These sections are yet to be tested. | It is recommended that the extradition procedures be simplified in the interest of the offender’s right. |
|  | 10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings. | Under section IV (B) of the EXA, Bhutanese High Court could issue warrant for arrest of an offender.  Under section IV (E) of EXA, an offender could be detained for a period not exceeding 30 days pending the extradition decision. | There is compliance with optional obligations of this sub-article. | These sections are yet to be tested. |  |
|  | 11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution.  Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party.  The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution. | Section VII (A) of EXA provides that RGoB could order the High Court to initiate prosecution of an offender (Bhutanese or not) if it’s reasonable to do so.    Section III (B) of EXA requires a requesting State to furnish relevant evidence and information. | There is compliance with mandatory obligations of this sub-article. | These sections are yet to be tested.  In extradition matters, the prosecution process may go against the fundamental principles of separate investigative and adjudicatory functions as the High Court would be performing both functions. | It is recommended that EXA should be amended to empower ACC to investigate matters relating to corruption. |
|  | 12.Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article. | Section VI (D) of EXA prohibits the extradition of persons serving sentence in Bhutan for committing offences in Bhutan which also include corruption offences till such sentence is completed.  Under section X (A) of EXA, Bhutan could request a foreign State to extradite a convict.  **These also apply to article 45.** | There is compliance with the mandatory obligations of this sub-article. | These sections are yet to be tested. | It is recommended that legislative provisions be introduced to permit the enforcement of the foreign judgment in the interest of international cooperation and justice. This recommendation also applies to sub-article 13 of this article. |
|  | 13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof. | There is no corresponding legislative provision. | There is no compliance with the mandatory obligations of this sub-article. |  | It is recommended that legislative provisions be introduced to permit the enforcement of the foreign judgment in the interest of international cooperation and justice. |
|  | 14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present. | Article 7 of BC provides basic fundamental rights, including presumption of innocence, right to legal counsel, and equality before the law.  Section 5 of article 7 of the BC requires the State to endeavor to provide justice through a fair, transparent and expeditious process.  Section 1 of article 21 of BC requires the Judiciary to safeguard, uphold and administer justice fairly in with accordance rule of law.  CCPC guarantees all necessary rights of a person under trial. | There is compliance with mandatory obligations of this sub-article. | These articles are yet to be tested. |  |
|  | 15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons. | No specific legislative provisions. However, section VI of EXA implies as RGoB could refuse extradition of offenders if the extradition request is not made in good faith or in the interest of justice or otherwise unjust. | There is partial compliance with mandatory obligations of this sub-article. | This section is yet to be tested. | It is recommended that specific legislative provisions be introduced in EXA in compliance with this sub-article to minimize doubt. |
|  | 16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve in fiscal matters. | This issue is addressed in article 40. |  |  |  |
|  | 17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation. | Section VIII (A) of EXA requires RGoB to inform the requesting State of its refusal to extradite because it intends to prosecute offenders in Bhutan. | There is partial compliance with mandatory obligations of this sub-article. | This section is yet to be tested. | It is recommended that specific legislative provisions be introduced in EXA to permit such consultations to minimize doubt. |
|  | 18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. | There is no corresponding provision. | There is no compliance with optional obligations of this sub-article. |  | It is recommended that Bhutan should consider entering into agreements with appropriate countries having regard to the country’s foreign policy. |
| **Article 45. Transfer of sentenced persons** | States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there. | There is no corresponding legislative provision. However, section VI (D) of EXA prohibits the extradition of persons serving sentence in Bhutan for committing offences in Bhutan till such sentence is completed. | There is partial compliance with optional obligations of this article.  RGoB has received a proposal from India on the transfer of sentenced persons which is under consideration.  However, amended ACA is in compliance with this article. Section 158 of ACAB empowers ACC, after consultation with the Minister responsible for Foreign Affairs, the Attorney General and other relevant public agencies, to enter into bilateral or multilateral agreements or arrangements on the transfer to or from Bhutan of persons sentenced to imprisonment or other forms of deprivation of liberty for an offence under this Act. | There has been an instance where a Bhutanese national convicted for criminal offence in U.S. was transferred to Bhutan to complete the sentence term in Bhutan. | It is recommended that section VI (D) of EXA be amended to allow the extradition of persons serving sentence in Bhutan for committing offences in Bhutan to avoid resources and human rights implications due to denial of accused person’s right to be near his family where reintegration would also be easy.  Assessment should be undertaken by the MoFA and other relevant stakeholders to determine which other countries Bhutan may enter into bilateral agreements with for transfer of sentenced persons, and that the negotiations be carried out and concluded. |
| **Article 46**  **Mutual legal assistance** | 1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention. | There is no specific legislation or legislative provision on MLA.  This also applies to all sub-articles of this article.  However, ACA contains a generic provision (section 55) for collaborations with foreign countries and international and regional organizations for assistance in investigations and information sharing. | There is partial compliance with mandatory obligations of this sub-article.  As one of the members States of SAARC, Bhutan could use SAARC CMACM to seek MLA from other SAARC member States in criminal matters and BIMSTEC in respect of its member States.  Chapter IX of ACAB provides more details on MLA. |  | An incremental approach is recommended. Initially, MLA be implemented using Chapter IX of ACAB. As a long-term strategy, MLA Statute, properly founded on a strong national policy framework on international cooperation in criminal matters should be enacted to facilitate international cooperation in preventing and combating trans-national crime, including corruption and related offences. The Act should also facilitate international cooperation in civil proceedings relating to corruption, including asset tracing and recovery, and administrative matters.  It is recommended that a working group be set up consisting of RBP, ACC, MoFA and OAG to assess whether or not Bhutan needs bilateral agreements with Singapore, Dubai and India regarding MLA matters.  These recommendations also apply to all sub-articles of this article. |
|  | 2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party. | There is no corresponding legislative provision. However, section 55 of ACA provides a generic power for ACC in international cooperation.  Section 45(f) of the same Act empowers ACC to investigate against a person abroad accused of corruption in Bhutan or Non-Bhutanese residing in Bhutan charged of corruption in their country of origin, which could facilitate international cooperation.  EXA provides a legal basis for cooperation in extradition matters. | There is no compliance with mandatory obligations of this sub-article.  However, amended ACA is in compliance with this sub-article. Section 141 of ACAB envisages MLA with respect to investigations and prosecutions. |  | It is recommended that Bhutanese legislation must be in compliance with this sub-article. |
|  | 3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes: |  |  |  |  |
|  | (a)Taking evidence or Statements from persons; | Section 50 of CCPC provides that a court may take oral depositions in a foreign country subject to that Country’s domestic laws. | There is compliance with the optional obligation of this subparagraph.  Section 145(4) of ACAB provides that evidence or Statements shall be taken from a person and transmitted by courts to the foreign State. | This section is yet to be tested. |  |
|  | (b)Effecting service of judicial documents; | Section 164.6 of CCPC provides for service of warrant in a foreign country through an intervention of that State subject to existence of extradition rights established a by Treaty, Convention and Mutual Agreement. | There is partial compliance with the optional obligation of this subparagraph.  Section 164.6 of CCPC is limited only to a service of warrant. | This section is yet to be tested. |  |
|  | (c)Executing searches and seizures, and freezing; | There is no corresponding legislative provision. This also applies to subparagraphs (d)-(k) of this sub-article. | There is no compliance with the optional obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Sections 142 and 144 of ACAB provides for the searches/seizures and freezing respectively. |  | It is recommended that Bhutanese legislation be in compliance with this subparagraph. This recommendation also applies to subparagraphs (d)-(k) of this sub-article. |
|  | (d)Examining objects and sites; |  |  |  |  |
|  | (e)Providing information, evidentiary items and expert evaluations; |  | There is no compliance with the optional obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 143 of ACAB empowers ACC to order a person to deliver, after obtaining judicial authorization, any document necessary for identifying, locating and quantifying any property or transfer of any property or financial information.  This also applies to subparagraph (f) of this article. |  |  |
|  | (f)Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; |  |  |  |  |
|  | (g)Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; |  | There is no compliance with the optional obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 143 of ACAB provides for the property tracking for a foreign State. This also applies to subparagraph (j) of this sub-article. |  |  |
|  | (h)Facilitating the voluntary appearance of persons in the requesting State Party; |  | There is no compliance with the optional obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 145(2) (b) of ACAB provides that a person will be ordered to deliver to the jurisdiction of the court of the foreign State. |  |  |
|  | (i)Any other type of assistance that is not contrary to the domestic law of the requested State Party; |  | There is no compliance with the optional obligation of this subparagraph.  However, ACAB is in compliance with this subparagraph. Refer to section 146 of ACAB cited in relation to sub-article 21 of this sub-article. |  |  |
|  | (j)Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention; |  | There is no compliance with the optional obligation of this subparagraph.  However, ACAB is in compliance with this subparagraph. Section 145(2) (b) of ACAB provides that a person will be ordered to deliver to the jurisdiction of the court of the foreign State. |  |  |
|  | (k)The recovery of assets, in accordance with the provisions of chapter V of this Convention. |  | There is no compliance with the optional obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 155 of ACAB provides that where the Minister responsible for Finance considers it appropriate, either because an international arrangement so requires or permits or in the interest of comity, the Minister may order that the whole or any part of any property forfeited under this Chapter, or the value thereof, be given or remitted to the foreign State. |  |  |
|  | 4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention. | There is no corresponding legislative provision. | There is no compliance with optional obligation of this sub-article. |  | It is recommended that a legislative provision be introduced to permit transmittal of information without prior request. |
|  | 5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay. | There is no corresponding legislative provision. | There is no compliance with mandatory obligation of this sub-article. |  | It is recommended that such transmittal of information under sub-article 4 of this article be subject to this sub-article. |
|  | 6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance. | There is no corresponding legislative provision. | There is no compliance with optional obligation of this sub-article. |  | It is recommended that MLA under this article should be made subject to this sub-article. |
|  | 7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation. |  |  |  |  |
|  | 8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy. | This issue is addressed in article 40. |  |  |  |
|  | 9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;  (b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de mnimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;  (c)Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality. | There is no corresponding legislative provision. | There is no compliance with optional obligation of this sub-article.  However, amended ACA is in compliance with this sub-article. Section 142(3) of ACAB requires dual criminality for MLA. |  |  |
|  | 10.A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:  (a)The person freely gives his or her informed consent;  (b)The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate. | There is no corresponding legislative provision. | There is no compliance with optional obligation of this sub-article. |  | It is recommended that a person detained or is serving a sentence in Bhutan may be transferred to another State subject to the sub-articles 10, 11 and 12. |
|  | 11.For the purposes of paragraph 10 of this article:  (a)The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred; |  |  |  |  |
|  | (b)The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties; |  |  |  |  |
|  | (c)The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person; |  |  |  |  |
|  | (d)The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred. |  |  |  |  |
|  | 12.Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred. |  |  |  |  |
|  | 13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible. | There is no corresponding legislative provision. | There is no compliance with mandatory obligations of this sub-article.  However, amended ACA is in compliance with this sub-article. Section 147(2) of ACAB proposes to designate the ACC Chairperson as the appropriate competent authority to sign a request for international cooperation in corruption matters. This would bring the Bhutanese law in compliance with this sub-article. |  | It is recommended that ACC be designated as a central authority for corruption offences or extend the mandates of the central authority in SAARC CMACM to cover corruption cases.  The central authority should expedite processing and execution of the requests. |
|  | 14.Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith. | There is corresponding legislative provision. | There is no compliance with the mandatory obligation of this sub-article.  However, amended ACA is in compliance with this sub-article. Section 151 of ACAB requires the request to be in writing. |  |  |
|  | 15.A request for mutual legal assistance shall contain: |  |  |  | It is recommended that, upon enactment of a comprehensive MLA law, a training programs and manuals for officers be developed to assist offices on MLA processes. |
|  | (a)The identity of the authority making the request; | There is no corresponding legislative provision. This also applies to subparagraphs (b)-(f) of this sub-article. | There is no compliance with the mandatory obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 152 (f) of ACAB provides that a request must specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced. |  |  |
|  | (b)The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding; |  | There is no compliance with the mandatory obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 152 (a) of ACAB requires confirmation of either an investigation or prosecution is being conducted for a corruption offence or conviction thereof.  There is no explicit requirement for name and functions of the authority conducting the investigation, prosecution or judicial proceeding. It is, however, implied by section 152 (h) of the same section of ACAB which covers any other information. |  |  |
|  | (c)A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; |  | There is no compliance with the mandatory obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 152 (b) of ACAB requires the request to State the grounds for investigation, prosecution or conviction details for a corruption offence. |  |  |
|  | (d)A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed; |  | There is no compliance with the mandatory obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 152 (e) of ACAB requires whether or not assistance to obtain relevant information, document or material from FIs or other person is required.  Section 152 (g) of ACAB requires identification of property and whether or such property is requires freezing and confiscation. |  |  |
|  | (e)Where possible, the identity, location and nationality of any person concerned; and |  | There is no compliance with the mandatory obligation of this subparagraph.  However, amended ACA complies with this subparagraph. Section 152 (c) and (d) of ACAB requires sufficient particulars of the identity of the person and FIs or other person believed to have relevant information, document or material. |  |  |
|  | (f)The purpose for which the evidence, information or action is sought. |  | There is no compliance with the mandatory obligation of this subparagraph.  However, amended ACA is in compliance with this subparagraph. Section 152 (b) of ACAB requires the Statement of the grounds for investigation, prosecution or conviction details for a corruption offence. |  |  |
|  | 16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution. |  |  |  |  |
|  | 17.A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request. |  | There is no compliance with the mandatory obligation of this sub-article.  However, amended ACA is in compliance with this subparagraph.  Refer to section 146 of ACAB cited in relation to sub-article 21 of this sub-article. |  |  |
|  | 18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party. |  |  |  |  |
|  | 19.The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those Stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay. |  |  |  |  |
|  | 20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party. |  |  |  |  |
|  | 21. Mutual legal assistance may be refused:  (a)If the request is not made in conformity with the provisions of this article;  (b)If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;  (c)If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;  (d)If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted. |  | There is no compliance with the optional obligations of this sub-article. However, ACAB is in compliance with this subparagraph. Section 146 of ACAB provides that if the request is (a) contrary to, or is likely to be contrary to, the Constitution; (b) the execution of the request is likely to prejudice the national interest; and under the law of the foreign State the grounds for refusing to comply with a request from another State is substantially different from paragraph (a) or (b).  Section 146 of ACAB also apply to subparagraph (i) of sub-article 3 and sub-article 17 of this article. |  |  |
|  | 22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. |  |  |  |  |
|  | 23. Reasons shall be given for any refusal of mutual legal assistance. |  | There is no compliance with the mandatory obligations of this sub-article.  However, amended ACA is in compliance with this subparagraph. Section 141 (b) of ACAB requires RGoB to inform a foreign State of its reasons for not executing a request. |  |  |
|  | 24.The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required. |  |  |  |  |
|  | 25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding. |  | There is no compliance with the optional obligation of this sub-article.  However, ACAB is in compliance with this subparagraph. Section 141 (b) of ACAB requires RGoB to inform a foreign State of its reasons for delaying the execution of requests. |  |  |
|  | 26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions. |  |  |  |  |
|  | 27.Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will. |  |  |  |  |
|  | 28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne. |  |  |  |  |
|  | 29.The requested State Party:  (a)Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;  (b)May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public. |  |  |  |  |
|  | 30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article. | Bhutan has not concluded any bilateral or multilateral agreements or arrangements on MLA other than SAARC CMACM which is yet to come into force.  There is SAARC Agreement on Mutual Administrative Assistance in customs matters. | There is no compliance with optional obligations of this article. |  | It is recommended that bilateral or multilateral agreements should be concluded by the national law enforcement agencies involved in the prevention, investigation and prosecution of corruption and related offences, where necessary, to enhance effective cooperation in mutual legal assistance.  Use of SAARC Agreement on Mutual Administrative Assistance in customs matters should be extended to corruption matters.  However, such provisions should have safeguards to ensure Bhutanese citizens are not tried abroad if they can be tried in Bhutan. |
| **Article 47. Transfer of criminal proceedings** | States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution. | There is no corresponding legislative provision. | There is no compliance with optional obligations of this article.  However, amended ACA is in compliance with this subparagraph. Section 159 of ACAB requires to transfer criminal proceedings, to and from, Bhutan in consultation with relevant Government agencies to bring the Bhutanese law in compliance with this sub-article. |  | It is recommended that the proposed provision be in compliance with this sub-article to save resources and to avoid human rights implications due to denial of accused person’s right to be near his family where reintegration would also be easy.  Consider entering into appropriate bilateral arrangements with appropriate countries. |
| **Article 48. Law enforcement cooperation** | 1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:  (a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;  (b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:  (i) The identity, where about and activities of persons suspected of involvement in such offences or the location of other persons concerned;  (ii) The movement of proceeds of crime or property derived from the commission of such offences;  (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;  (c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;  (d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;  (e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers; | Section 55 of ACA empowers ACC to collaborate with other countries and international regional organizations, in facilitating and supporting international effort in the prevention of and fight against corruption including asset recovery, assistance in investigation and sharing of information in accordance with the law and established procedure of the government.  Section 119 of the same Act provides that a public servant is liable for prosecution in Bhutan for acts committed outside Bhutan as if such had been committed in Bhutan.  Section 45(f) of the same Act empowers ACC to investigate against a person abroad accused of corruption in Bhutan or Non-Bhutanese residing in Bhutan charged of corruption in their country of origin, which could facilitate international cooperation.  There is Interpol (National Central Bureau) at the Police headquarters that liaises with other Interpol member countries and sub-regional bureaus (Section 117 of RBPA). | There is compliance with the mandatory obligations of this article. | In 2010, ACC signed MOU with the National Anti-corruption Commission of Thailand for international cooperation in corruption matters. | It is recommended that an effective legislative and administrative framework be developed to facilitate and enhance law enforcement cooperation.  This recommendation also applies to sub-articles 2 and 3.  It is recommended that law enforcement agencies should identify strategic partners and enter into MOUs and other forms of cooperation.  It is recommended that the informal international cooperation between law enforcement agencies be explored. |
|  | (f)To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention. |  |  |  |  |
|  | 2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, enhance the cooperation between their law enforcement agencies. |  |  |  |  |
|  | 3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology. |  |  |  |  |
| **Article 49. Joint investigations** | States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected. | There is no corresponding legislative provision. However, section 55 of ACA may be invoked for collaboration with other countries and international and regional organization in combating corruption. | There is partial compliance with optional obligations of this article.  However, amended ACA is in compliance with this subparagraph. Section 157 of ACAB provides a provision on joint investigations pursuant to bilateral or multilateral, or case-by-case basis which would make the Bhutanese law compliant with this article. | This section is yet to be tested. RGoB has not concluded any bilateral or multilateral agreements or arrangements with any country so far. | It is recommended that strategic partners be identified and bilateral arrangements with strategic partners for joint investigations with the involvement of MoFA and MoHCA be entered into.  It is recommended that bilateral or multilateral agreement or arrangement to jointly investigate and combat corruption be concluded with other appropriate countries.  It is recommended that MoHCA be consulted as some cases are informally taken up with India. |
| **Article 50. Special investigative techniques** | 1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived there from. | Section 112 of ACA authorizes ACC to engage in controlled delivery.  Section 3 read with 43 of EA permits the admissibility of electronically generated evidence.  Sections 86 and 412 of PCB deal with entrapment defense and penalty therefor. | There is partial compliance with mandatory obligations of this sub-article.  However, ACAB is in compliance with this subparagraph. Section 86 of ACAB authorizes ACC to make use of the physical surveillance and observation, undercover operations, video recording, use listening or bugging devices or engage in controlled deliveries.  This also applies to sub-article 4 of this article.  Sections 86 and 412 of PCB prohibit may limit the undercover operations. | Sections 111 and 112 of ACA have been used by ACC on a numbers of occasions and proved to be very successful investigation tools.  The use of video recording has been challenged in court though such challenges have been unsuccessful.  Furthermore, investigative agencies lack the capacities to utilize special investigative techniques. | It is recommended that the application of section 111 of ACA be limited to instances of collusive activities in public tenders and such power be made discretionary in nature as opposed to mandatory in nature.  A free standing law on the use of special investigative techniques be passed in the long run consistent with BC to cover all special investigative techniques identified by this article.  PCB and EA should be reviewed to provide for wider admissibility of evidence generated by special investigative techniques.  There should be training on the use of special investigative techniques to adequately prepare all law enforcing agencies including the judiciary.  The use of these special investigation techniques should be well documented. |
|  | 2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements. | Section 55 of ACA provides a basis for ACC to collaborate with other countries and international and regional organization in combating corruption. | There is partial compliance with optional obligations of this sub-article. | Bhutan has not concluded any bilateral or multilateral agreements or arrangements that would allow for use of special investigative techniques in the context of international cooperation. | It is recommended that bilateral or multilateral agreements or arrangements with appropriate countries on the use of special investigative techniques be concluded to effectively fight corruption globally. |
|  | 3.In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned. | Section 55 of ACA empowers ACC to collaborate with other countries and international and regional organization in prevention and combating corruption. | There is no compliance with the mandatory obligations of this sub-article. | RGoB does not have any arrangement for collaboration with other countries on a case-by- case basis. | It is recommended that until there are agreements or arrangements under sub-article 2 of this article, decisions to use such special investigative techniques at the international level be made on a case-by-case basis. |
|  | 4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part. | There is no specific legislative provision. However, section 55 of ACA may be invoked as a basis for use of controlled delivery at international level.  Section 43 of EA provides admissibility of electronically generated evidence.  Section 48 of CCPC allows impounding and keeping of the evidence in court custody.  Section VIII (A) of EXA permits admissibility of evidence in a court of law. | There is partial compliance with optional obligations of this sub-article.  Section 176 (k) of ACAB envisages the use of controlled delivery at the international level. | This section is yet to be tested at the international context. | It is recommended that a detailed guideline be developed on the use of controlled delivery at the international level.  There should be training on the use of controlled delivery at the international level to adequately prepare all law enforcing bodies including the judiciary. |

**UNCAC CHAPTER 5: ASSET RECOVERY**

Article 51: General provision

Article 52: Prevention and detection of transfers of proceeds of crime

Article 53: Measures for direct recovery of property

Article 54: Measures for direct recovery of property

Article 55: International cooperation for purposes of confiscation

Article 56: Special cooperation

Article 57: return and disposal of asset

Article 58: Financial intelligence unit

Article 59: Bilateral and Multilateral agreements

# UNCAC CHAPTER 5: ASSET RECOVERY

# SUMMARY

UNCAC Chapter V specifies how international cooperation and assistance is to be provided, how the proceeds of crime are to be returned to a requesting State party and how the interests of other victims or legitimate owners are to be considered. The return of criminal proceeds to the country of origin is one of the fundamental objectives of UNCAC because the repatriation of assets derived from corruption or other illicit sources has negative consequences for the State of origin. UNCAC largely represents the need for an effective and deterrent response to corruption and other economic crimes at the international level and the need to address the issue of the return of assets derived from these crimes to victimized States or other States.

**General provision**

The UNCAC article 51 requires States Parties to afford one another the widest measure of cooperation and assistance in asset recovery.

In Bhutan, section 55 of ACC provides a legal basis for ACC to collaborate with other countries and international organizations in asset recovery. However, there are no detailed procedures as to how international cooperation and assistance is to be provided, how proceeds of crime are to be returned to the requesting State and how the interests of other victims or legitimate owners are to be considered. Therefore, Bhutan should consider entering into agreements with other States so as to either accord or seek assistance or cooperation to or from other States and enhanced procedures in asset recovery.

**Prevention and detection of transfers of criminal proceeds**

The UNCAC article 52 requires FIs of a State Party to verify the identity of customers or beneficial owners of high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by public officials. It requires public officials of State Party having foreign accounts to report to the competent authority. The UNCAC also obligate States Parties to ensure that FIs maintain transaction records of such and to use their regulatory and oversight bodies to prevent the establishment of banks that have no physical presence or that are not affiliated with a regulated financial group. States Parties are required to establish effective financial disclosure systems and provide appropriate sanctions for non-compliance, and to share that information with other States Parties when necessary to investigate, claim and recover proceeds of UNCAC offences. The UNCAC article 52 (6) requires States Parties to consider necessary measures to require appropriate public officials having an interest in or authority over a financial account in a foreign country to report that relationship to the competent authorities and to maintain proper records related to such accounts.

In Bhutan, sections 17.3-17.6 of PR require FIs to adopt ‘KYC Policy’, institute ‘Customer Transaction Profile’, and maintain record and report to RMA on a quarterly basis of any single cash transaction of more than Nu.5 million or any private single cash transaction of foreign currencies and Indian Rupees of more than Nu.0.5 million and Nu. 1million. Article 59 of FIA also requires FIs to reveal to RMA any evidence of serious criminal activity either in Bhutan or abroad. However, these legal provisions do not adequately comply with UNCAC requirements because there is no provision for identification of beneficial owners of high-value accounts and enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. RMA do not rigorously enforce even the existing legal provisions. Therefore, FIs’ should be mandated to report to RMA as and when suspicious transactions take place rather that reporting on a quarterly basis. RMA should expedite the enactment of FSB complying with these requirements. The enforcement capability of law enforcement agencies should also be enhanced and the use of ICT should be explored with a view to enable automatic reporting in this regard.

In regard to the requirement of effective financial disclosure systems and provide appropriate sanctions for non-compliance, and information sharing, Bhutan is fully in compliance as section 6 of ADR requires public officials to make their financial disclosure and sanction for non-compliance and section 34 of RMAA provides for the information disclosure system and sanction for non-compliance. ACC could share such information with other countries or international organizations under section 55 of ACA and chapter VI of ADR for specified uses.

There is also adequate compliance with article 52 (6) as RPPOB and section 281 and 173 of NAA and NCA prohibit Bhutanese citizens from opening, maintaining and operating accounts outside Bhutan except with the prior permission of the Royal Monetary Authority. Public officials having an interest in or signature or other authority over an official financial account in a foreign country is regulated by such official’s State auditing systems. The disclosure of financial information of the private account holders abroad is regulated by ADR.

**Measures for direct recovery of property**

The UNCAC article 53 obligates a State Party to allow another State Party to initiate civil actions in its court for the purposes of establishing title to property acquired through the commission of an offence. State Parties must empower their court to order payment of compensation to another State Party and also to permit courts or competent authorities to recognize another State Party’s claim as a legitimate owner of property acquired through commission of corruption offence.

Bhutanese laws partially comply with the requirements of this article. Section 31.2 CCPC requires ‘legal standing’ to initiate legal proceedings in Bhutan. Section 55 of ACA empowers ACC to collaborate with other countries and international and regional organizations in facilitating and supporting international effort in asset recovery. Sections 36-43 and 46 of PCB provide for the payment of damages, compensation and restitution of the property to the victim of an offence, which may also apply to States Parties as parties in proceedings. However, Bhutan should introduce legislative provision in ACA permitting recognition of other State Party’s priority claims and also consider entering into agreements that enable to make arrangements for providing legal standing to foreign States to initiate civil action in the Bhutanese Courts to establish title to or ownership of property acquired through the commission of an offence of corruption.

**Mechanisms for recovery of property through international cooperation in confiscation**

UNCAC article 54 prescribes a number of mechanisms be considered by States Parties for recovery of property through international cooperation in confiscation. These include:

* permit State Party’s authorities to give effect to an order of confiscation issued by a court of another State Party;
* allow the competent authorities to order the confiscation of such property of foreign origin by adjudication of money laundering or other offences within their jurisdiction or by other procedures under domestic law;
* allow confiscation of property without criminal conviction under certain circumstances;
* requires the competent authorities to freeze or seize property upon a freezing or seizure order issued by a competent authority of a requesting State Party concerning property eventually subject to confiscation;
* permits the competent authorities to freeze or seize property upon request by another State when there are sufficient grounds for taking such actions regarding property eventually subject to confiscation; and
* take additional measures to permit their 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.

Bhutanese laws partially comply with the requirements of this article. Sections 21 & 47 of PCB and 123 of ACA provides for the confiscation of property by adjudication of money-laundering under section 277 of PCB. Section 123 of ACA and 47 of PCB do not allow confiscation of property constituting criminal proceeds without conviction.Section 55 of ACA empowers ACC to collaborate with other countries and international and regional organizations to facilitate and support international effort for asset recovery. However, Bhutan should consider entering into agreements with other States clearly stating the procedures as to whether the competent authority of the requested State Party should recognize and enforce the foreign confiscation order or institute new proceedings in accordance with domestic law and issue of a confiscation order. Bhutan should emphasis on procedural aspect of recognition and enforcement of foreign Court’s confiscation order. The need of legislative provision enabling the confiscation or property of foreign or domestic origin without criminal conviction is also recommended.

I**nternational cooperation for the purposes of confiscation**

The UNCAC article 55(1) (a) & (b)mandate States Party to provide assistance to a wide extent to another requesting State Party for confiscation of the proceeds of crime. In such instances, the State Party needs to submit requests for confiscation of proceeds of crime to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or submit to its competent authorities the confiscation order issued by the requesting State Party with a view to giving effect to it. UNCAC article 55(2)-(9) require State party to take a number of measures, including the following:

* measures to identify, trace, freeze or seize proceeds of crime, property, equipment or other instrumentalities;
* procedural requirements to be followed when a request is made pursuant to this article;
* respond to confiscation requests in accordance with the provisions of its domestic laws or any bilateral or multilateral agreements with the requesting State;
* furnish copies of their laws and regulations that give effect to the article and of any subsequent changes of such laws to the Secretary-General of the United Nations;
* consider UNCAC as the sufficient treaty basis if State party make the existence of a treaty a condition to taking such steps;
* refuse such requests or lift provisional measures on the basis that it did not receive sufficient and timely evidence or that the property is of a *de minimis* value;
* an opportunity to present the reasons in favor of continuing the measures in case of refusal or lifting of provisional measures, the requested State Party shall give the requesting State Party; and
* Not to construe the provisions of the article as prejudicial to the right of a bona fide third party.

As Bhutan is yet to accede to UNCAC, there is no question of compliance with sub-article 5. There is partial compliance with the rest of the requirements of this article as section 55 of ACA provides for the international cooperation but there are no procedures for securing or giving such cooperation. However, ACAB is in compliance with this requirement.

**Special cooperation**

The UNCAC article 56 requires States Parties to disclose information related to criminal proceeds to other States Parties on its own motion, for the purposes of assisting in the initiation or carrying out of investigations, prosecutions or judicial proceedings.

Section 55 of ACA empowers ACC to collaborate with other countries and international and regional organizations, in facilitating and supporting international effort in the sharing of information. However, Bhutan has neither made such information disclosure nor received it from other countries. Therefore, FIU should consider a policy for disclosure of information to other FIUs on its own accord.

**Return and disposal of Asset**

The UNCAC article 57 mandates that confiscated property shall be returned to its prior legitimate owners and to take measures to enable its competent authorities to return the confiscated property by taking into account the rights of bona fide third parties. States Parties may deduct reasonable expenses incurred for the confiscation process and may also consider the conclusion of agreements or arrangements for the final disposition of assets on a case by case basis. Furthermore, article permits State party to enter into mutually acceptable arrangements for the disposal of confiscated property.

Section 181.4 and 181.5 of CCPC provides for the return of items irrelevant to a case to the owner and for the return of the item seized to the possessor or retention of the same until the ownership is established if there is a dispute. However, Bhutan does not comply with these requirements as these legal provisions are inadequate for the return and disposal of assets in the context of international cooperation and laundering of criminal proceeds and also Bhutanese laws do not provides for the protection of the rights of bona fide third parties. Therefore, Bhutan legislative provisions on how to return and dispose of, including by return to its prior legitimate owners and the protection of the rights of bona fide third parties and also consider entering into bilateral and multilateral agreement in order to enforce this article.

**Financial Intelligent unit**

The UNCAC article 58 requires States Parties to cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a Financial Intelligence Unit to be responsible for receiving, analyzing and disseminating information to the competent authorities on suspicious financial transactions.

Bhutanese laws and measures governing the FIUs and recommendations made in connection with it are addressed under UNCAC article 14, which also apply here as well.

**Bilateral and multilateral agreements and arrangements**

The UNCAC article 59 advocates the formulation of bilateral or multilateral agreements between States Parties to enhance effectiveness of international cooperation.

Bhutan as a sovereign State has the legal right to conclude bilateral and multilateral agreements with other countries. Once such agreements are made, RGoB will be able to share information relating to corruption, provide cooperation for confiscation and disposal of property, and request for the return of property from another State. Moreover, formulation of bilateral or multilateral agreements will open different avenues of international cooperation.

**Asset Recovery**

**UNCAC Articles 51-59**

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| **Article 51. General Provision** | The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard. | Section 55 of ACA provides a legal basis for ACC to collaborate with other countries in asset recovery. | There is compliance with mandatory obligations of this article.  Chapter IX of ACAB outlines more exhaustive provisions on international cooperation, such as: property tracking for a foreign State, freezing and confiscation of property in international cooperation, and return of assets to foreign States. | Section 55 is yet to be tested as there is no request in regards to asset recovery.  Bhutanese law enforcement agencies lack necessary skills and capacity to handle issues relating to assets recovery. | It is recommended that agreements with other States to either accord/seek assistance or cooperation to/from foreign State and enhanced procedural measures in this regard be considered.  Law enforcement agencies, including the judiciary and prosecution should be trained to develop their skills or capacity to handle assets recovery matters. |
| **Article 52. Prevention and detection of transfers of proceeds of crime** | 1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer. | Sections 17.3 and 17.4 of PR require FIs to adopt ‘KYC Policy’ and institute ‘Customer Transaction Profile’.  Section 17.5 of PR requires FIs to maintain record of any single cash transaction of more than Nu. 5 million and report to RMA on a quarterly basis.  Sec. 17.6 of PR requires FIs to report to RMA any private single cash transaction of foreign currencies and Indian Rupees of more than Nu.0.5 million and Nu. 1 million respectively to RMA on a quarterly basis.  Article 59 of FIA also requires FIs to reveal to RMA any evidence of serious criminal activity either in Bhutan or abroad. | There is partial compliance with mandatory obligations of this sub-article.  Identification of beneficial owners of high-value accounts and the scrutiny of accounts sought or maintained by or on behalf of individuals who are or have been, entrusted with prominent public functions and their family and associates are not captured by Bhutanese laws.  Enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates are not emphasized.  Real estate and lawyer organizations are beyond the ambit of anti-money laundering laws. | Comments on article 14 apply here as well.  FIs’ should be mandated to report to RMA as and when suspicious transactions take place rather that reporting on a quarterly basis.  RMA should also rigorously enforce these legal provisions and to enhance capacity, the use of ICT should be explored.  FIU has been established in the Central Bank, which also includes ACC as members of the coordinating committee as well as the operations committee.  FIs face challenges in fighting money laundering and in its implementation action plan. | It is recommended that RGoB should expedite the enactment of FSB and its Regulations, Such Regulations must meet the requirements of this article.  There is need for training on fighting money laundering for FIs.  It is recommended that real estate and lawyer organization as well should be made the subject of money laundering. |
|  | 2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:  (a)Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and | There is no corresponding legislative provision. | There is no compliance with the mandatory obligations of this sub-article. |  | It is recommended that legislative provisions be introduced in appropriate laws to mandate RMA to issue such advisories in compliance with this sub-article. |
|  | (b)Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify |  |  |  |  |
|  | 3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner. | There is no corresponding legislative provision. However, article 51 of FIA imply as FIs are require to maintain the records of their State of affairs in clearly and correctly for a period of, at least, five years. | There is partial compliance with the mandatory obligations of this sub-article. Records envisaged by article 51 of FIA relate to FI’s general State of affairs rather that record of FIs’ clients. |  | It is recommended that legislative provisions be introduced in Anti-Money Laundering and Combating of Financing of Terrorism Regulation mandating FIs to keep their clients’ records for an appropriate period of time to minimize doubt, which should be synchronized with a Statute of Limitation. |
|  | 4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group | Article 6 of FIA provides that representative offices in Bhutan of FIs domiciled abroad shall not provide financial services or make payments within the territory of Bhutan nor shall institutions domiciled abroad without offices in Bhutan provide financial services directly or through agents within the territory of Bhutan or make payments directly or through agents other than institutions licensed to conduct financial services within Bhutan. | There is compliance with the mandatory obligations of this sub-article. |  |  |
|  | 5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention. | Section 6 of ADR requires all public officials to declare their income, assets and liabilities failure of which attracts liabilities and this to some extent addresses the public disclosure requirements.  Section 55 of ACA empowers ACC to share information with other countries or international organizations.  Section 34 of RMAA provides for the information disclosure system and sanction for non-compliance. | There is compliance with the optional obligations of this sub-article. |  |  |
|  | 6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance | RPPOB restricts Bhutanese citizens from opening, maintaining and operating accounts outside Bhutan except with the prior permission of the Royal Monetary Authority.  Section 281 of NAA prohibits a member from maintaining or operating bank account outside Bhutan.  Section 173 of NCA prohibits maintenance or operation of bank accounts outside Bhutan.  Article 26 (d) & (e) of the RMAA authorizes the RMA to open and maintain accounts abroad; and to act as agent or correspondent for foreign central banks, foreign FIs, foreign governments, foreign government agencies and institutions, and international institutions  Public officials having an interest in or signature or other authority over an official financial account in a foreign country is regulated by such official’s State auditing systems.  The disclosure of financial information of the private account holders abroad is regulated by ADR. | There is compliance with the optional obligations of this sub-article. |  |  |
| **Article 53.**  **Measures for direct recovery of property** | Each State Party shall, in accordance with its domestic law:  (a) Take such measures as may be necessary 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 this Convention; | Sec. 31.2 CCPC provides that a petitioner must have “legal standing” to initiate legal proceedings in Bhutan.  Section 55 of ACA empowers ACC to collaborate with other countries and international and regional organizations in facilitating and supporting international effort in asset recovery. | There is partial compliance with the mandatory obligation of this subparagraph. | This section is yet to be tested as there is no case law. There is uncertainty as to whether the definition of ‘legal standing’ would be extended to State Party as well. | It is recommended that an amendment be made to the CCPC to ensure that State Parties have legal standing in appropriate circumstances.  There is need for bilateral agreements to enable State Parties to have legal standing so as to initiate civil action in the Bhutanese Courts to establish title to or ownership of property acquired through the commission of an offence of corruption.  However, domestic legal requirements must be complied with, including the retention of Bhutanese legal counsel. |
|  | (b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and | Sections 36-43 and 46 of PCB provide for the payment of damages, compensation and restitution of the property to the victim of an offence. | There is no compliance with mandatory obligations of this paragraph. | There is no case law on this issue as these sections are yet to be tested. There is uncertainty as to whether the definition of ‘victim’ would be extended to State Party. | It is recommended that an amendment to the CCPC be made to allow compliance with this subparagraph. |
|  | (c) Take such measures as may be necessary to 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 an offence established in accordance with this Convention. | There is no corresponding legislative provision. | There is no compliance with mandatory obligations of this paragraph. | There is no case law on this issue. | It is recommended that an amendment be made to the CCPC to permit recognition of other State Party’s priority claims. |
| **Article 54.**  **Mechanisms for recovery of property through International cooperation in confiscation** | 1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law: |  |  |  |  |
|  | (a)Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party; | Section 55 of ACA empowers ACC to collaborate with a foreign State to facilitate and support international effort for asset recovery.  This applies to all the subparagraphs of this sub-article. | There is no compliance with the mandatory obligation of this subparagraph as section 55 of ACA is insufficient for the purpose.  However, amended ACA is in compliance with this subparagraph. Section 153 of ACAB recognizes an order of confiscation issued by a court of a foreign State. | Section 55 of ACA is yet to be tested as Bhutan has not received an order of confiscation issued by a court of another foreign State. | It is recommended that Bhutanese legislation must be in compliance with this subparagraph. |
|  | (b)Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and |  | There is no compliance with the mandatory obligations of this subparagraph. |  | It is recommended that legislative provisions be introduced in compliance with this subparagraph to effectively fight corruption on a global scale. |
|  | (c) Consider taking such measures as may be necessary to allow confiscation of such 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. | There is no corresponding legislative provision. | There is no compliance with the optional obligations of this subparagraph. |  | It is recommended that legislative provisions be introduced in compliance with this subparagraph to effectively fight corruption on a global scale. |
|  | 2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law: |  |  |  |  |
|  | (a)Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; | Section 55 of ACA empowers ACC to collaborate with a foreign State to facilitate and support international effort for asset recovery.  This also applies to subparagraph (b) of this sub-article. | There is no compliance with the mandatory obligation of this subparagraph as section 55 of ACA is insufficient for the purpose.  However, amended ACA is in compliance with this subparagraph. Section 153 of ACAB recognizes an order of confiscation issued by a court of a foreign State. | Section 55 of ACA is yet to be tested as Bhutan has not received a freezing or seizure order issued by a court or competent authority of a foreign State. | It is recommended that Bhutanese legislation ACA be in compliance with this subparagraph. |
|  | (b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and |  | There is no compliance with the mandatory obligation of this subparagraph as section 55 of ACA is insufficient for the purpose.  However, amended ACA is in compliance with this subparagraph. Section 153 of ACAB recognizes an order of confiscation issued by a court of a foreign State. |  | It is recommended that Bhutanese legislation must be in compliance with this subparagraph. |
|  | (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. |  |  |  |  |
| **Article 55. International Cooperation for purposes of confiscation** | 1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:  (a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or | Section 55 of ACA provides for the international cooperation.  AC Amendment Bill seeks to address this issue in chapter ix. | There is partial compliance with the mandatory obligations of this sub-article.  There are no procedures for securing such cooperation.  Chapter IX of ACAB provides detailed provisions on this issue.  There will be full compliance with this paragraph. | Section 55 of ACA is yet to be tested. There is no case law on it. | It is recommended that an amendment be introduced to Bhutanese laws and Bhutan should consider entering into agreements with other countries for the purposes of this article.  These recommendations also apply to other sub-articles.  There is need to enter into international cooperation required for international confiscation. |
|  | (b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party. |  |  |  |  |
|  | 2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party. |  |  |  |  |
|  | 3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:  (a)In the case of a request pertaining to paragraph 1 (a)of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a Statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law; |  |  |  |  |
|  | (b) In the case of a request pertaining to paragraph 1 (b)of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a Statement of the facts and information as to the extent to which execution of the order is requested, a Statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a Statement that the confiscation order is final; |  |  |  |  |
|  | (c)In the case of a request pertaining to paragraph 2 of this article, a Statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based. |  |  |  |  |
|  | 4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party. |  |  |  |  |
|  | 5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations. | Bhutan is yet to accede to and ratify the UNCAC. |  |  |  |
|  | 6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis |  |  |  |  |
|  | 7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value. |  |  |  |  |
|  | 8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure. |  |  |  |  |
| **Article 56. Special cooperation** | 9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties. Without prejudice to its domestic law, each State Party shall endeavor to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the convention. | Section 55 of ACA provides that the ACC may collaborate with other countries and international and regional organizations, in facilitating and supporting international effort in the sharing of information. | There is partial compliance with the optional obligations of this article. There are, however, no procedural measures in place on how to secure or tender special cooperation. | Bhutan has neither made such information disclosure nor received it from other countries. | FIU to be established under FSA should consider a policy for disclosure of information to other FIUs on its own accord. |
| **Article 57. Return and disposal of assets** | 1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law. | There are no corresponding legislative provisions. Neither are there other provisions in any law related to MoFA or MOUs. | There is no compliance with the mandatory obligations of this sub-article. |  | It is recommended that legislative provisions be introduced in Bhutanese laws on how to return and dispose of, including by return to its prior legitimate owners. |
|  | 2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties. | There are no corresponding legislative provisions. | There is no compliance with the mandatory obligations of this sub-article.  Chapter IX of ACAB addresses this issue. |  | It is recommended that legislative provisions in ACA to protect the rights of bona fide third parties.  This recommendation also applies to sub-articles 3-4 of this article. |
|  | 3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:  (a)In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgment in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party; | There are no corresponding legislative provisions. | There is no compliance with the mandatory obligations of this sub-article.  Chapter IX of ACAB addresses this issue. |  | Consider introducing legislative provisions. |
|  | (b)In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgment in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property; |  |  |  |  |
|  | (c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime. |  |  |  |  |
|  | 4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article. |  |  |  |  |
|  | 5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by case basis, for the final disposal of confiscated property. | Section 55 of ACA provides for collaboration with other countries and international and regional organizations in the prevention and fight against corruption | There is partial compliance with the optional obligations of this sub-article. |  | Consider entering into bilateral and multilateral agreement in order to enforce this article. |
| **Article 58. Financial intelligence unit** | States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a **financial intelligence unit** to be responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious of financial transactions. | Issues relating to FUIs are addressed in connection with UNCAC article 14 and those recommendations or observations apply here as well. |  |  |  |
| **Article 59. Bilateral and multilateral agreements and arrangements** | States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the convention. | Section 55 of the ACA provides for collaboration with other countries and international and regional organizations in the prevention and fight against corruption | There is partial compliance with the optional obligations of this article. Bhutan has not concluded any bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation. |  | Bhutan may enter into bilateral and multilateral arrangements in order to articulate and enforce this article. |

**UNCAC CHAPTER 6: TECHNICAL ASSITANCE AND INFORMATION EXCHANGE**

Article 60: Training and technical assistance

Article 61: Collection, exchange and analysis of information on corruption

Article 62: Other measures: implementation of the Convention through economic development and technical assistance.

**UNCAC CHAPTER 6: TECHNICAL ASSISTANCE AND INFORMATION EXCHANGE**

# SUMMARY

**Training**

The UNCAC article 60(1) calls on States Parties, to the extent necessary, to initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption on:

* effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;
* building capacity in the development and planning of strategic anticorruption policy;
* MLA;
* evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;
* preventing, combating, detecting, freezing and surveillance of the transfer or movement of criminal proceeds; and
* appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of criminal proceeds;
* witness protection methods, national and international rules, and in languages.

The provision of training for anti-corruption purposes is provided by section 54 (b) (h) (i) of ACA. Chapter 8 of ACCSR and HRD Master Plan provide a general policy framework for sustainable human resources development by training ACC staffs to equip them with necessary qualifications, skills and knowledge relevant to their jobs. With the assistance of donor communities, ACC staffs have been receiving general training in the forms of symposiums, attachments, study tours, meetings, workshops, etc. in the areas of corruption prevention, detection, and investigation, including the building capacity in the development and planning of strategic anticorruption policy. However, training on other areas highlighted by UNCAC is mostly lacking. Therefore, Bhutan should focus its future training programmes on areas covered UNCAC article 60 (1) to prepare its law enforcement, prosecution, or other judicial officers with necessary skills.

**Technical assistance**

The UNCAC article 60(2) calls on States Parties to consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

Just like any other developing countries, Bhutan in general, and ACC in particular, is heavily dependent on the good will of the donor countries for technical assistance for its human resources development needs. These donor countries include: Government of India in strengthening office of ACC, Swiss Development Cooperation in good governance, DANIDA, UNDP and Government of Korea.

Bhutan will continue to depend on the good will of its donor communities to prepare its law enforcement, prosecution, or other judicial officers with specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance. Therefore, ACC should consider seeking technical assistance in the field of extradition and mutual legal assistance; and review its technical needs with a view to taking advantage of its existing assistance.

**Collection, exchange and analysis of information on corruption**

UNCAC article 61 requires State Party to consider analyzing, in consultation with experts, trends and the circumstances in which corruption offences are committed. It also requires State party to consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency by enhancing the monitoring and evaluation framework for anti-corruption policies, strategies and activities.

ACC’s Research Section within its Prevention Division collects and analyses data and prepare reports on trends of corruption. Some of these studies are: The Corruption Perception Survey 2007, People's Attitude towards Corruption and Anti-Corruption Commission 2008, ACC Quarterly news updates, ACC Annual reports, Reports by Parliamentary Committees, and Integrity Assessment Report 2009. As the Research Section is resourced by an officer or two, its capacity should be developed to a more professional level both in terms of number and skills or knowledge to comply with the requirements of this article. And there is also need to subject theses studies to peer review and analysis.

**Other measures: Implementation of the Convention through economic development and technical assistance**

UNCAC article 62 is devoted to other practical efforts States Parties must take to comply with UNCAC. States Parties are required to take measures conducive to implementing the Convention through international cooperation. Furthermore, in coordination with other States Parties and international and regional organizations, States Parties are obligated to increase their cooperation with developing States to improve their capacity to fight corruption, to enhance material and financial assistance to developing countries to bolster their anti-corruption efforts, to provide technical assistance to developing countries to aid them in implementing the Convention, and to encourage and persuade other States Parties and financial institutions to assist in the aforementioned efforts. If possible, these efforts should be without prejudice to existing foreign assistance commitments or financial arrangements at the bilateral, regional or international level.

Solidarity and partnership among the countries must be nurtured as the foundation of fighting corruption. Bhutan is a member of the ADB/OECD Anti-Corruption initiative for Asia Pacific and has many working relationships with Anti-corruption agencies around the region. ACC is also exploring other bilateral and regional cooperation for greater efficiency of its national anti-corruption drive.

**Technical Assistance and Information Exchange**

**UNCAC Articles 60-62**

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| **60. Training and technical assistance** | 1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programs for its personnel responsible for preventing and combating corruption. Such training programs could deal, inter alia, with the following areas:  (a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods | Section 54 (b) (h) (i) of the Anti Corruption Act of Bhutan 2006 has some provisions on program and measures to curb corruption. | There is no compliance with the mandatory obligations of this subparagraph. |  | It is recommended that ACC in consultation with other stakeholders carry out proper training needs assessments across all UNCAC parameters to identify and then prioritize the key areas.  ACC must devise and lead training strategies to ensure that there is no overlap and duplication.  There should be training and workshops in this area for law enforcement officers, prosecutors,  Judges or other judicial officers.  It is recommended to second Bhutanese LEAs staffs for few months to the ICAC (New South Wales), ICAC (Hong Kong), CPIB (Singapore) and India. |
|  | (b) Building capacity in the development and planning of strategic anticorruption policy; | Section 54(b) and 45(k) of ACA requires ACA to prepare a national strategy and program.  South Korea trained ACC officials on corruption risk management, which is now being conducted mostly in public sector by ACC. | There is no compliance with the mandatory obligations of this subparagraph. There has been no specific training on developing and planning strategic anti-corruption policy though components of it have been availed through various training programs. |  | There is need for specific training on developing and planning strategic anti-corruption policy. |
|  | (c)Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention; | Section 55 gives ACC a generic power to facilitate and support international effort in preventing and fighting corruption. | There is no compliance with the mandatory obligations of this subparagraph. | However, none of the competent authorities have been trained on MLA. | Comprehensive training is required on the preparation and execution of letters of request. |
|  | d)Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector; | ACC has undertaken studies to analyze systems, procedures and practices in the management of natural resources such as minerals and rural timber.  RGoB has commissioned two studies in 1999 and 2005 on how to promote good governance in the public service among others.  PRR has been revised in 2009 along with its subsidiary documents such as SBD for goods, works & Services, including training of procurement personnel.  PEMS has been operationalized to provide single uniform accounting system throughout government agencies by doing away two accounting systems.  MORB System has also been introduced to further improve the management of budget addressing fund requirement for multiyear projects and spillover programs. | CPIB of Singapore, ICAC of Hong Kong, and ICAC of Australian New South Wales trained ACC personnel on system study. However, these are inadequate.  The recommendations and findings of these reports largely remained unimplemented.    PRR does not capture the entire procurement process such as procurement planning. | Training in this area is insufficient. | There is need for more training in this area to learn from other successful jurisdictions.  PRR should be revised to capture procurement planning process as well to make procurement system efficient and comprehensive.  There is need to effectively enforce the Budget, Financial and Property Management Manuals to guide training in these areas. |
|  | (e)Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds; | CPIB of Singapore and ICAC of Hong Kong trained ACC investigators on search; seizure; and tracing, freezing and confiscation of corruption proceeds among others from 15-17 Sept. 2008.  ACC conducts basic training on investigation for its new investigators.  ICAC of Australian New South Wales trained the personnel of RBP, OAG and ACC from Jan. 3-6, 20110 on search and seizure among others.  RMA has trained the members of the Oversight and Operation Committees of FIU on anti-money laundering.  **These also apply to subparagraphs (f)-(h)** | There is no coherent training program to address issues under subparagraphs (f)-(h).  **These also apply to subparagraphs (f)-(h)** |  | There is need for the necessary legislation to address issues under subparagraphs (f)-(h) in order to provide legal grounding for training.  **These also apply to subparagraphs (f)-(h)** |
|  | (f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention; |  |  |  |  |
|  | (g)Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds; |  |  |  |  |
|  | (h)Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention; |  |  |  |  |
|  | (i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and in languages. | Provisions relating to this are scattered in ACA, RBPA, Evidence Act and CCPC. | There is no training program on methods for protecting victims and witnesses. | There is no Witness Protection Program and designated Witness Protection Agency. | LEA personnel should be trained on methods for protecting victims and witnesses. |
|  | (j)Training in national and international regulations and in languages. | Occasionally, Tourism Council of Bhutan offers basic training in foreign languages to tourist guides. | Tourism Council of Bhutan’s training does not specifically target LEA personnel. |  | LEA personnel, particularly those charged with fighting corruption, should undergo specialized training in foreign languages. |
|  | 2.States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programs to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance. | Section 55 of ACA gives a generic power for cooperation between ACC and foreign governments, including international and regional organizations.  The Regional Consortium on UNCAC Compliance Reviews provided invaluable technical assistance in the Self-assessment.  Singapore, Hong Kong, and Australian New South Wales anti-corruption agencies have provided ACC technical assistance in investigation.  ACC and its Thai counterpart have signed an MOU whose objectives include training of personnel of the respective agencies.  Bhutan has not received any request for technical assistance. | There is partial compliance with the mandatory obligations of this sub-article. ACAB (Chapter IX) which provide more details on MLA is in compliance with this sub-article.  However, as Bhutan is yet to develop the expertise in this area, and also being a developing country, it has limitation on its capacity to provide technical assistance. |  | Bhutan should sign and ratify more treaties with other countries in relation to extradition and MLA.  The Government needs to be proactive and receptive to technical assistance. |
|  | 3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements. | Bhutan is a member of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific since 2007. | Bhutan has subscribed to a very few bilateral and multilateral frameworks. Consequently, Bhutan has not benefitted substantially from bilateral, multilateral and regional technical assistance. |  | Bhutan needs to establish more collaborative links in order to benefit from technical assistance envisaged in this article. |
|  | 4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption. | Bhutan has not received any request from any country for technical assistance.  Bhutan has sought technical assistance from South Korea, Singapore, Hong Kong, and Australian New South Wales. | Bhutan lacks adequate capacity to meaningfully offer technical assistance envisaged in UNCAC. |  | There is need to develop Bhutan’s internal capacity to offer technical assistance. |
|  | 5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective. | Bhutan is yet to develop this kind of expertise in relation to international asset recovery. |  |  | Neither ACC nor Bhutan as a country has the expertise to fully implement this provision. |
|  | 6. States Parties shall consider using sub regional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition. | Bhutan has participated in a number of fora within the region and beyond in these areas. For example, the 14th IACC, the 3rd Asia-Pacific INTACT (Integrity in Action) Community of Practice Workshop on Anti-Corruption, the Regional Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific since 2007, and first International Anti-corruption Conference for Asia. | Sharing of experiences and best practices from other jurisdictions has helped Bhutan to prevent and combat corruption better. |  |  |
|  | 7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programs and projects. |  | Bhutan is a beneficiary of technical assistance e.g. from the Regional Consortium on UNCAC Compliance Reviews. |  | There is need to undertake a technical needs assessment to determine the form of technical assistance required for preventing and combating corruption. |
|  | 8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programs and projects in developing countries with a view to implementing this Convention. |  |  |  |  |
| **Article 61. Collection, exchange and analysis of information on corruption** | 1. Each State Party shall consider analyzing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed. | As per Section 54 (g) of ACA, the ACC has the duty to publish its annual performance report to the public.  The research section of the prevention division of the ACC collects and analyses data and prepare reports on trends of corruption. | There is partial compliance with the optional obligations of this sub-article. |  | ACC’s research capacity should be developed through SAARC regional initiatives, if any. |
|  | 2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption. |  |  |  | Required to increase and facilitate information sharing with other countries. |
|  | 3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency | ACC’s Research Section within its Prevention Division collects and analyses data and prepare reports on trends of corruption. Some of these studies are:   * The Corruption Perception Survey 2007, * People's Attitude towards Corruption and Anti-Corruption Commission 2008, * ACC Quarterly news updates, * ACC Annual reports, * Reports by Parliamentary Committees, and * Integrity Assessment Report 2009. | There is compliance with the optional obligations of this sub-article. | ACC’s Research Section is resourced by an officer or two and this hamper research activities. | ACC’s Research Section’s capacity should be developed to a more professional level both in terms of number and skills or knowledge to comply with the requirements of this article.  There is also need to subject theses studies to peer review and analysis.  The monitoring and evaluation framework for anti-corruption policies, strategies and activities need to be further enhanced. |
| **Article 62. Other measures: Implementation of the Convention through economic development and technical assistance.** | 1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development. |  |  |  |  |
|  | 2.States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:  (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption; |  |  |  |  |
|  | (b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully; |  |  |  |  |
|  | (c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavor to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention; |  |  |  |  |
|  | d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programs and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention. |  |  |  |  |
|  | 3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level. |  |  |  |  |
|  | 4.States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this convention to be effective and for the prevention, detection and control of corruption. |  |  |  |  |

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## UNCAC CHAPTER 7: MECHANISMS FOR IMPLEMENTATION

## Article 63: Conference of the State Parties to the Convention

## Article 64: Secretariat

# UNCAC CHAPTER 7: MECHANISMS FOR IMPLEMENTATION

# SUMMARY

## The UNCAC chapter 7 (article 63-64) establishes and makes provisions for the CoSP to UNCAC, and the Secretariat. CoSP to UNCAC was established to improve the capacity of and cooperation between States parties to achieve the objectives set forth in UNCAC and to promote and review its implementation.

Bhutan filled and submitted the UNCAC Self Assessment checklist in 2007 and commissioned this Self-Assessment exercise in the beginning of 2010. However, as the country is not yet a State Party, Bhutan has not participated in the CoSP and any of the Open Ended Intergovernmental working groups on the Convention such as; the implementation review mechanism, asset recovery, and technical assistance.

With regard to implementation of the Convention, the report underscores the importance of effective enforcement of existing legislation and efficient implementation of policies and administrative regulations and practices. Furthermore, in order to firmly anchor the evaluation of corruption prevention and combating efforts, the Report acknowledges the importance of the implementation review mechanism of the Conference of States Parties as a complementary avenue of ensuring intended results are achieved.

**Mechanisms for Implementation**

## UNCAC Articles 63-64

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| Article 63. Conference of the State Parties to the Convention | 1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation. | Bhutan is yet to ratify or accede to UNCAC. |  |  | It is recommended that RGoB should participate in the CoSP after ratification or accession to UNCAC. |
|  | 2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference. |  |  |  |  |
|  | 3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities. |  |  |  |  |
|  | 4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions; |  |  |  |  |
|  | (b)Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article; |  |  |  |  |
|  | (c)Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations; |  |  |  |  |
|  | (d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work; |  |  |  |  |
|  | (e) Reviewing periodically the implementation of this Convention by its States Parties; |  |  |  |  |
|  | (f)Making recommendations to improve this Convention and its implementation; |  |  |  |  |
|  | (g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect. |  |  |  |  |
|  | 5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties. |  |  |  |  |
|  | 6. Each State Party shall provide the Conference of the States Parties with information on its programs, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered. |  |  |  |  |
|  | 7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention. |  |  |  |  |
| **Article 64. Secretariat** | 1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention. |  |  |  |  |
|  | 2. The secretariat shall:(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties; |  |  |  |  |
|  | (b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and |  |  |  |  |
|  | (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations. |  |  |  |  |

## 

## UNCAC CHAPTER 8: FINAL PROVISIONS

## Article 65: Implementation of the Convention

## Article 66: Settlement of disputes

## Article 67: Signature, ratification, acceptance, approval and accession

## Article 68: Entry into force

## Article 69: Amendment

## Article 70: Denunciation

## Article 71: Depository and languages

# UNCAC CHAPTER 8: FINAL PROVISIONS

# SUMMARY

The UNCAC chapter 8 (article 65-71) contains the Final Provisions in relation to its implementation; settlement of disputes; signature, ratification, acceptance, approval and accession; entry into force; amendment; denunciation; depository and languages.

## Bhutan has just signed but yet to ratify UNCAC. Consistent with article 9(24) of BC, which requires RGoB to pursuit the promotion of goodwill and cooperation with nations, foster respect for international law and treaty obligations, it is recommended that RGoB expedite the ratification or accession to UNCAC. This Self-Assessment Report shows that Bhutan has complied fully with a good number of the measures required by UNCAC. Bhutan has, for instance, established ACC, criminalized most of the offences specified in the UNCAC chapter 3, operationalized ADR and GR in 2008 and 2009 respectively for all public officers, among other things. We hope to implement many of the findings and recommendations of the Report with the enactment of Anti-corruption Amendment Bill which is under consideration by Parliament.

With the implementation of the findings and recommendations of this Self-Assessment Report, Bhutan would be implementing UNCAC provisions prior to ratification.

## If Bhutan so ratifies, it is recommended that Bhutan should send a notification to the Secretary General of the United Nations, stating that “Pursuant to Article 66, paragraph 3 of the United Nations Convention against Corruption, RGoB does not consider itself bound by paragraph 2 of Article 66 of UNCAC.” RGoB should take a stand that the consent of all parties to such a dispute is necessary, in each individual case, before the dispute is submitted to arbitration or to the International Court of Justice.

## 

## Final Provisions

## UNCAC Articles 65-71

| **UN CONVENTION AGAINST CORRUPTION** | | **BHUTANESE LAWS, REGULATIONS AND ADMINISTRATIVE MEASURES** | **SELF-ASSESSMENT**  **UNCAC-BHUTANESE FRAMEWORK** | | **RECOMMENDATIONS** |
| --- | --- | --- | --- | --- | --- |
| **ARTICLE** | **CONTENTS** | **LEGISLATIVE AND REGULATORY** | **ENFORCEMENT AND IMPLEMENTATION** |
| Article 65. Implementation of the Convention | 1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention. | Bhutan is yet to ratify the UNCAC. However, this Self-assessment exercise will lead to the amendment of ACA and, if enacted by Parliament, it is expected to bridge many of the identified gaps. |  |  |  |
|  | 2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption. |  |  |  |  |
| Article 66.Settlement of disputes | l. States Parties shall endeavor to settle disputes concerning the interpretation or application of this Convention through negotiation. |  |  |  |  |
|  | 2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court. |  |  |  |  |
|  | 3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation. |  |  |  | It is recommended that RGoB makes a reservation that Bhutan does not consider itself bound by paragraph 2 of this article at the time of ratification or accession to UNCAC. |
|  | 4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations. |  |  |  |  |
| Article 67. Signature, ratification, acceptance, **approval and accession** | 1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005. | Bhutan has just signed UNCAC on September 15, 2005. Bhutan is yet to ratify or accede to UNCAC. |  |  | It is recommended that RGoB ratify or accede to UNCAC. |
|  | 2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article. | None of the regional economic integration organisations of which RGoB is a member has signed or ratified UNCAC. |  |  |  |
|  | 3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of 55 ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence. |  |  |  |  |
|  | 4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence. |  |  |  |  |
| **Article 68. Entry into force** | 1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization |  |  |  |  |
|  | 2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later. |  |  |  |  |
| **Article 69. Amendment** | 1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties. |  |  |  |  |
|  | 2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa. |  |  |  |  |
|  | 3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties. |  |  |  |  |
|  | 4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment. |  |  |  |  |
|  | 5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved. |  |  |  |  |
| **Article 70.**  **Denunciation** | 1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the denunciation by the Secretary-General. |  |  |  |  |
|  | 2. A regional economic integration organization shall cease to be a Party to this Convention when all of its members States have denounced it. |  |  |  |  |
| **Article 71.**  **Depository and languages** | 1. The Secretary-General of the United Nations is designated depository of this Convention. |  |  |  |  |
|  | 2. The original of this Convention, of which Arabic, Chinese, English, French, Russian and Spanish texts, are equally authentic, shall be deposited with the Secretary-General of the United Nations. |  |  |  |  |
|  | IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention. |  |  |  |  |

## ANNEXES

## Annex I: Implementation Matrix

## Annex II: Key contributors to the UNCAC Self-Assessment Report

## Glossary of organisations

## List of Statutes referred

## Index

# ANNEX I: IMPLEMENTATION MATRIX

| **General Objectives** | **UNCAC Requirements** | **Implementation Actions** | **Key Actors** | **Timeframe** | **Remark** |
| --- | --- | --- | --- | --- | --- |
| 1. To domesticate and implement the UNCAC | * 1. Promote and strengthen measures to prevent and combat corruption more efficiently and effectively. | 1. Coordinate anti-corruption measures amongst RGoB, anti-corruption agencies and other stakeholders and enact necessary laws to effectively deal with corruption offences. | Cabinet/CoS, ACC, RCSC, RAA & RBP | Constant effort |  |
| * 1. Protect sovereignty with sovereign equality and territorial integrity of the State. | 1. Any bilateral and multi-lateral arrangements and agreements that Bhutan enters into to carry out its obligations under UNCAC shall be consistent with the principles of State sovereignty and State integrity and non intervention in domestic affairs of other States. | Parliament, Cabinet, ACC & MoFA (lead) | As and when required |  |
| 1. To adopt and enforce punitive anti- corruption measures | * 1. Develop, maintain, coordinate, evaluate and monitor the implementation of a comprehensive anti- corruption policy. | 1. Agencies responsible for implementing NACS to assess vulnerabilities and develop their own sector specific action plans with clearly defined tasks, responsibilities and measurable indicators to ensure that the strategy cascades down into all sectors (review of NACS & drafting of its edition is underway). | CoS and agencies (Executive, Legislature, Judiciary, Constitutional Offices, armed forces, corporations & private sector including CSOs) to take lead roles supported by the Cabinet and ACC. | On-going. Institutionalized by December 2013. | Ongoing  In the 11th Five Year Plan, implementation of NACS has been identified as one of the Key Performance Indicators (KPIs) of Sector Key Result Areas (SKRAs) “Strengthened Accountability Transparency, Efficiency and Effectiveness in Governance” under Governance Sector. This will ensure collective action in achieving the National Key Result Areas on *Democracy and Governance Strengthened* and *Corruption Reduced* of the Good Governance pillar of GNH. |
| 1. Conduct proper needs assessments across all NACS parameters to identify capacity building requirements and then prioritize the key areas. (Para 10.4 of NACS)(refer 2nd edition) | ACC, MoLHR and RCSC | Mid 2014. | 2nd edition will be for the period 2013-2018. |
| 1. Build capacity of various agencies to enhance their capacity to effectively implement various anti-corruption policies and practices. (Para 10.4 of NACS) | Agencies to take lead roles supported by ACC. | On-going | On-going |
| 1. Create awareness amongst media and Parliament about NACS and develop a strategy to engage them in covering of NACS implementation.(Para NACS 10.7(i) of NACS) | ACC & MoIC, Media | 2014 |  |
| 1. Educate Bhutanese media on corruption to build them as partners in preventing and combating corruption. (Para 10.7(i) of NACS) | MoIC, Media and ACC | 2013 |  |
| 1. Create awareness among the general public as well as media on the right to information. | MoIC, CSOs, ACC & Media (BBSC) | 2014 |  |
| 1. Fix greater accountability through performance appraisals. (signing of compacts between the oversight bodies and implementing agencies) | Cabinet/CoS, Agencies | 2014 |  |
| 1. Devise mechanisms for collaboration between agencies and CoS & CoS and ACC to draw up NACS implementation action plans and meeting regularly to exchange ideas on their successes and challenges implementing NACS. | Lead by ACC in coordination with Parliament and CoS. | 2013 | MOUs signed with the 7 CSOs will be operationalized. |
| 1. Review of NACS implementation by Parliament through their Good Governance Committee and the Ethics and Credentials Committee. | Cabinet, GGC, ECC, CoS and ACC | From 2014, periodic monitoring | ACC hired consultants to review the NACS. Findings of the initial review of NACS elicit lack of awareness on NACS, weak ownership and accountability, lack of effective monitoring, & perception of NACS as ACC’s mandate. |
| 1. Formulate a proper monitoring and evaluation system of NACS implementation. | Cabinet, CoS and ACC | End 2013 | NACS monitoring protocol developed |
| 1. Sensitize citizens on the principle of rule of law and fight against corruption to promote their active participation in anti-corruption measures. | ACC & Media | Continuous process | In dialogue sessions with agencies and advocacy programs at local level are ongoing. |
| 1. Coordinate various anti-corruption reform initiatives between various agencies for optimal use of resources and for sustainability. | Cabinet, ACC and agencies | 2014 |  |
| 1. Mainstream SCM (Standard Cost Model) and RIA (Regulatory Impact Assessment) (Para. 10.5 of NACS) | Lead by MoEA in coordination with CoS and ACC. | 2014 | Adopted Rules & Regulation for Mainstreaming RIA |
| 1. Designate CoS as an oversight body for monitoring and coordinating various preventive measures within the civil service. | Cabinet | 2013 | The 2nd edition will explore other options (same for below). |
| 1. Designate ACC as an oversight body for monitoring and coordinating various preventive measures outside the civil service. | Cabinet and ACC | 2013 |  |
| 1. Designate ACC as dedicated authority to establish a proper monitoring and evaluation of NACS implementation system. | ACC | 2013 |  |
| 1. Establish an independent Law Review Commission, on a permanent or assignment bound basis, to carry out in-depth and thorough studies of legislative proposals and related matters.(Para 10.3 of NACS) | Lead by Parliament, Cabinet, OAG and judiciary. | End of 2014 |  |
| 1. Enhance networking and linkages with relevant international and regional anti-corruption bodies through bilateral and regional cooperation. | ACC and MoFA | As and when required |  |
| 1. Develop assessment tool for assessing the impact of NACS in collaboration with civil society using independent and objective criteria of impact assessment. | ACC, CoS, CSOs | 2013 | NACS impact assessment tools has been developed |
| 1. Develop assessment tools for assessing the impact of NACS, RIA & SCM using independent and objective criteria of impact assessment.(Para 10.5 of NACS) | Lead by ACC and MoEA. | 2014 |
| 1. Establish a representative body, including representatives from appropriate parliamentary committees as oversight body to coordinate and monitor RIA and SCM initiatives. | MoEA, CoS, Parliament | 2014 | RIA unit and RIA task force has been formed |
| * 1. Ensure the existence of independent anti-corruption body/bodies that prevent corruption. | 1. Review laws, including the Civil Service Act and the Entitlement and Service Conditions Act of Holders and Members and Commissioners Act to ensure ACC’s independence to enable it to carry out its functions effectively and free from any undue influence.(Para 10.3 of NACS) | Parliament and Cabinet | 2015 | Report on delinking of ACC from the RCSC will be presented to the Cabinet in the latter part of 2013. If found in order, ACC will submit the ACA amendments to the Parliament. |
| 1. Develop human resources by putting in place attractive recruitment, hiring, and promotion and retirement schemes for ACC staffs. (Para 10.4 of NACS) | Cabinet, ACC (lead) | End of 2013 | A firm currently working on the overall HR matter in anticipation of the above. 1st draft ready. |
| 1. Carry out a thorough financial resources needs assessments for ACC. | Cabinet, MoF and ACC (lead) | End of 2013 | Broadly covered in the delinking report. |
| 1. Train ACC staff in processing MLA requests, financial investigation, asset recovery and anti-money laundering. | ACC and RCSC | 2015 |  |
| 1. Train OAG and judicial staff on MLA, financial investigation, asset recovery and anti-money laundering. | ACC (lead), OAG, RBP, Judiciary, ECB, DRC, RAA and RMA | 2015 |  |
| 1. Develop human resources and professional capacities of ACC in relation to public education. (Para 10.4 of NACS) | ACC | 2014 |  |
| 1. Develop more specific public education programs to intensify anti-corruption awareness at various levels and platforms.(Para 10.6 of NACS) | ACC | 2014 |  |
| 1. Establish sustainable partnerships between the anti-corruption bodies and those actors outside the public sector.(Para 10.7 of NACS) | ACC | 2014 |  |
| 1. Produce more specific promotional materials, training programs and manuals for public education to intensify anti-corruption awareness campaigns at various levels and platforms.(Para 10.4 of NACS) | ACC | 2014 |  |
| 1. Infuse ethical contents in the curriculum of educational, training, vocational and other institutions should be as a package with the infusion of GNH values.(Para 10.4 of NACS) | Cabinet, ACC, MoE, MoLHR and RUB | 2015 | A report on “Integrity & value Education in Schools” has been published. |
| 1. Agencies to make concerted efforts to beef up the implementation of NACS. | Implementing agencies | 2013 |  |
| * + 1. Reduce corruption in the public sector through proper system of recruitment, hiring, retention, promotion & retirement of public servants. | 1. Enhance implementation of merit principles contained in various existing laws by establishing more detailed and transparent recruitment criteria. | RCSC (lead in the civil service), Judiciary, MoF, DHI, agencies, and MoLHR | 2013 |  |
| 1. Amend BCSR to clarify that the ‘seniority’ and ‘academic qualification’ are only for qualification purposes rather than as criteria for promotion and recruitment except for specialist position. | Lead by RCSC supported by ACC | 2014 | BCSR has been revised; has not captured the essence of the recommendation. |
| 1. Establish guided criteria in viva voce evaluations to guide evaluators and to achieve consistency. | RCSC (lead in the civil service), Judiciary, MoF, DHI, agencies, and MoLHR | 2013 | Selection & recruitment as a whole has to be professionalized. |
| 1. Outsource services related to elementary and general service to the private sector in line with the policy of “small and compact” civil service. | Cabinet and MoF, RCSC | 2014 |  |
| 1. Device systemic and coherent training programs on performance management for managers to ensure that the performance planning and evaluations are objective and are consistent across all agencies. | RCSC and agencies | 2014 |  |
| 1. Train individuals responsible for interview in interview techniques. | -do- | 2014 |  |
| 1. Impose post-employment restrictions in the private sector for all public servants with which they have dealings during their public service tenure based on vulnerability. | RCSC, Judiciary and DHI | 2015 |  |
| 1. Establish proper screening procedures to check integrity of individuals before appointment and promotion. | RCSC, judiciary and agencies | 2013 |  |
| 1. Take measures such as performance-based incentives and special retirement to retain or recognize public servants. | RCSC, MoF and agencies | 2014 |  |
| 1. Establish training needs assessment tools in the public service. | RCSC, Judiciary and agencies | 2013 |  |
| 1. Training in the public service to be based on merit. | RCSC, Judiciary and agencies | 2013 |  |
| 1. Expedite the establishment of HR auditors in RCSC to audit functions delegated to agencies. | RCSC | 2014 |  |
| 1. Designate an independent body to review RCSC’s decisions to overcome the problem of who watches the watchdog. | RCSC, Parliament, Cabinet | 2014 |  |
| 1. Assess the vulnerability of positions in the civil service through an inclusive approach. | RCSC, ACC and agencies | 2014 |  |
| 1. Put in place adequate procedures to ensure strict scrutiny of selection and training of individuals in positions prone to corruption. | RCSC, ACC and agencies | 2014 |  |
| 1. Pre-appointment screening of successful candidates in vulnerable positions, their specific terms and conditions of service, procedural controls such as benchmarking performance, frequent rotation and monitoring of their lifestyles. | RCSC(lead), DHI(lead) and agencies | 2014 |  |
| 1. Allocate adequate resources for training public officials considered vulnerable to corruption. | MoF/Cabinet | 2014 |  |
| 1. Introduce transparent, competitive, and merit based recruitment procedures for appointment of gedrungs (Geog Clerks). | MoHCA, DLG, LGs and Parliament | 2013 |  |
| 1. Strengthen the Fiscal Frameworks for the Local Governments. | MoHCA, DLG, LGs and Parliament | 2014 | With the Government’s commitment to “*wang tse chirpel*”, |
| 1. Conduct comprehensive capacity assessments of the Local Governments. | MoHCA, DLG, LGs and Parliament | 2014 | Capacity development & checks have |
| 1. Develop the capacity of the Local Governments, including in financial management. | MoHCA, DLG and MoF | 2014 | Become critical. |
| 1. Enhance implementation of subordinate ratings and introduction of peer review. | RCSC and agencies | 2013 |  |
| 1. Provide performance-based incentives and special retirement schemes to weed out non-performers. | MoF, RCSC and other agencies. | 2014 |  |
| 1. The Pay Commission to consider salary increment as one of corruption preventive measure. | Cabinet, Pay Commission | As and when required |  |
| 1. Revisit the adequacy of remuneration for public servants at lower levels. | Cabinet, Pay Commission | 2014 |  |
| 1. Implement the principle of equal pay for equal value of work by developing the performance indicator and checking criteria. | Cabinet, RCSC and DHI | 2014 |  |
| 1. Develop comprehensive training modules and manuals in a consultative manner and train public servants in ethics, including the infusion of ethical contents in various pre-service courses. | RCSC, agencies, Parliament, ACC, DHI, RUB and RIM |  | E-module on ethic and integrity being implemented in the civil service. RCSC-RIM-ACC coordinated initiative. |
| 1. Agencies to develop a sector specific training modules and manuals to address specific challenges to foster a culture of integrity. | RCSC, ACC and agencies | 2014 |  |
| 1. Impart ethical training to public servants periodically to raise awareness of the risk of corruption posed in their public functions. | RCSC, ACC and agencies |  | Over 2700 civil servants have taken the test on ethics and integrity . |
| 2.3.2Reduce political corruption by strengthening electoral laws that takes care of the candidature criteria, funding of candidature and political parties and prevention of conflict of interest. | 1. Stringent compliance programs on codes of conduct, including administration & management of conflict of interest. | Parliament, ECB, ACC, RAA, RCSC & political parties. | End of 2013 | Should draw lessons from the 2013 elections. |
| 1. Define conflicts of interest succinctly and provide adequate procedures for declaring it in codes of conduct. | ACC, ECB, Parliament and RCSC. | End of 2013 | Public Service Model Code of Conduct has been drafted covering the issue of conflict of interest. |
| 1. Train public servants including the parliamentarians periodically on conflict of interest and the requirements to declare conflict of interest to raise awareness. | ECB, ACC and Parliament | 2014 |  |
| 1. Introduce legislative provision to fix supervisory accountability on persons in positions of authority for failure to ensure the compliance with requirements to declare the conflict of the interest. | Parliament, ACC and ECB | 2014 |  |
| * 1. Develop standard code of conduct for public officials to foster integrity, honesty & responsibility. | 1. Develop a public service model code of conduct & ethics with strong compliance and training programs. | Lead by ACC and RCSC in coordination with agencies | 2014 | The ACC is yet to adopt the Model Code of Conduct |
| 1. Involve the employees of public agencies to develop their specific code of conduct and their implementation and oversight. | RCSC, MoLHR and agencies including DHI | 2014 |  |
| 1. Develop a complaint management system that accepts walk in, telephone, fax, e-complaints including acceptance of anonymous complaints. | ACC, RCSC, DHI and agencies | 2014 |  |
| 1. Impart periodic training with respect to their reporting obligations to public servants and persons in position of authority. | RCSC, DHI, ACC and agencies | 2014 |  |
| 1. Strengthen asset and gift disclosure administrators through enhanced implementation of the Gifts Rules by training gifts disclosure administrators and awareness campaigns. | ACC (lead), RCSC and agencies | 2014 |  |
| 1. Establish effective information sharing network for timely AD verification. | ACC (lead), FIs and agencies | 2014 | Dialogue with repositories on. Singed MOU with RSTA. |
| 1. Revise ADR to make it compatible with provisions of ACAB. | ACC and agencies |  | ADR 2012 in force and the revised GR yet to be adopted. |
| 1. Revise ADR and GR to require only selective categories of public servants or persons using public resources to declare assets or disclose gifts. | ACC |  |
| 1. Develop a proper verification skills and tools to ensure accurate declaration of assets or disclosure of gifts. | ACC (lead) and agencies | 2013 | Asset Disclosure Administrator are trained on AD system. |
| 1. Establish measures and systems requiring public officials to declare their private activities, employment and investments. | ACC (lead) and agencies |  | Incorporated in the ADR |
| 1. Expedite the drafting of impeachment procedures for the impeachment of the Constitutional Officer Holders. | OAG and Constitutional Offices | 2014 | Impeachment Bill drafted |
|  | * 1. Strengthen public procurement systems, management of public finances and preserve the integrity of accounting books, records, financial Statements and other documents related to public expenditure and revenue. | 1. Revise PRR to require:    * 1. The advertisement of limited bidding.      2. Publicize contract award decision including assessment and contracting decision.      3. Institute independent review mechanism to address grievances for goods, works and services altogether at one stop.      4. Develop centralized procurement system (specific items), e-procurement and legislation on it. | MoF | 2013 | PRR is one of the most frequently revised rules. Integrity Pact has been incorporated in it.  MOIC has been working on the e-procurement system with support from the World Bank. |
| 1. Specify the goods feasible for the centralized procurement system. | MoF | 2014 | Proposal on central procuring system still on hold. |
| 1. Introduce legislative provisions to enable the Tender Committees to take into account the vendor performance. | MoF | 2014 |  |
| 1. Develop training programs for procurement officers. | RCSC, MoF, RIM and RUB, CDB | 2014 | Till date over 661 trained at RIM. |
| 1. Conduct pre-appointment screening, timely rotation of office, monitor their life style and impose post-employment restrictions. | RCSC, MoF and agencies | 2014 |  |
| 1. Create separate division for procurement of works on less valued procurement. | MoF(lead), Cabinet | 2014 |  |
| 1. Introduce legislative provision requiring needs assessment by all procuring agencies. | MoF, OAG | 2014 |  |
| 1. Draft detailed guidance on the conflict of interest declaration and trained procurement officials to develop their capacity. | MoF (lead), ACC, RCSC | 2014 |  |
| 1. Introduce a legislative provision requiring;   pre-appointment screening,  monitoring of lifestyle and accounts,  frequent rotation of officials at vulnerable positions and  restriction on post-employment activities for all procurement officials on a selective basis. | RCSC | 2014 | Rotation in vulnerable positions covered in BCSR 2012. |
| 1. Implement PCS with regard to establishing the benchmarks, standards, and competencies of procurement officials. | RCSC and agencies | 2014 |  |
| 1. Expedite implementation and institutionalization of the three components of the Institutional Capacity Building Project for Procurement. | MoF, | End of 2013 |  |
| 1. Develop a mechanism to implement effectively the new procurement law. | MoF | 2014 |  |
| 1. Develop mechanisms to evaluate the impacts or effective of the new procurement law. | MoF | 2014 |  |
| 1. Make business code of conduct as one of the conditions for incorporation, licensing or registration. | MoF | 2014 |  |
| 1. Review the current procurement rules to allow families of Tender Committees to participate in tenders. | MoF, agencies | 2014 |  |
| 1. Establish proper rules to declare the conflict of interest by tender committee when there are their relatives participating. | MoF, RCSC | End of 2013 | Positive and negative conflicts of interest to be covered. |
| 1. Train contractors on procurement rules. | CDB, MoF | End of 2013 |  |
| 1. Assess the effectiveness and impacts of Multi-Year Rolling Budget (MORB) System to address fund requirement for multi year projects and spillover programs. | MoF | 2014 |  |
| 1. Develop human resource on budget planning. | RCSC and MoF | 2014 |  |
| 1. Coordinate between LG and parliamentarians for budget planning and procurements. | MoF, Parliamentarians and LGs | 2014 |  |
| 1. Assess the effectiveness and impacts of Public Expenditure Management Systems (PEMS). | MoF, DRC | 2014 |  |
| 1. Establish centralized data base system to capture tax, customs, sales tax and revenue information at one stop. | MoF | 2014 |  |
| 1. Finalize the audit manuals at the earliest and impart sensitization workshops and trainings to the field auditors. | RAA and RCSC | End of 2013 |  |
| 1. Train internal auditors on the Internal Audit Manual. | RCSC, MoF and RAA | 2014 |  |
| 1. Strengthen Internal Audit Services. | MoF (lead), RCSC, RAA and agencies | 2014 |  |
|  | * 1. Enhance transparency in administrations, functioning and decision making process through public reporting. | 1. Expedite the enactment of RTIB which should address the following: 2. Make decisions transparent and public and develop proper procedures for obtaining information. 3. Introduce legislative provisions to enable the public to access information held by public institutions and raise awareness about the provisions. 4. Designate focal person in institutions responsible to disseminate information for public interest. 5. Raise awareness among general public about the RTIB. | Cabinet and MoIC | 2014 | There are media focal persons in agencies. MOIC committed to build their capacity.  Government committed enacting RTIB. |
| 1. Publish information on functions and decision making procedures of agencies both in English and Dzongkha and make available to the public. | Agencies lead by RCSC | 2014 |  |
| 1. Publish relevant information in particular with regard to combating corruption besides the periodic report incorporating sunset clauses and make it accessible to the public. | ACC and agencies | 2014 |  |
| 1. Periodically undertake self assessment and publish information regarding likelihood of corruption occurring in agencies. | ACC | 2014 |  |
| 1. Increase awareness and sensitization after periodic assessment of corruption and its impact. | ACC, Agencies, Media and Civil Society. | End of 2013 |  |
| 1. Develop public education program on corruption. | ACC | 2014 |  |
| 1. Develop behavioral change program and its implementation action plan. | ACC, MoE, RUB, MoLHR and agencies | Mid 2014 |  |
| 1. Amend CSA to guarantee judicial independence in respect of the lower level officials. | Parliament | 2015 |  |
|  | * 1. Promote integrity in the judiciary and prosecution. | 1. Assess vulnerability of existing judicial system and prosecution. | Judiciary and OAG | 2014 |  |
| 1. Develop proper case management system and information in such a system should be made accessible to the general public to further enhance the judicial transparency subject to certain restrictions as may be necessary. | Judiciary | 2014 |  |
| 1. Integrate the case management systems of Judiciary, OAG and ACC. | OAG, ACC, Judiciary | 2014 |  |
| 1. Publish judgments (along the line of like All England Reports) of all courts. | Judiciary | 2014 |  |
| 1. Post information on backlog cases on website for information dissemination and easy accessibility to public. | Judiciary | 2014 |  |
| 1. Develop proper service standards for judiciary and OAG or information kiosk. | Judiciary, OAG | 2014 |  |
| 1. *Jabmis* (legal counsel) and legal representative should be made subject to the same standards of conduct as the prosecution service. | Judiciary, OAG | End of 2013 |  |
| 1. Review and implement the *Jabmi* Act to ensure the establishment of the Bar Council and its independence. | OAG, Judiciary, Cabinet | 2014 |  |
| 1. Review the existing code of conduct of judicial personnel taking best international practices into account (may be the Bangalore Principle for Judicial Conduct) and conduct regular training programs on code of conduct by integrating into judicial training programs. | Judiciary | 2014 |  |
| 1. Train judges and prosecutors on corruption for proper judgment of corruption cases. | Judiciary, OAG, ACC | 2014 |  |
| 1. Introduce legislative provision that charge the budget of the judiciary to be charged on the Consolidated Fund of Bhutan. | MoF, Judiciary | 2014 |  |
| 1. Develop capacity in prosecution including police prosecutor. | OAG, RBP, RCSC | 2014 |  |
| 1. Establish standard GAAP & GAAS. | RAA, MoF (lead in public sector), RMA, MoLHR (lead in private sector) BCCI, Accounting Standards Board of Bhutan. | Medium complexities: 2015  Technically advanced level: 2017 (as per the Accounting Standard Implementation Plan of RMA) | Basic level completed in 2011 |
|  | * 1. Enhance accounting and auditing standards, integrity, transparency and accountability in private sector. | 1. Introduce legislative provisions which provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with measures to prevent corruption in private sector. | MoEA (lead), MoF, ACC, RAA, BCCI | June 2014 |  |
| 1. Develop partnership between government and private sector and engage in awareness raising in private sector by law enforcement agencies. | MoLHR, MoEA, BCCI, ACC and MoF | 2014 |  |
| 1. Introduce corporate compliance program which can be defense for criminal prosecution. | MoEA (lead), MoF, BCCI, MoLHR | Mid 2014 |  |
| 1. Introduce protocol between tax authorities and law enforcement agencies and use anti-corruption measures during listing of companies. | DRC, ACC, MoEA (lead), RSEB | Mid 2014 |  |
| 1. Introduce legislative provision which oblige legal persons to report corruption to ACC. | ACC |  | Introduced in ACA 2011. |
| 1. Review existing model business code of conduct. | MoLHR, BCCI, MoEA(lead), CDB, DHI | 2014 |  |
| 1. Make model code of conduct a part of the Internal Service Rules for business entities and also licensing regulation and other incentive schemes, and condition for CDB registration for construction industries. | MoLHR(lead) BCCI, MoEA, CDB, DHI | 2014 |  |
| 1. Develop the capacity of the BCCI during the development of service standard for the business entities. | BCCI, MoLHR (lead) | 2014 |  |
| 1. Review the existing Journalist Code of Conduct by MoIC to make it more acceptable to journalists in collaboration with BICMA, Media Foundation, and the Journalists’ Association of Bhutan. | MoIC, BICMA, Media Foundation, Journalists’ Association | 2014 |  |
| 1. Develop model business code of conduct and make part of the Internal Service Rules for Enterprises of MoLHR. | MoEA, BCCI, MoLHR (lead) | End of 2014 |  |
| 1. Develop service standards for all business entities such as CAB and ABTO. | BCCI, Tourism Council of Bhutan | End of 2013 |  |
| 1. Address code of conduct in corporate governance framework | RGoB | 2014 |  |
| 1. Consider establishing Global Compact Chapter in Bhutan. | RGoB | 2014 |  |
| 1. Enhance transparency with respect to identities of persons who play important role in the creation and management or operations of corporate entities. There should be effective monitoring mechanism. | MoEA, DHI | 2012 |  |
| 1. Establish sufficient internal audit controls private sector enterprises. | BCCI, Private sector | End of 2013 |  |
| 1. Review the existing CA to require private enterprise to institute audit control mechanisms. However, since the liability of the private company is unlimited this may be left to the concerned person for having a sufficient internal auditing control system. | MoEA | 2014 |  |
| 1. Review ITA to enforce effectively laws relating to maintenance of books and records, financial statements and disclosures. | MoF | 2014 |  |
| 1. Enhance the keeping of the financial statements and books of account by the business entities through proper training. | MoF | End of 2013 |  |
| 1. Introduce legislative provision disallowing bribes as tax deductible expenses (entertainment expenses). | ACC, OAG, Judiciary | 2014 |  |
| 1. Conduct public education programs involving CSOs, community based organizations. | ACC, CSOs, Dratshang Lhentshog | End of 2013 |  |
|  | * 1. Promote and facilitate participation of civil society, non-governmental organization and community based organizations in prevention and the fight against corruption. | 1. Intensify community based anti-corruption programs. | ACC and CSO | 2013 | ACC engaged the citizens and public servants in creating topical awareness on corruption and empowering citizens with knowledge and tools to demand accountability from the service providers in 2013. |
| 1. Encourage the formation of CSOs to deal with corruption issues. | ACC and CSO Authority | 2014 | Bhutan Transparency Group in the making. |
| 1. Simplify/clarify civil society registration procedures. | CSO Authority | End of 2013 |  |
| 1. Make aware of the existence, causes and gravity of and the threat posed by corruption to CSOs. | ACC and CSO Authority | 2014 |  |
| 1. Evaluate the current resources of CSOs to assess their ability to engage and participate in the fights against corruption. | ACC and CSO Authority | End of 2013 |  |
| 1. Consider funding CSOs to play important role in raising public awareness in threat posed by corruption. | Cabinet, CSOs | End of 2013 |  |
| 1. Conduct training needs assessment in CSOs to build their capacity in financial management and procurements. | CSO Authority | 2014 |  |
| 1. Build capacity of civil society, strengthen their independence | ACC and CSO Authority | End of 2013 |  |
| 1. Raise awareness on the role of Civil Society. | CSOs and CSO Authority | End of 2013 |  |
| 1. Ensure the public agencies to adopt an open door policy and participatory method in their affairs so that the public is informed of decisions affecting them subject to exceptions in the interests of national security or *ordre public* or of public health or morals. | Cabinet | 2014 |  |
| 1. Develop code of conduct for CSOs based on international best practices. | CSO Authority and CSOs | 2014 |  |
| 1. Ensure proper information dissemination and implementation of the existing anti-corruption laws. | ACC | Constant effort |  |
| 1. Put in place outreach programs to enhance citizens’ accessibility to ACC and the public distribution of information on ACC. | ACC | 2014 |  |
| 1. Expedite the Anti-money Laundering and Combating of Financing Terrorism Regulation which comply with the UNCAC requirements, including the details on customer due diligence (KYC principles) which cover accounts of natural as well as legal persons, identification and verification of beneficial owners, politically exposed persons, non-face-to-face transactions, and monitoring of transactions and risk management. | Parliament, RMA, ACC | 2014 |  |
|  | * 1. Establish a domestic regulatory and supervisory regime to prevent money laundering and to monitor the movement of cash and negotiable instrument across the border. | 1. Enact statute on Anti-money Laundering. | RMA |  | Anti-Money Laundering and Combating the Financing of Terrorism Regulations have been drafted. |
| 1. Redefine the definition of Money Laundering in Anti-money laundering and Combating the Financing of Terrorism regulation covering the aspects provided under the section 70-72 of ACAB. | RMA |  |
| 1. Lower the threshold limit in AML law/regulations regarding the STRs and CTRs. | FIs, RMA | 2014 |  |
| 1. Introduce legislative provision requiring all suspicious transactions, including attempted transactions, to be reported regardless of the transactions amount and such reports should be required as and when transactions take place rather than on a quarterly basis. | RMA, FIs | 2014 | Enforcement has to be ensured. Currently, the STRs are hardly acted upon. |
| 1. Mandate the regulated sectors to maintain all necessary records on transactions for, at least, five years or longer if necessary by reporting entities. | RMA, FIs | 2014 |  |
| 1. Implement enhanced customer due diligence for higher risk customer or transactions and avoid or prohibit any dealing with shell banks. They should be prohibited from opening any accounts, commence business relations or perform any transactions for customers who fail to meet their customer due diligence requirement. | RMA, FIs | 2014 |  |
| 1. Bring designated non-financial businesses and professions such as real estate agents, jewelers, lawyers, notaries, etc within the ambit of AML law. | RMA, | 2015 |  |
| 1. Seek membership in the Egmont and Group Asia/Pacific Group on Money Laundering. | RMA | End of 2013 |  |
| 1. Train to develop capacity in RMA and other stakeholders to properly perform their functions in preventing money laundering. | RMA and FIs | End of 2013 |  |
| 1. Empower RMA to issue appropriate regulations to prevent the use of Bhutan’s financial system for money laundering or the financing of terrorism. | RMA, Cabinet | 2013 |  |
| 1. Provide FIU with the necessary powers, resources, and sufficient operational independence and autonomy to ensure that it is free from undue interference or influence. | RMA, FIs | 2013 | The FSA and Anti-Money Laundering and Combating the Financing of Terrorism Regulations empower the FIU. |
| 1. Expedite the proposed national payment and settlement system and regulate electronic money transfer by appropriate means. | RMA, FIs | 2014 |  |
| 1. Develop capacity and provide more resources to harness technological facilities for monitoring and collecting information of electronic fund transfer. | RMA, FIs, MOF(lead) | End of 2013 |  |
| 1. Participate in international and regional fora on money laundering and bilaterally cooperate among judicial, law enforcement and financial regulatory authorities. | RMA, ACC, Judiciary OAG, MoFA, RBP, BNC and DRC | As and when required |  |
| 1. Consolidate active and passive bribery in single AC Statute. | ACC, parliament, Judiciary, OAG. |  | Incorporated in ACA 2011. |
| 1. To criminalize all forms of corruption and effectively enforce anti- corruption laws. | * 1. Enforce effectively, laws that criminalize bribery of public officials. | 1. Clarify that not all acts or omissions need to be within the assigned functions and that they need not actually be influenced by offering or giving of a bribe in AC statute | ACC |  | Addressed in ACA 2011.  ADR revised and rationalized.  Internal guidelines developed.  Debarment Rules 2013 published. |
| 1. Introduce legislative provision on criminalization of bribery of foreign public officials and officials of public international organizations. | ACC |
| * 1. Criminalize bribery of foreign public officials and officials of public international organizations | 1. Consolidate embezzlement provisions committed for the benefits of another person or entity in single AC statute. | ACC |
| * 1. Criminalize the embezzlement and misappropriation of property by a public official. | 1. Introduce legislative provision on criminalization of trading in influence. | ACC |
| * 1. Criminalize trading in influence. | 1. Consolidate criminalization of abuse of function in single anti-corruption statute. | ACC |
| * 1. Criminalize abuse of functions. | 1. Enhance the implementation of ADR initially focusing on those public officials in vulnerable positions until appropriate assets verification skills are developed and then to gradually in other positions. | ACC |
| * 1. Criminalize illicit enrichment or accretion of asset beyond lawful income. | 1. Take “proactive’ verification of asset declarations rather than taking up as part of investigations process. | ACC |
| 1. Share information and cooperate between the relevant Government agencies and FIs to facilitate investigations of illicit enrichment cases. Cooperate and collaborate between law enforcement agencies in sharing information to prove the possession of disproportionate assets. | ACC, DRC, RMA, RAA, Land Commission, FIs, RSTA |
| 1. Train asset administrators and law enforcement agencies to check illicit enrichment. | ACC |
| 1. Train asset administrators and law enforcement agencies to see what other jurisdictions have done with their systems and how are such mechanisms used in the fight against the corruption. | ACC |
| 1. Criminalize bribery in private sector including soliciting or accepting a bribe through intermediaries. | ACC, Judiciary, OAG |
| * 1. Criminalize bribery in private sector. | 1. Criminalize embezzlement in private sector including embezzlement committed for the benefits of another person or entity, excluding the *de minimis* offences. | ACC, Judiciary, OAG |
| * 1. Criminalize the embezzlement in private sector. | 1. Criminalize laundering of proceeds of crimes. | ACC, Judiciary |
| * 1. Criminalize the laundering of proceeds of crime | 1. Paragraph 2.10 action plan 159 applies here too. | RMA |
| 1. Paragraph 2.10 action plan 159 applies here too. | RMA, parliament |
| 1. Criminalize concealment of corruptly acquired property. | ACC |
| * 1. Criminalize concealment or continued retention of property knowing it to be obtained corruptly. | 1. Criminalize obstruction of justice. | ACC, OAG, Judiciary |
| * 1. Criminalize the obstruction of justice. | 1. Address the liability of legal person in participation to corruption in AC statute | ACC |
| * 1. Liability of legal person in participation to corruption. | 1. Finalize the Debarment Rule. | ACC, MoF, CDB |
| 1. Criminalize the participation and attempt of corruption. | ACC, |
| * 1. Criminalize the participation and attempt of corruption. | 1. Provide no limitation period or sufficiently longer limitation periods for corruption offences in the Limitation Bill. | OAG, ACC |
| * 1. To establish statute of limitation period. | 1. Establish independent body to draft sentencing guideline to guide courts and to ensure that similar cases are treated similarly. | Parliament (lead), Cabinet, OAG, Judiciary | 2014 |  |
| * 1. Expeditious and effective investigation, prosecution, adjudication and imposition of sanctions, taking into account the gravity of the offence | 1. Mandate OAG to pray for the type of sentence to be awarded by courts. | OAG | 2013 |  |
| 1. Review the Prosecution Guidelines to ensure proper definitions on public interest and more expected criteria on when not to prosecute and to allow victims or CSOs to judicially review the OAG’s decisions. | ACC and OAG | End of 2014 | Prosecution referral guideline will also be revised to address ACC’s prosecutorial responsibility. |
| 1. Review the Prosecution Referral Guidelines to ensure proper definitions on public interest and more expected criteria on not to make prosecution referrals and to allow victims or CSOs to judicially review ACC’s decisions. | ACC and OAG | End of 2013 |  |
| 1. Establish protocol between OAG and ACC in relations to prosecution or prosecution referral decisions. | ACC, OAG |  | MOU signed in April 2013 |
| 1. Attachment of prosecutor with ACC for a fixed term on a case-by-case basis. | ACC  ACC (lead) | 2016  End of 2013 | Discussed but may not happen soon. |
| 1. Draft guidelines in consultation with various stakeholders for suspension of those who are accused under suspicion of serious corruption offences based on the *prima facie* evidence. | Based on the Supreme Court’s directive 2013, guideline will be drafted. |
| 1. Draft guideline for disqualification of those involved in serious corruption offences. | ACC | 2015 |  |
| 1. Reconsider interpretation of the phrase “…sentenced to imprisonment’ under BC and the Election Act. (Section 4(c) of art. 23 of BC and section 179(a) of the Election Act) | ECB | 2015 |  |
| 1. RBP to place rigorous reformatory programs and implement them in consultation with MoHCA. | RBP, MoHCA | 2013 |  |
| 1. Address freezing, seizure and confiscation, including the confiscation of property or equipment used in or destined for use in the commission of corruption offences. | ACC, Judiciary, RBP |  | Legal provision included in ACA 2011. |
| * 1. Enforce the provision of ACA and related laws to facilitate freezing, seizure and confiscation of proceeds of crime. | 1. Provide legislative provision that can regulate the administration by the competent authorities of frozen, seized or confiscated property. | ACC, RBP, Judiciary |  | Legal provision included in ACA 2011. |
| 1. Provide capacity training for investigation agencies, prosecutors and judges. | OAG, ACC, Judiciary | 2014 |  |
| 1. Provide legislative provisions in AC statute where there is no need for judicial authorization in case of imminent danger of destruction of evidence. | ACC, Parliament |  | Legal provision included in ACA 2011. |
| 1. Allow the evidentiary rules to permit the use of communications technology to protect witness from identification. | Judiciary, OAG | 2015 |  |
| * 1. Provide adequate protection for witnesses, experts and victims. | 1. Draft witness protection statute which also provides protection for experts and victims and identify OAG/RBP to implement the statute. | OAG, Judiciary, RBP, DRC | 2015 |  |
| 1. Witness Protection Programs should cover the victims insofar as they are witnesses to minimize doubt. | OAG, ACC, RBP | 2015 |  |
| 1. Introduce legislative provision which enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings. | Parliament, Judiciary, OAG | 2014 |  |
| 1. Enter into agreements or arrangements with other States for the relocation of witnesses on a case-by-case basis. | Judiciary, MoFA, MoHCA, ACC | As and when required |  |
| 1. Address issues relating to protection of reporting persons in AC statute and Witness Protection Statute. | ACC, OAG, Judiciary |  | Legal provision included in ACA 2011. |
| * 1. Provide adequate protection of reporting persons. | 1. Introduce legislative provisions to protect the rights of third parties who had acquired in good faith. | ACC |  | Legal provision included in ACA 2011. |
| * 1. Amend the laws to address the consequences of corruption by cancellation or annulment of contracts, withdrawal of concessions or any other remedial actions to address the consequences of corruption. | 1. Expedite the finalization of Debarment rule including the provision to protect the rights of third parties acquired in good faith. | ACC (lead), CDB, BCCI, CAB and MoF |  | Debarment Rules published.. Information dissemination & enforcement. |
| 1. Introduce legislative provision conferring the rights to victims to initiate legal proceedings against those responsible for damage in order to obtain compensation. | ACC, Judiciary |  | Legal provision included in ACA 2011. |
| * 1. Provide compensation for damages. | 1. Draft Judicial Sentencing Guideline covering the compensation for the damage. | Judiciary | 2015 |  |
| 1. Grant ACC the necessary independence to enable it to carry out its functions effectively and free from any undue influence. | Parliament | 2014 |  |
| * 1. Ensure existence of independent and specialized body to combat corruption. | 1. Develop capacity in ACC through various training programs. | ACC | 2013 | Continuous process. |
| 1. Draft specific guideline for the ACC and judiciary to enhance cooperation | Judiciary and ACC | 2014 |  |
| * 1. Enhance and strengthen cooperation between law enforcement authorities. | 1. Introduce legislative provision to permit ‘substantial cooperation in the investigation or prosecution of a corruption offence’ as a mitigating factor. | ACC and OAG |  | Legal provision included in ACA 2011. |
| 1. Introduce legislative provision to provide immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of a corruption offence, including in other criminal offences. | OAG, ACC, Judiciary |  |
| 1. Enter into agreements and arrangement with other State on a case-by-case basis. | ACC, MoFA, MoHCA, RBP, RAA, DRC, BNC | As and when required |
| 1. Sign MoUs or draft guidelines on inter-agency cooperation. | ACC, Agencies, private sector. | End of 2013 | Dialogue has begun. |
| * 1. Promote and facilitate cooperation between the national authorities and with the private sector as well. | 1. Create joint investigation programs and synergies between agencies. | ACC, Agencies, private sector | As and when need arises |  |
| 1. Promote consensual relationship between the private sector and a national authority as its instrumental to the effective fight against corruption. | Agencies, private sector | End of 2013 |  |
| 1. Amend section 206 of PA to allow cooperation among law enforcement agencies without a judicial authorization. | RBP, ACC, RMA, DRC, | 2014 |  |
| 1. Introduce legislative provision to empower OAG to request for information necessary for prosecution from any person or entity. | Cabinet, OAG | 2015 |  |
| 1. Develop standard procedure to obtain assistance or cooperation. | Public agencies | 2014 |  |
| 1. Amend legislations or regulations to make clear rules of engagement between law enforcement and prosecuting agencies and private sector entities. | ACC, OAG | 2014 | 1st discussion between OAG, RBP & ACC in June 20, 2013 (prompted by case dismissal by a court). Broad understanding established. |
| 1. Develop and conduct rigorous and coherent public education and awareness programs about the need to report acts of corruption. | ACC | Continuous process |  |
| 1. Draft Whistleblowers Protection Act and identify the agency responsible to enforce the legislation. | Cabinet, OAG, ACC, Judiciary, RBP, DRC | 2015 |  |
| 1. Amend article 23 of FIA to remove a requirement of bank customers consent to facilitate effective investigation. | RMA, ACC, FIs, DRC | 2015 |  |
| * 1. Overcome the obstacles of bank secrecy. | 1. Draft manual or regulations specifying the circumstances which warrant authorization by ACC in situations of an imminent danger of destruction or removal of required information. | Judiciary, ACC |  | Incorporated in revised investigation manual of ACC. |
| 1. Empower ACC to apply *ex parte* for judicial authorization. | ACC |  | Legal provision included in ACA 2011. |
| 1. Amend section 56 of CCPC to allow investigating and prosecuting agencies access to a person’s financial information, not only when punitive damages are sought. | Parliament | 2015 |  |
| 1. Introduce a specific legislative provision to permit the use of final foreign criminal records. | Judiciary, OAG, MoFA, RBP |  | Legal provision included in ACA 2011. |
| * 1. Adopt measures to keep the criminal records | 1. Introduce a specific legislative provision to establish jurisdiction over offences committed within Bhutan and outside Bhutan by foreigners, where such offences is committed against Bhutanese citizen or Bhutan. | ACC, judiciary, MoHCA, MoFA, RBP | Mid 2014 |  |
| * 1. Establish jurisdiction over offences committed within Bhutan and outside Bhutan by foreigners, where such offences is committed against Bhutanese citizen or Bhutan. | 1. Use SAARC CMACM in respect of criminal matters relating to corruption and also BIMSTEC in corruption offences. | MoFA, OAG and ACC | As and when required |  |
| 1. To establish mechanism for international cooperation in the fight against corruption. | * 1. Cooperate with other States in criminal matters and assist in investigations of and proceeding in civil and administrative matter relating to corruption. | 1. Consider a regional arrangement in the SAARC region and Southeast Asia for civil and administrative matters relating to corruption. | MoFA, OAG and ACC | As and when required |  |
| 1. Draft comprehensive and effective act on all aspects of international cooperation and on dual criminality. | MoFA, OAG |  | Separate chapter on international cooperations incorporated in ACA 2011. |
| 1. Use bilateral arrangement as a basis for extradition and determine the offences that should be included as extradition offences while entering into agreements with other countries. | ACC, OAG, RBP, Judiciary, MoFA, | 2014 |  |
| 1. Simplify extradition procedures in the interest of the offender’s right. | MoFA, Judiciary | 2015 |  |
| 1. Amend extradition act to empower ACC to investigate matters relating to corruption | MoFA, ACC | 2015 |  |
| 1. Introduce legislative provisions to permit the enforcement of the foreign judgment in the interest of international cooperation and justice. | ACC |  | Legal provision included in ACA 2011. |
| 1. Enter into MLA agreements with appropriate countries. | ACC | Mid 2014 |  |
| 1. Amend section VI (D) of extradition act to allow the extradition of persons serving sentence in Bhutan for committing offences in Bhutan to avoid resources and human rights implications due to denial of accused person’s right to be near his family where reintegration would also be easy. | ACC, Judiciary, MoFA, OAG | 2015 |  |
| 4.3. Facilitate transfer of sentenced person by concluding treaties, or bilateral or multilateral agreements. | 1. Assess with which countries Bhutan may enter into bilateral agreements with for transfer of sentenced persons and negotiate the same. | MoFA, ACC, OAG | 2014 |  |
| 1. Draft MLA statute, properly founded on a strong national policy framework on international cooperation and to facilitate international cooperation in combating trans-national crimes including corruption. The MLA Act should facilitate international cooperation in civil proceedings relating to corruption, including asset tracing and recovery, and administrative matters. | MoFA, judiciary, ACC, OAG, RBP, DRC, BNC | 2015 |  |
| * 1. Afford one another the widest measure of mutual legal assistance (MLA) in investigation, prosecution and judicial proceedings in relation to offences covered by UNCAC by concluding treaties, or agreements and arrangements. | 1. Introduce legislative provisions to facilitate informal and coordinated cooperation regarding MLA. | MoFA, ACC, RBP |  | Legal provision included in ACA 2011. |
| 1. Introduce legislative provision to permit transmittal of information without prior request. | MoFA, RBP(INTERPOL) | 2014 |  |
| 1. Introduce legislative provisions to enable transfer to and from Bhutan of a person who is detained or is serving a sentence in Bhutan to another State. | ACC, OAG, RBP, Judiciary, MoFA |  | Legal provision included in ACA 2011. |
| 1. Designate ACC as a central authority for corruption offences or extend the mandates of the central authority in SAARC CMACM to cover corruption cases and expedite processing and execution of the requests. | ACC, MoFA | Mid 2014 |  |
| 1. Develop a training programs and manuals for officers to assist offices on MLA processes upon enactment of a MLA law. | MoFA, RCSC, OAG | 2015 |  |
| 1. Set up a working group consisting of RBP, ACC, MoFA, and OAG to assess with which countries (Singapore, Dubai and India, Nepal, Thailand, Hongkong) Bhutan should cooperate regarding MLA matters. | RBP, ACC, MoFA, OAG | 2014 |  |
| 1. Conclude bilateral or multilateral agreements by the national law enforcement agencies involved in the prevention, investigation and prosecution of corruption and related offences, where necessary, to enhance effective cooperation in mutual legal assistance. | MoFA, ACC, MoHCA | 2014 |  |
| 1. Include provisions ensuring Bhutanese citizen are not tried abroad if they can be tried in Bhutan. | OAG, Parliament | 2015 |  |
| 1. Introduce legislative provision to save resources and to avoid human rights implications due to denial of accused person’s right to be near his family where reintegration would also be easy. | ACC, OAG and MoFA |  | Legal provision included in ACA 2011. |
| * 1. Facilitate transfer of criminal proceeding for prosecution of offences. | 1. Enter into appropriate bilateral arrangements with appropriate countries to facilitate transfer of criminal proceedings. | Judiciary, OAG, MoFA, MoHCA and RBP. | As and when required |  |
| 1. Develop effective legislative and administrative framework to facilitate and enhance law enforcement cooperation. | ACC, OAG, RBP, Judiciary, RAA | 2014 |  |
| * 1. Enhance effectiveness of law enforcement action to combat corruption by law enforcement cooperation. | 1. Identify strategic partners and enter into MOUs and other forms of cooperation by law enforcement agencies. | ACC, OAG,RBP, Judiciary, RAA,RMA, DRC | 2013 |  |
| 1. Seek informal international cooperation between law enforcement agencies. | ACC, MoFA | As and when required |  |
| 1. Identify the strategic partners and enter into bilateral arrangements with strategic partners for joint investigations. | MoFA, MoHCA, ACC, RBP, Judiciary | 2013 |  |
| * 1. Cooperate with other State in joint investigation by concluding bilateral or multilateral agreements or arrangements or on case-by-case basis. | 1. Conclude bilateral or multilateral agreements or arrangements for joint investigation or on case-by-case basis. | ACC, MoFA and MoHCA. | As and when required |  |
| 1. Limit the application of section 111 of ACA to instances of collusive activities in public tender and it should be made discretionary power of ACC as opposed to mandatory in nature. | ACC, OAG, Judiciary |  | Made discretionary in ACA 2011. |
| * 1. Facilitate deployment, use and admission of a broad of special investigative technique. | 1. Pass free standing law on the use of special investigative techniques in consistent with BC. | Parliament, OAG, ACC, RBP, Judiciary | 2015 | Salient provisions are incorporated in ACA 2011. |
| 1. Review EA to provide for wider admissibility of evidence generated by special investigative techniques. | Parliament, OAG | 2015 |  |
| 1. Document the use of special investigative techniques. | ACC, DRC, RBP | 2013 |  |
| 1. Train all law enforcing agencies including the judiciary in use of controlled delivery and investigative techniques at both international and national level. | ACC, OAG, RBP, Judiciary, DRC | 2014 |  |
| 1. Conclude bilateral or multilateral agreements or arrangements with appropriate countries on the use of special investigative techniques or take decision on a case-by-case basis. | ACC, RAA, RBP, MoFA, MoHCA | 2015 |  |
| 1. Develop guideline on the use of controlled delivery at the international level. | ACC, OAG, Judiciary, RBP, BNC, DRC | 2014 |  |
| 1. Enter into agreement to accord/seek assistance or cooperation to/from foreign State and enhanced procedural measures in asset recovery. | ACC, OAG, MoFA | Mid 2014 |  |
| 1. To establish full mechanism for the asset recovery. | * 1. Afford one another the widest measure of cooperation and assistance in asset recovery. | 1. Train law enforcement agencies, including the judiciary and prosecution to develop their skills or capacity to handle assets recovery matters. | ACC, OAG, RBP, DRC, Judiciary. | 2013 |  |
| 1. Para. 2.10 applies here as well |  |  |  |
| * 1. Facilitate prevention and detection of transfers of the proceeds of crime established under UNCAC. | 1. Amend CCPC to ensure that State Parties have legal standing and to permit recognition of other State Party’s priority claims. | Judiciary, Parliament, OAG |  | CCPC amended |
| * 1. Facilitate direct recovery of property by allowing initiation of civil action in the court to establish ownership of property, pay compensation or damages and to claim as legitimate owner of the property. | 1. Conclude bilateral agreements to enable State Parties to have legal standing to initiate civil action in the Bhutanese Courts to establish title to or ownership of property acquired through the commission of an offence of corruption. | Judiciary, OAG, MoFA, MoHCA | 2013 |  |
| 1. Address international cooperation to request and receive a request for confiscation, freezing and seizure of proceeds of crimes, property, equipments, or other instrumentalities. | ACC, OAG and MoFA |  | Legal provision included in ACA 2011. |
| * 1. Use various mechanisms for recovery of property through international cooperation in confiscation. | 1. Introduce legislative provisions to effectively fight corruption on a global scale. | ACC |  | Legal provision included in ACA 2011. |
| 1. Introduce legislative provision to enhance international cooperation to request and receive a request for confiscation, freezing and seizure of proceeds of crimes, property, equipments, or other instrumentalities. | ACC, MoFA, OAG |  | Legal provision included in ACA 2011. |
| * 1. Enhance international cooperation to request and receive a request for confiscation, freezing and seizure of proceeds of crimes, property, equipments, or other instrumentalities. | 1. Enter into bilateral and multilateral agreements or arrangements with other countries for international cooperation required for international confiscation. | ACC, MoFA, DRC, OAG | 2014 |  |
| 1. Introduce legislative provisions in Bhutanese laws on how to return and dispose of, including by return to its prior legitimate owners. | ACC |  | Legal provision included in ACA 2011. |
| * 1. Provide special cooperation by sharing information which will help to initiate or carry out investigations, prosecutions or judicial proceedings. | 1. Introduce legislative provisions to protect the rights of bona fide third parties. | ACC | 2014 |  |
| * 1. Adopt legislative or administrative measure to dispose the confiscated property or to return to its prior legitimate owner. | 1. Enter into bilateral and multilateral agreement in order to dispose the confiscated property or to return to its prior legitimate owner. | ACC, MoFA, RBP, | As and when required |  |
| 1. Enter into bilateral and multilateral arrangements in order to articulate and enforce UNCAC obligations. | ACC, MoFA |  |  |
| Conduct proper training needs assessments across all UNCAC parameters to identify and then prioritize the key areas. | ACC, RCSC, RMA, DRC, RBP and FI. | 2014 |  |
| * 1. Establish financial intelligence unit to prevent and combat transfer of proceeds of crime. | Devise and lead training strategies to ensure that there is no overlap and duplication. | ACC, RCSC and Cabinet | 2014 |  |
| * 1. Conclude bilateral and multilateral agreements and arrangements. | Train law enforcement officers, prosecutors, Judges or other judicial officers. | ACC, RAA, OAG, RBP, Judiciary | After ratification |  |
| 1. To operationalise technical assistance, training plans and information exchange programmes. | * 1. Develop and initiate a special training and technical programme for personnel responsible for preventing and combating corruption. | Train in planning of strategic anti-corruption policy. | ACC and RCSC | 2015 |  |
| Study tours and secondment of the Bhutanese LEAs staff to the ICAC (New South Wales), ICAC (Hong Kong), CPIB (Singapore) and CBI (India). | ACC and RCSC |  |
| Train in the field of execution of requests for MLA and public procurement. | ACC, RBP, OAG and PPD |  |
| Develop ACC’s research capacity through SAARC regional initiatives to make more professional in terms of number and skills or knowledge. | ACC and RCSC |  |
| Peer review and analysis of Corruption Perception Survey and Integrity Assessment Report. | ACC |  |
| Enhance monitoring and evaluation framework for anti-corruption policies, strategies and activities. | ACC, CoS, Cabinet & Parliament |  |
| * 1. Develop capacity to analyze trends in corruption, share information and to monitor policies and actual measures to combat corruption. | 1. Increase and facilitate information sharing with other countries. | ACC, MoFA, OAG |  |  |
| 1. Participate in CoSP after the ratification or accession to UNCAC. | RGoB, MoFA and ACC |  |
| 1. Ratify or accede to UNCAC. | RGoB, MoFA and ACC |  |
| 1. Make a reservation that Bhutan does not consider itself bound by paragraph 2 of article 66 during the time of ratification or accession to UNCAC. | RGoB |  |
| 1. To participate at the conference of the State parties. | * 1. Participate consistently in the conference of the States parties. | 1. Participate in CoSP after the ratification or accession to UNCAC. | RGoB, MoFA and ACC | After ratification |  |
| 1. To implement UNCAC and make provision for accession and settlement of dispute. | * 1. Ratify, implement and enforce UNCAC. | 1. Ratify or accede to UNCAC. | RGoB, MoFA and ACC | 2014 |  |
| * 1. Settle disputes in interpretation of convention through negotiation or arbitration. | 1. Make a reservation that Bhutan does not consider itself bound by paragraph 2 of article 66 during the time of ratification or accession to UNCAC. | RGoB |  |

# ANNEX II: KEY CONTRIBUTORS TO THE UNCAC SELF-ASSESSMENT REPORT

**Overall Coordinator and Supervision**

Dasho Neten Zangmo

Chairperson

Anti-Corruption Commission

**Self-Assessment Report Coordinator**

Choining Dorji,

Chief Legal Officer (now with Druk Holdings and Investments)

Anti-Corruption Commission

**Secretarial Support to TTEs**

Sonam Dhendup,

Legal Assistant (have resigned to pursue higher education),

Anti-Corruption Commission.

**The Sub-team Leaders**

1. **Team Leader for Chapter I and II**

Damchoe Tenzin

Chief Legal Advisor and Company Secretary,

Bank of Bhutan Ltd

1. **Team Leader for Chapter III**

Tashi Delek

Sr. Attorney

Office of the Attorney General

1. **Team leader for Chapter IV and VIII**

Kinley Dorji

Chief Legal Officer (now Paro Drangpon)

Ministry of Home and Cultural Affairs

1. **Team leader for Chapter V, VI and VII**

Phub Dorji (Personal Secretary to President,

Bhutan National Legal Institute)

Registrar

High Court

Royal Court of Justice

**Team of Technical Experts**

1. Peljore Rumba

Head of Banking Operation

Bhutan National Bank

1. Tshering Dhendup

Examining Officer

Royal Monetary Authority

1. Sonam Yangchen

Legal Officer

Royal Audit Authority

1. Dema Lham

Legal Officer

National Assembly of Bhutan

1. Rinchen Dema

Legal Officer

Ministry of Foreign Affairs

1. Chhimi Tshoke Dorji

Legal Officer

Ministry of Education

1. Kunzang

Legal Officer

National Environment Commission

1. Jurmila

Procurement Officer

Public Procurement Division

Ministry of Finance

1. Yangzom

Procurement Officer (now with DHI)

Public Procurement Division

Ministry of Finance

1. Ugyen Penjor (Late)

Legal Officer

Bhutan Information Communication and Media Authority

1. Tashi Chenzom

Sr. Legal Officer

Ministry of Labour and Human Resources

1. Kinley Tenzin

Sr. Legal Officer

National Council of Bhutan

1. Sherab Tharchen

Asst. Legal Officer

Anti- Corruption Commission

**External Experts/Consultants**

1. Manzoor Hasan, currently Director of the Institute of Governance Studies (IGS) in BGAG University, Bangladesh (have left IGS).
2. Alan Bacarese, currently Head of Legal and Case Consultancy in the International Centre for Asset Recovery which is under the auspices of the Basel Institute of Governance. He was one of the main authors of the UN’s Technical Guide on UNCAC. He is also the former Senior Crown Prosecutor from the UK with extensive international experience of working with countries on the implementation of the UNCAC (have left BIG).
3. Dr. Jan Christopher Richter, currently Head of Public Sector Governance at the Centre for Governance and Anti-Corruption which is under the auspices of the Basel Institute of Governance (demise).

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# GLOSSARY OF ORGANISATIONS

**Association of Bhutanese Tour Operator (ABTO)**

The ABTO is a representative of the tour operators, representing the mutual interests of the tourism industry in Bhutan. It was founded in 2000 to help the member tour operators in service delivery, product development and enhancement, marketing and promotion, capacity and professional development in the tourism business. <http://www.abto.org.bt/>

**Anti-Corruption Commission (ACC)**

The ACC is an independent constitutional body established under the Royal Decree in 2006 to fight against corruption through law enforcement, prevention, and public education for creating mass awareness on anti-corruption. <http://www.anti-corruption.org.bt/>

**ADB/OECD-** **Anti-Corruption initiative for Asia-Pacific**

The ADB/OECD-Anti-Corruption initiative for Asia-Pacific is a regional organisation launched in 1999 to support the countries’ effective and sustainable anti-corruption mechanism through fostering policy dialogue, policy analysis, capacity building and donor coordination, and by providing an extensive online database to fight against corruption within the region. <http://www.oecd.org/>

**Bhutan Chamber of Commerce and Industry (BCCI)**

The BCCI is non-profit making private sector organisation composed of business community members. It was established in 1980 under the royal command to facilitate and promote private sector development and acts as the link between the Private Sector and the Royal Government of Bhutan. <http://www.bcci.org.bt/>

**Basel Institute on Governance (BIG)**

The BIG is an independent and non-profit institute based in Switzerland. It is associated with the University of Basel. The BIG conduct research, offer policy advice and capacity building support in public, global and corporate governance/compliance. <http://baselgovernance.org/>

**Bhutan InfoComm and Media Authority (BICMA)**

The BICMA is an independent, autonomous body governed by the Bhutan Information, Communications and Media Act 2006. It is mandated to regulate Information Communication Technology and Media services in the country. <http://www.bicma.gov.bt/>

**Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)**

The BIMSTEC is a regional organisation which aims to facilitate rapid socio-economic development, collaborate and provide assistance through training and research facilities, cooperate and provide joint efforts to national development plans of member states and other beneficial cooperation. Bhutan became the member state in 2003. <http://www.bimstec.org/>

**Construction Association of Bhutan (CAB)**

The CAB is a Non Government Organisation established in January 25, 2000 to develop and promote industry by addressing the problems and policy issues at national, regional and international level. <http://www.cab.org.bt/>

**Construction Development Board (CDB)**

The CDB is a government body established under the umbrella of Ministry of Works & Human Settlement to promote a robust and vibrant Construction Industry through registration, classification and monitoring of contractors, consultants and engineers/architects. <http://www.cdb.gov.bt/>

**Druk Holding and Investment (DHI)**

The DHI is autonomous holding company established under the Royal Charter. It holds and manages the commercial companies of the government to invest, raise funds and to facilitate and promote private sector development. <http://www.dhi.bt/>

**Department of National Budget (DNB)**

DNB is a department under the Ministry of Finance. It works to improve the budgetary system by formulating effective budgetary rules and policies to ensure effective national resource allocation and management. <http://www.mof.gov.bt/index.php?deptid=11>

**Department of Public Accounts (DPA)**

DPA is department under the Ministry of Finance. It monitors and strengthens the public sector accounting system and debt management for proper use of public resource. <http://www.mof.gov.bt/index.php?deptid=13>

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**Department of Revenue and Custom (DRC)**

DRC is law enforcing department under the Ministry of Finance. It fosters effective tax collection and works to develop an effective revenue system. It also oversees the functioning of RRCOs. <http://www.mof.gov.bt/index.php?deptid=14>

**Election Commission of Bhutan (ECB)**

The ECB is a independent constitutional body established in 2006 under the Royal Kasho to prepare, maintain, and update periodically the electoral roll, the election schedule, and to supervise, direct, control, and conduct election to Parliament and Local Government, as well as holding of National Referendums. <http://www.election-bhutan.org.bt/>

**Gross National Happiness Commission (GNHC)**

The GNHC is a central government body for coordinating and spearheading policy formulation, strategic development framework for the five year plans and programmes. It also works towards embedding GNH into policies and to undertake proper coordination to implement plans and programs. <http://www.gnhc.gov.bt/>

**German Technical Cooperation (GTZ)**

The German Technical Cooperation is international cooperation for sustainable development mandated for successful promotion of international cooperation contributing to sustainable development throughout the world through capacity development. <http://www.gtz.de/en/689.htm>

**Institute of Governance Studies (IGS), BRAC University**

The IGS is leading institute in Bangladesh established 2005 under BRAC University to offer post-graduate degree and undertaking of research in the areas of governance and development. <http://www.igs-bracu.ac.bd/>

**International Criminal Police Organisation (INTERPOL)**

The INTERPOL is international police organisation established in 1923 to facilitate international police co-operation, supports and assists all organizations, authorities and services who works to prevent or combat international crime. Bhutan became the member state on 19th September 2005 and it maintains a National Centre Bureau at Royal Bhutan Police headquarter in Thimphu. <http://www.interpol.int/>

**National Judicial Commission (NJC)**

The NJC is a commission **responsible for the appointment and the removal of the Drangpons and Drangpon Ramjams of the courts in Bhutan.** It was established in 2003 under a Royal Decree.The commission meets twice a year.

**National Land Commission (NLC)**

The NLC is the responsible agency for land records administration, cadastral mapping, topographic mapping, maintenance of record of international boundaries, and boundary demarcation discussions with neighboring countries. <http://www.land.gov.bt>

**Office of the Attorney General (OAG)**

The OAG is an autonomous body established in 2006 to represent the Royal Government of Bhutan in the court of law and tribunals, draft and review legal frameworks and to provide legal services. <http://www.oag.gov.bt/>

**Pay Commission (PC)**

The PC is an autonomous body which constitute from time to time on recommendation of prime minister to recommend revisions of salary structure, allowance, benefits, remunerations and other emoluments for the royal civil service, the judiciary, the armed forces, the parliament members, the local government, the Dratshang, the holders and members of constitutional offices and other public servants.

**Public Procurement Policy Division (PPPD)**

PPPD is division established to facilitate policy and professional development in the field of procurement under the Department of National Properties (DNP) of Ministry of Finance. It monitors the implementation of the PRR and based on their analysis of PRR proposes improvements to the Procurement Rules & Regulations and supporting regulations, guidelines and documentation. <http://www.mof.gov.bt/index.php?deptid=12&id=67>

**Royal Audit Authority (RAA)**

The RAA is an independent authority established in 1985 to audit and report on the economy, efficiency, and effectiveness in the use of public resources. It can conduct any type of audit as it may deem proper. <http://www.bhutanaudit.gov.bt/>

**Royal Bhutan Police** (**RBP)**

The RBP is a trained uniform force under the Ministry of Home and Cultural Affair responsible for maintaining law and order and prevention of crimes. The RBP is the custodian of Royal Bhutan Police Act 2009.

**Royal Civil Service Commission (RCSC)**

The RCSC is a constitutional body established in 1982 under the Royal Charter to promote and ensure an independent and apolitical civil service to discharge public duties in an efficient, transparent, and accountable manner. <http://www.rcsc.gov.bt/>

**Royal Institute of Management (RIM)**

The RI M is a training institute established in 1986 to **develop socially and professionally responsible and proactive leaders and managers** by providing various programmes for human resource development in the field of public administration, financial management and in national law from diploma level to post graduate diploma. <http://www.rim.edu.bt/>

**Royal Judicial Service Council (RJSC)**

The RJSC is a committee responsible in formulating personnel policies for the judicial bodies, institutions and Courts concerning the administration of judicial system of Bhutan. The committee consist representative Drangpon/Drangpons from Supreme Court, High Court, Dzongkhag Courts and Dungkhag.

**Royal Monetary Authority (RMA)**

The RMA of Bhutan is responsible agencies was established in 1982 to take control over amount of bank note and coin circulation, control money supply growth, supervision of banks and other financial institutions’ conduct their business on sound and prudential basis in accordance with related laws and rules and regulations and ensure to promote effective financial system. <http://www.rma.org.bt/>

**Road Safety and Transport Authority (RSTA)**

The RSTA is an organization that consolidates motor vehicle activities in the kingdom including registration and fitness of vehicles, licensing of drivers, collection of motor vehicles taxes, traffic and transport management, besides regulation and monitoring of passenger transport service. Today RSTA has four Regional Offices and sixteen Bases. <http://www.rsta.gov.bt/>

**Royal University of Bhutan (RUB)**

The RUB is authority of eleven constituent colleges that manages the tertiary education in Bhutan. It aims to achieve excellence in tertiary education to advances knowledge, improves life quality, enhances socio-economic development and promotes national happiness. <http://www.rub.edu.bt/>

**South Asian Association for Regional Cooperation (SAARC)**

The SAARC is an economic and political organization established on 8th December, 1985. The member state works closely for economic, technological, social, and cultural development emphasizing on the collective self-reliance. http://www.saarc-sec.org/

**United Nation (UN)**

The United Nation is an international organisation founded by 51 countries to maintain international peace and security develop cooperation amongst nations to promote social developments, better living standards and human. Bhutan became member state to UN in 21st September 1971 and has the **Permanent Mission to the United Nations in New York** that focus on Bhutan’s participation in the regular and special sessions of the General Assembly. http://www.un.org/en/

**United Nation Development Programme (UNDP)**

The UNDP is the UN’s global development network, advocating for change and connecting countries to knowledge, experience and resources to help build a better life. In Bhutan, the foundation of UNDP's work is to ensure that progress is based on people - on their needs, their efforts and their rights. The Standard Basic Assistance Agreement (SBAA), which the Royal Government of Bhutan and UNDP signed on 14th July 1978, governs UNDP assistance to the country. <http://www.undp.org.bt/>

**United Nations Office on Drugs and Crime (UNODC)**

The UNODC is an international organisation established in 1997 by combining the United Nations International Drug Control Programme (UNDCP) and the Crime Prevention and Criminal Justice Division to fight against illicit drugs and international crime and operates throughout the world through an extensive network of field offices. <http://www.unodc.org/>

**World Trade Organisation (WTO)**

The World Trade Organization is an organization mandated to supervise and liberalize the international trade. It was officially founded on January 1, 1995. It regulate the international trade between the trading nations based on the WTO agreements negotiated, formalised and signed by trading nations and ratified by the parliament. Bhutan is under the process of accession. <http://www.wto.org/>

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# LIST OF STATUTES REFERRED

1. **Acts**

Audit Act 2006

Anti-Corruption Act 2006

Bhutanese Constitution

Bhutan Information and Communications Act 2006

Companies Act 2000

Civil and Criminal Procedure Code 2001

Civil Service Act 2010

Civil Society Organisation Act 20007

Election Act 2009

Evidence Act 2004

Enabling Act on Suppression of Terrorism 1991

Extradition Act 1991

Financial Institutions Act 1992

Income Tax Act 2001

Jabmi Act 2003

Judicial Service Act 2007

Labour and Employment Act 2007

Local Governance Act 2009

National Assembly Act 2009

National Council Act 2009

Narcotic Drugs, Psychotropic Substance and Substance Abuse Act 2005

Office of the Attorney General Act 2006

Penal Code of Bhutan 2004

Public Election Fund Act 2008

Public Finance Act 2007

Royal Bhutan Police Act 2009

Royal Monetary Authority Act 1982

Religious Organisation Act 2007

Sale Tax, Customs & Excise Act 2000

Road Safety and Transport Authority Act 1999

1. **Bills**

Anti-Corruption Amendment Bill 2010

Financial Services Bill

Right to Information Bill

1. **Rules and Regulations**

Anti-Corruption Commission Service Rules 2008

Anti-Money Laundering and Combating the Financing of Terrorism Regulation 2010

Asset Declarations Rules 2008

Bhutan Civil Service Rules 2006

Election Commission of Bhutan Service Rule

Export and Import of Currency Regulation

Foreign Exchange Regulations 1997

Gifts Rules 2009

Public Procurement Rule 2009

Procurement Rules and Regulations 2009

Prudential Regulation 2002

Regulation for Possession of Property Outside Bhutan 1993

1. **Manuals**

Finance and Accounting Manual

Position Classification System Manual

1. **Conventions**

SAARC Convention on Mutual Assistance in Criminal Matters

United Nations Convention Against Corruption

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