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Executive summary

Note by the Secretariat

Addendum

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* [CAC/COSP/IRG/2025/1](#).



II. Executive summary

Bhutan

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

Bhutan signed the United Nations Convention against Corruption on 15 September 2005 and acceded to it on 27 September 2023.¹

The implementation by Bhutan of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was issued on 28 February 2019 ([CAC/COSP/IRG/I/4/1/Add.66](#)).

The legislation implementing chapters II and V of the Convention principally comprises the Anti-Corruption Act 2011, the Civil Service Act 2010, the Judicial Service Act 2007, the Office of the Attorney General Act 2015, the Election Act 2008, the Audit Act 2018, the Royal Monetary Authority Act 2010, the Companies Act 2016, the Public Finance Act 2007, the Penal Code, the Civil and Criminal Procedure Code and the Anti-Money-Laundering and Countering of Financing of Terrorism Act 2018.

Relevant institutions involved in preventing and countering corruption include the Anti-Corruption Commission (ACC), the Office of the Attorney General, the Royal Bhutan Police, the Royal Monetary Authority, the Royal Audit Authority, the Financial Intelligence Department (under the Royal Monetary Authority), the Royal Civil Service Commission (RCSC), the Ministry of Finance and the Ministry of Home and Cultural Affairs.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

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

The National Integrity and Anti-Corruption Strategy 2019–2023, adopted by the Government on 8 August 2019, builds on two previous strategies (covering the periods 2009–2013 and 2014–2018, respectively). In developing the Strategy, consultations were conducted involving all national stakeholders, including non-State actors. Furthermore, “corruption reduced”, one of the national key result areas of the twelfth five-year plan, is mandatory for all budgetary agencies to implement in the form of an organizational integrity plan. An implementation action plan has been prepared for each strategic objective of the Strategy.

The National Integrity Committee, chaired by the Prime Minister and comprising members of relevant agencies, civil society organizations and the private sector, was established to monitor and evaluate the implementation of the National Integrity and Anti-Corruption Strategy and report to the Parliament on an annual basis. The National Integrity Committee is supported by the Integrity Committee, which has not met for the past four years. As an interim measure, ACC is taking the lead in monitoring the implementation of the Strategy. Although the National Integrity Committee is required to evaluate the Strategy twice in the plan period (mid-term and upon its conclusion), in practice the evaluation is only conducted at the end of the Strategy.

Agencies report their implementation status annually for evaluation. ACC, in collaboration with relevant stakeholders’ Government Performance Management Divisions, conducts the evaluation and shares the scores with the respective agencies.

¹ On 21 September 2016, the Government of Bhutan deposited its instrument of ratification of the Convention. On 27 October 2022, the Government of Bhutan notified the Secretary-General of its denunciation of the Convention. On 27 September 2023, the Government of Bhutan deposited its instrument of accession to the Convention.

Furthermore, ACC presents the evaluation findings to the National Integrity Committee and the Integrity Committee for any necessary interventions.

Bhutan carries out a wide range of measures and initiatives aimed at the prevention of corruption, in both the public and the private sectors. These include corruption risk management (conducted by internal auditors in all ministries, who then report to ACC on a yearly basis); the Integrity Diagnostic Tool; the Business Integrity Initiative of Bhutan; the Integrity Vetting System; ethics and integrity programmes; research and system studies; integrity pacts (agreements between procuring agencies and service providers or contractors to avoid corruption or deceptive practices); the E-Learning Course on Ethics and Integrity (mandatory for all public servants at the P2 level but open to all those in the public service); the Strategic Youth Integrity Programme and Integrity Clubs in schools and educational institutions; the National Corruption Barometer Survey; and the Business Integrity Portal.

Bhutan established the National Law Review Task Force in 2015. The country has also established a mission team to review the effectiveness of existing anti-corruption programmes and integrity tools. The Anti-Corruption Act, the Penal Code and other laws have been amended to incorporate recommendations issued following the review of the country's implementation of the Convention under the first cycle.

ACC, which was established in December 2005, is the primary body responsible for preventing and combating corruption, including through knowledge- and awareness-raising. Following the adoption of the Constitution in 2008, ACC was recognized as one of the constitutional bodies (art. 27).

The Chair and members of ACC are appointed by the King, for a five-year term, from a list of names recommended jointly by the Prime Minister, the Chief Justice of the Supreme Court, the Speaker, the Chair of the National Council and the Leader of the Opposition. As a holder of a constitutional office, the Chair of ACC is not eligible for reappointment (sect. 31 (4) of the Entitlement and Service Conditions Act for the Holders, Members and Commissioners of Constitutional Offices), is required not to have any political affiliation and can be removed only by way of impeachment by the Parliament (art. 32 of the Constitution; sect. 19 of the Anti-Corruption Act). However, an impeachment bill is pending before the Parliament for adoption, which creates uncertainty regarding the removal of holders of constitutional offices, including the Chair of ACC.

Although the Constitution (art. 27) and the Anti-Corruption Act (sect. 6) provide for the operational independence of ACC, section 8 of the Act, which requires ACC to consult with RCSC on human resource matters, restricts the independence of ACC in the administration of such matters. A proposal to amend this section was not considered by the Parliament. The current human, technical and financial resources of ACC seem to be adequate. ACC staff members receive a range of dedicated training on preventing and combating corruption.

Although the State is required to make adequate financial provisions for the independent administration of the Commission as part of the annual national budget and ACC has the independence to decide on how to spend the funds allocated to it, the Parliament only approves the capital budget. The recurrent budget, which is not part of the annual national budget but is necessary for implementing ACC core mandates, is decided on and provided later by the Ministry of Finance. So far, ACC has not faced any issues, but this cannot be guaranteed in the future.

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

The right to equal access and opportunity to join the public service is a fundamental right of every Bhutanese citizen (art. 7 of the Constitution).

RCSC is the central agency responsible for implementing the civil service systems, which are governed by the Civil Service Act and the Bhutan Civil Service Rules and Regulations.

The recruitment, selection and appointment of civil servants is done on the basis of merit, qualification and fair and open competition (sect. 46 of the Civil Service Act). University graduates are recruited and appointed as civil servants through a competitive examination known as the Bhutan Civil Service Examination. Except for appointments to executive and specialist positions and the appointment of university graduates through the Bhutan Civil Service Examination, the appointment of civil servants is delegated to individual agencies.

The recruiting agency is required to appoint successful candidates to the approved vacant posts in order of rank on the basis of merit. Candidates are given the opportunity to appeal to the appellate authority (an administrative tribunal) within 10 working days of the date of declaration of the result (sect. 4.10.4 of the Bhutan Civil Service Rules and Regulations).

The Bhutan Civil Service Rules and Regulations establish detailed procedures for the conduct of the Bhutan Civil Service Examination (chap. 7) and the recruitment of civil servants on contract (chap. 5).

Integrity and anti-corruption training for civil servants is delivered in cooperation with ACC.

RCSC is required to institute a transparent, objective and fair performance evaluation system based on individual workplans. A detailed procedure for the promotion of civil servants is provided under chapter 13 of the Bhutan Civil Service Rules and Regulations.

The Bhutan Civil Service Rules and Regulations require the parent agencies to issue guidelines for the rotation of civil servants in positions considered vulnerable to corruption (sect. 14.2.3). They also provide a list of vulnerable positions (sect. 14.4.10).

The Constitution (art. 7) and the Civil Service Act (sect. 45) establish the principle of equal pay for work of equal value. Chapter 11 of the Bhutan Civil Service Rules and Regulations provides for allowances and benefits to attract and retain civil servants, in addition to their salary.

RCSC has instituted various retirement schemes. Civil servants with impending disciplinary or corruption cases are not eligible for the early retirement scheme (sect. 20.3.2.2 of the Bhutan Civil Service Rules and Regulations).

The appointment, hiring, retention, promotion, training, remuneration, retirement, resignation and termination of service of non-elected public servants are governed by relevant acts and rules.

The elective offices in Bhutan are those of the National Assembly, the National Council and local government. Persons who have been convicted of any criminal offence and sentenced to imprisonment or who have been found guilty of corrupt practice in an election should be disqualified as candidates or members holding an elective office under the Constitution (sect. 179 of the Election Act).

The Constitution (art. 16) allows State funding of registered political parties and their candidates to the National Assembly and the National Council. The funding of political parties and public elections is governed by the Election Act and the Public Election Fund Act. The Public Election Fund Division, established within the Secretariat of the Election Commission, and the Royal Audit Authority are required to examine and audit parties' and candidates' campaign accounts and records (sect. 14.1 of the Public Election Fund Rules and Regulations).

Several pieces of legislation include provisions to enhance transparency in public administration and avoid conflicts of interest. In 2017, ACC adopted the Model Guideline on Managing Conflicts of Interest in the Public Sector. Although public officials, including elected officials, must avoid conflicts of interest and declare any that arise, the rules in place are not sufficiently descriptive to be effective.

Various laws, including the Anti-Corruption Act (sect. 38), require public officials to declare their outside activities, employment, investments, assets and substantial gifts or benefits. Furthermore, the Asset Declaration Rules and the Gift Rules detail and govern the procedures for and frequency and management of such declarations (see the section on article 52 of the Convention below).

A number of laws, including the Civil Service Act (sects. 36, 37 and 44), emphasize integrity, honesty and responsibility and prohibit acts that impede the proper performance of a public service. Codes of conduct for various public services are provided in the laws that govern those services. Appropriate disciplinary sanctions for breaches of the codes are provided for in the respective laws. RCSC publishes statistics on administrative action taken against civil servants for the violation of codes of conduct in its annual report.

Every Bhutanese citizen has a fundamental duty to uphold justice and to act against corruption (art. 8 of the Constitution). All persons, including public servants, are required to report acts of corruption to ACC (sect. 77 of the Anti-Corruption Act). Every public agency has a human resource committee responsible for overseeing human resource matters, including disciplinary issues. Public servants can report to this committee for onward reporting to ACC. ACC has established a dedicated division for receiving complaints. Any individual can file a complaint with ACC in person or by email, post or telephone. ACC has also created an online corruption reporting platform and developed a complaint reporting form, available on its website. In addition, ACC has launched social media accounts on WeChat and WhatsApp for reporting corruption. ACC has also developed a brochure aimed at educating and guiding complainants on the lodging of complaints.

The judiciary is independent (art. 21 of the Constitution). The Judicial Service Act requires the Royal Judicial Service Council to institute a personnel administration system to maintain dignity, a high degree of competency and integrity among judicial service personnel.

The Chief Justice and justices of the Supreme Court and the Chief Justice and justices of the High Court are appointed by the King on the basis of the recommendations of the National Judicial Commission. Under article 31 of the Constitution, these senior judges are the holders of constitutional offices. As such, they are not eligible for reappointment, are required not to have any political affiliation and can be removed only by way of impeachment by the Parliament. However, an impeachment bill is pending before the Parliament for adoption, which creates uncertainty regarding the removal of holders of constitutional offices, including these senior judges.

Detailed procedures for the selection, appointment, promotion, transfer, training, remuneration, performance management, retirement, removal and termination of service of judicial service personnel are set out in the Judicial Service Act, which also establishes various integrity measures, including a code of conduct. In addition, Bhutan has taken other measures to further strengthen integrity among members of the judiciary, including the Judiciary Integrity Scan (designed on the basis of the Bangalore Principles of Judicial Conduct), the development of a module on judicial ethics and integrity, an e-learning course on ethics and integrity management in the Parliament and the judiciary, a thematic session on ethics and integrity for bench clerks and the National Integrity Assessment 2019 (which was extended to the judiciary). The judiciary has established the Media and Communications Unit at the Supreme Court to assess all allegations against the institution and its employees.

The Royal Judicial Service Council is required to transfer judicial service personnel once every three years (sect. 225 of the Judicial Service Act).

In addition to the integrity measures and code of conduct provided for in the Office of the Attorney General Act, staff of the Office of the Attorney General, including prosecutors, are civil servants and are subject to the integrity requirements set out in the Civil Service Act.

The Office of the Attorney General adopted the Prosecution Guidelines in 2010. They establish measures for professional conduct by prosecutors and include a code of conduct.

The Attorney General is appointed by the King on the basis of the recommendation of the Prime Minister (art. 29 of the Constitution). The Office of the Attorney General Act provides measures to guarantee integrity in the appointment of the Attorney General (sect. 62). Integrity checks are done prior to that appointment. The Act also lists the grounds for the removal or compulsory resignation of the Attorney General (sects. 93 and 94).

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

The Public Finance Act and the Procurement Rules and Regulations 2009 issued by the Ministry of Finance regulate public procurement. The Procurement Rules and Regulations, last amended in 2019, provide various mechanisms regulating procurement processes.

The Procurement Rules and Regulations apply to all government agencies, including the armed forces.

The Government Procurement and Property Management Division of the Ministry of Finance is the agency responsible for overseeing and implementing the government procurement system.

Procurement is decentralized, and every procuring agency has a tender committee supported by a procurement officer who acts as the secretary to the committee.

Procurement officers are recruited through a single recruitment process as officers of the Ministry of Finance and are transferred regularly between agencies.

The procurement system was reformed in 2023. Bhutan started implementing the E-Government Procurement System in 2017; it was expected to be fully rolled out in July 2023. The System is the single government portal that serves as the primary source of information on all government procurement. All government agencies are required to use it.

All procuring agencies are required to prepare annual procurement plans, which are published and made available to the public in the E-Government Procurement System. The Procurement Rules and Regulations provide for emergency procurement.

The Procurement Rules and Regulations establish the procurement thresholds and, accordingly, predetermine the methods of procurement to be used by procuring agencies (sects. 4.1 and 4.2). Open tendering is the default method.

Depending on the method of procurement adopted by the tender committee, procuring agencies prepare bidding documents using templates to minimize changes to those containing project-specific conditions.

Award is based on the lowest total price, subject to compliance with the technical requirements. Bid-opening sessions are not public.

The procuring agency issues a letter of intent following its decision to award the contract to the successful bidder, after which a 10-day standstill period is observed. The contract can be awarded only after the standstill period has been completed and only if there is no complaint or any complaint has been successfully resolved. Section 8.1 of the Procurement Rules and Regulations establishes the procurement grievance mechanism. Every procuring agency is required to institute the grievance redressal mechanism to receive and deal with any complaint related to the procurement. The tender committee of the procuring agency is a first-tier grievance redressal body for complaints related to the pre-award stage of procurement. The complainant may further appeal to the independent review body established by the Ministry of Finance. Any appeal to that body does not oust the jurisdiction of the courts.

The Procurement Rules and Regulations establish the requirement for members of the tender committee to declare a conflict of interest (sect. 3.1).

The Government Procurement and Property Management Division has established the Code of Conduct for Procurement Officers in accordance with section 8.2.2.1 (q) of the Procurement Rules and Regulations.

Training programmes include a module on the code of conduct and ethics and other relevant sessions to raise awareness among personnel dealing with procurement of vulnerabilities to corruption. Furthermore, the Ministry of Finance regularly rotates the persons dealing with procurement, especially procurement officers, to avoid creating an environment conducive to corruption.

The Constitution (art. 14) and the Public Finance Act regulate the public financial management of the State. The Financial Rules and Regulations 2016 provide detailed procedures for the preparation, approval and execution of the budget and accountability therefor.

The annual financial statements of the Government are subject to audit by the Royal Audit Authority, which is required to issue compliance, financial, performance and audit reports as appropriate, with specific audit observations and recommendations. Audited agencies are required to implement audit observations and recommendations (sects. 55, 56, 118–136, 146 and 147 of the Audit Act).

The Ministry of Finance adopted the Public Financial Management Reform Strategy 2017–2021 in August 2017. In July 2019, Bhutan adopted the electronic Public Expenditure Management System and the Global Interchange for Financial Transaction payment system, which allow for timely reporting on revenue and expenditure and corrective action, where necessary.

The Finance and Accounting Manual appended to the Financial Rules and Regulations establishes measures for the preservation of the financial records of budgetary agencies. The act of tampering with public records and with accounting records or financial statements is criminalized (sects. 298–301 of the Penal Code).

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

The Constitution establishes the right to information as one of the fundamental rights (art. 7). In 2013, Bhutan drafted a right to information bill that was never adopted. In 2006, the country adopted the Policy Guideline on Information-Sharing, which was amended in 2023. The Policy Guideline is, however, not mandatory and provides that each agency has the liberty to share information on the basis of its own information-sharing security and data protection policy. If access to information is denied, except for appeal to the Hight Court for infringement of a constitutional right, there is no formal mechanism to follow.

Public agencies disseminate information on their functioning and decisions through their annual reports, websites and other mainstream media and social media platforms. The websites of the various public agencies can be accessed through the National Portal of Bhutan. The country has also developed e-services that are available on the Citizen Services Portal (available at www.citizenservices.gov.bt/) to simplify administrative procedures.

In January 2016, the Council of Ministers adopted the Social Media Policy, which requires public agencies to use social media to disseminate and receive information and to collaborate on the formulation of public policy and the delivery of public services.

ACC regularly conducts studies and exercises relevant to the assessment of corruption risks, including corruption risk management exercises and national integrity assessments (every two years). The research reports are available on the ACC website.

The Anti-Corruption Act requires ACC to promote the active participation of civil society and non-governmental and community-based organizations in the prevention

of and fight against corruption (sect. 170). As an example of implementation, prior to the enactment of any legislation, the proposing agency is required to conduct a legislative impact assessment and upload the bill in the related registry for public review and comment.

ACC has developed an engagement programme for civil society organizations to strengthen anti-corruption efforts, justice and internal governance. ACC also provided funding to a civil society organization, Bhutan Transparency Initiative, to conduct the National Corruption Barometer Survey (in 2016 and 2020). ACC conducts general advocacy and awareness-raising activities for the students of various schools, colleges and institutes, including as part of the school Integrity Clubs and the Strategic Youth Integrity Programme.

ACC has set up multiple channels for receiving complaints about corruption, including anonymous complaints.

Private sector (art. 12)

The Companies Act includes provisions aimed at achieving integrity and transparency in the management of private companies, including measures related to corporate governance and the prevention of conflicts of interest (sects. 158–160). The Companies Act also requires the Corporate Regulatory Authority to establish a code of conduct for the governance of companies (sects. 163–166). The Office of the Registrar of Companies established that code in 2022. Private companies are also encouraged to implement the model code of conduct developed by ACC, which is mandatory for public companies.

The Bhutan Chamber of Commerce and Industry, the apex body of the private sector, holds regular dialogues with the Government and serves on statutory boards and government committees (sects. 251–266 of the Companies Act).

The Anti-Corruption Act requires ACC to cooperate with the private sector in the fight against corruption. To this end, ACC signs integrity pledges with private sector entities to drive the anti-corruption agenda as part of the Business Integrity Initiative of Bhutan.

Although the Companies Act requires a company's depository to maintain a register of beneficial owners, that register is deemed to be a register of shareholders or debenture holders for the purposes of the Act (sect. 87) and might not necessarily include information on the ultimate beneficial owners (as defined in article 13 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act).

There are no measures imposing restrictions on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement.

The Companies Act establishes adequate measures to promote transparency and accountability and to preserve the integrity of accounting books (sects. 232–240 and 245).

The Income Tax Act does not explicitly disallow the tax deductibility of expenses that constitute bribes (sect. 18).

Measures to prevent money-laundering (art. 14)

The Anti-Money-Laundering and Countering of Financing of Terrorism Act has significantly strengthened the country's anti-money-laundering regime. It is complemented by the comprehensive Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations of 2022. The regulatory framework establishes a risk-based approach for banks and non-bank financial institutions, as well as for designated non-financial businesses and professions. At the time of the country visit, Bhutan was conducting a national risk assessment. The Financial Intelligence Department, under the Royal Monetary Authority, is the supervisory authority for financial institutions, the definition of which includes banks, insurers or

reinsurers, securities brokers, investment advisors, investment fund operators, securities depositories or registries, foreign exchange dealers, money value transfer service providers and any financial service providers licensed or registered by the Royal Monetary Authority. The Bar Council supervises lawyers, and the Ministry of Economic Affairs supervises real estate agents, dealers in precious metals and dealers in precious stones. Casinos are illegal in Bhutan.

The Anti-Money-Laundering and Countering of Financing of Terrorism Act regulates customer due diligence, including the identification of ultimate beneficial owners, and contains rules on suspicious transaction reporting and record-keeping (see the section on article 52 of the Convention below).

Low capacity among the supervisory bodies leads to some challenges in the implementation of the anti-money-laundering requirements. According to the National Strategy and Action Plan for Combating Money-Laundering and Terrorism Financing for 2015–2020 and for 2020–2023, capacity-building is needed to strengthen investigations into money-laundering, terrorist financing and predicate offences. The supervisory framework for designated non-financial businesses and professions is not implemented in practice due to a lack of capacity among the supervisory authorities and the absence of a dedicated supervisory authority for accountants. No suspicious transaction reports have been received from any designated non-financial businesses and professions to date. However, the risk posed by that sector has been assessed as low, partly because foreign investment in Bhutan is difficult and limited.²

Financial institutions have compliance officers who report suspicious transactions through a dedicated system (sects. 69–74 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act). Reports reach the Financial Intelligence Department, and law enforcement authorities can send enquiries to it.

Non-compliance with any of the above duties is subject to sanctions, pursuant to sections 235 to 260 of the Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations.

Domestically, the Financial Intelligence Department cooperates with ACC, the Department of Revenue and Customs, the Royal Bhutan Police and the Civil Society Organizations Authority. The Financial Intelligence Department also acts as the secretariat of the National Coordination Committee, which is in charge of ensuring coordination among different domestic agencies and of coordinating national policies with regional and international initiatives. In addition, the Department holds an annual forum to ensure coordination between law enforcement authorities, supervisors and financial institutions. Internationally, the Department cooperates on the basis of memorandums of understanding, as well as through the Asia/Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units.

Cash and cash equivalents with a value of \$10,000 or more, including transferable bearer instruments, must be declared to the Department of Revenue and Customs of the Ministry of Finance and are subject to customs supervision (sects. 58–63 of the Customs Act; sects. 186–195 of the Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations). Non-compliance leads to sanctions and confiscation, pursuant to sections 136 and 143 to 147 of the Customs Act.

² Following the country visit, Bhutanese authorities noted the following changes in the supervision of designated non-financial businesses and professions: real estate agents are now supervised by the Department of Industry, under the Ministry of Industry, Commerce and Employment (formerly the Ministry of Economic Affairs); the Department of Trade, under the Ministry of Industry, Commerce and Employment, has been tasked with supervising dealers in precious metal and stones; Bhutan is in the process of consultations for the Accounting and Auditing Standards Board of Bhutan to supervise professional accountants; and the Financial Intelligence Department developed and issued the Anti-Money-Laundering and Countering of Financing of Terrorism Guideline for Designated Non-Financial Businesses and Professions 2023 in 2023.

In line with sections 154 to 168 of the Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations, payment service providers must ensure that all funds transfers are accompanied by accurate and complete information on the payer. Incomplete or inadmissible information will trigger a rejection of the transfer or a request for the required information before the transfer is initiated.

2.2. Successes and good practices

- An inclusive approach to developing and implementing the National Integrity and Anti-Corruption Strategy 2019–2023 (art. 5, para. 1).
- A high level of commitment and a wide range of measures and initiatives aimed at the prevention of corruption, in both the public and the private sectors, including the Strategic Youth Integrity Programme and Integrity Clubs in schools and educational institutions (art. 5, para. 2).
- Detailed and comprehensive procedures for the selection and recruitment of all categories of public officials, including selection procedures for scholarships (art. 7, para. 1).
- The use of modern technology, including in public service delivery and the management of public finances (art. 9, para. 2).
- The conduct of the legislative impact assessment and its upload for public review and comment prior to the enactment of any legislation (art. 13, para. 1 (a)).

2.3. Challenges in implementation

It is recommended that Bhutan:

- Ensure that the National Integrity Committee meets and monitors the implementation and conducts an evaluation of the National Integrity and Anti-Corruption Strategy 2019–2023, as mandated. Alternatively, formalize the monitoring and evaluation system in place (art. 5, para. 1).
- Take the necessary measures to increase the operational independence of ACC, in particular in the administration of its human resource matters (art. 6, para. 2).
- Adopt the Impeachment Act in order to increase independence and avoid uncertainty regarding the removal of holders of constitutional offices, including the Chairs of ACC and RCSC, the Chief Election Commissioner of the Election Commission, the Auditor General, the Chief Justice and justices of the Supreme Court and the Chief Justice and justices of the High Court (art. 6, para. 2, and art. 11, para. 1).
- Take the necessary measures to ensure that adequate financial resources continue to be provided to ACC in the future by legislatively safeguarding a minimum budget guarantee, for example, by allotting a percentage of the annual national budget so that ACC does not depend on the recurrent budget decided on and provided by the Ministry of Finance (art 6, para. 2).
- Endeavour to consolidate a comprehensive and uniform framework for preventing, detecting and managing conflicts of interest (art. 7, para. 4, and art. 8, para. 5).
- Adopt a legal framework that regulates and facilitates access to and the disclosure of information (art. 10 (a)).
- Explicitly disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4).
- Strengthen the implementation of anti-money-laundering requirements, including by designating supervisory authorities for all relevant sectors, including accountants, ensuring sufficient supervision of designated non-financial businesses and professions by allocating human, technical and

financial resources for this purpose, and raising awareness among reporting entities and supervisors (art. 14, para. 1).

- Finalize the national risk assessment and ensure the gaps identified are addressed.

Bhutan is also encouraged to:

- Further promote transparency among private entities, including by establishing requirements for the identification of the ultimate beneficial owners of corporate entities (art. 12, para. 2 (c)).
- Impose restrictions 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 (art. 12, para. 2 (e)).

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

- Capacity-building for law enforcement officers and prosecutors.
- Assistance with the investigation, prosecution and adjudication of money-laundering cases.
- Assistance with the supervision of designated non-financial businesses and professions.
- Capacity-building on corruption risk monitoring and reporting.
- Capacity-building on anti-corruption tools and measures.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

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

The domestic confiscation regime of Bhutan is well developed. In addition to conviction-based, including value-based, confiscation of proceeds, instrumentalities and benefits derived from offences (sects. 47 and 48 of the Penal Code; sects. 131–134 of the Anti-Corruption Act), the Bhutanese legal system provides for several means of non-conviction-based confiscation, as well as civil forfeiture, trial in absentia and the prosecution of persons in possession of unexplained wealth (sects. 60 (5) and 176 (1) (pp) of the Anti-Corruption Act). In practice, authorities stated that domestically, conviction-based confiscation was the method of choice in order to safeguard the rule of law. ACC and the Financial Intelligence Department can issue freezing orders (sects. 103 and 107 of the Anti-Corruption Act; sects. 32–34 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act).

The legal regime for international cooperation in asset recovery is rudimentary, and Bhutan has never sent or received a mutual legal assistance request relating to asset recovery. A mutual legal assistance bill has been tabled several times over a number of years without being passed. The Anti-Corruption Act and the Anti-Money-Laundering and Countering of Financing of Terrorism Act contain some provisions on asset recovery, the latter specifically for cases of money-laundering and predicate offences. In addition, Bhutan can cooperate with other States on the basis of diplomatic channels and bilateral treaties, as well as the Convention.

The Department of Law and Order has recently been designated as the central authority but had not received any requests or collected any experience at the time of the country visit.

There is no legal basis for the spontaneous exchange of information, but sections 9 and 24 of the Anti-Corruption Act allow ACC to cooperate with any foreign Government and to exchange information with appropriate domestic or foreign

bodies. Information is exchanged, for example, through the International Criminal Police Organization (INTERPOL). The Financial Intelligence Department may disseminate information to a foreign financial intelligence unit, either spontaneously or in response to a request (sect. 20 of the Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations).

Section 57 of the Anti-Corruption Act provides for the conclusion of bilateral or multilateral agreements or arrangements or cooperation on a case-by-case basis. To date, Bhutan has not entered into any bilateral treaties or arrangements on international cooperation.

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

Sections 61 and 62 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act and sections 87 to 127 of the Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations set out comprehensive and continuous due diligence requirements, including enhanced due diligence requirements for domestic and foreign politically exposed persons. Because of legislative oversight, the enhanced due diligence requirements do not currently extend to relatives or close associates of politically exposed persons, but authorities stated that they were subject to enhanced customer due diligence in practice, and they are covered in the guidance material on politically exposed persons issued by the Financial Intelligence Department in 2019.

Customer due diligence rules include the requirement to identify beneficial owners and take reasonable measures to verify their identity (sects. 91 and 95–99 of the Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations), as defined in the Anti-Money-Laundering and Countering of Financing of Terrorism Act (sect. 187).

Financial institutions must retain records for a minimum of 10 years following the end of a business relationship or conclusion of a transaction (sects. 67 and 68 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act).

The Financial Intelligence Department issues guidance to reporting entities on issues such as risk identification and management, customer due diligence, beneficial ownership identification and politically exposed persons. The Department can notify reporting entities and request customer due diligence be conducted, pursuant to section 87 of the Anti-Money-Laundering and Countering of Financing of Terrorism Rules and Regulations.

Shell banks are prohibited, pursuant to section 173 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act. Reporting entities cannot enter into or continue correspondent banking relationships with shell banks and must satisfy themselves that respondents do not permit their accounts to be used by shell banks (sect. 65 of the Act).

High-level public servants or other individuals using public resources, such as ministers, must file declarations of their personal assets, income and liabilities, as well as those of their spouses and dependents, with ACC (sect. 38 of the Anti-Corruption Act). Other public servants must declare their assets to the head of their respective agency. An online asset declaration system can flag potentially disproportionate assets, which are then verified in accordance with the Asset and Liability Verification Protocol. Non-compliance is subject to sanctions. Bhutanese authorities stated that asset declarations could be shared with another State if so ordered by a Bhutanese court.

Bhutanese citizens are generally prohibited from opening bank accounts abroad, with a few exceptions, such as diplomatic staff located abroad (sect. 47 of the Foreign Exchange Rules and Regulation 2020).

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

Any person who suffers a loss through corruption can initiate legal proceedings in order to obtain restitution of stolen property and compensatory damages (sect. 130 of the Anti-Corruption Act). Bhutanese authorities confirmed that the definition of a “person” would extend to foreign States. Although no foreign States have sued in Bhutan, authorities stated that foreign companies frequently litigate before Bhutanese courts. In addition, a criminal court can order a defendant to pay appropriate damages or reparation for loss or injury, including compensation to the victim (sects. 36–38 of the Penal Code). Victims, which could include foreign States, are notified by the court and given a chance to prove their ownership. Notification channels included newspapers and television. While property is confiscated upon adjudication, the enforcement division of the prosecution liaises with victims to return their property. In addition, Bhutanese authorities could return seized items to a victim and thereby exempt them from confiscation (sects. 267 and 268 of the Anti-Corruption Act).

Foreign confiscation orders are not executed directly (sects. 141, 144 and 153 of the Anti-Corruption Act; sects. 139–141 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act). Instead, upon receipt of a confiscation request, the Department of Law and Order forwards the request to ACC. ACC consults the Attorney General and the Minister of Foreign Affairs and then applies to the High Court for a forfeiture order. The request must be accompanied by a foreign confiscation order that is no longer appealable and by proof that criminal charges have been filed. The mutual legal assistance bill provides for the direct enforcement of foreign confiscation orders.

Money-laundering is criminalized under sections 70 to 72 of the Anti-Corruption Act. According to section 76 of that Act and section 161 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act, predicate offences include those committed abroad. Their proceeds are subject to confiscation.

Civil forfeiture exists in Bhutan. In addition, property or its corresponding value can be confiscated in cases where an offender has absconded (sect. 133 of the Anti-Corruption Act). Under section 149 of the Anti-Money-Laundering and Countering of Financing of Terrorism Act, in cases of money-laundering or predicate offences, confiscation is also possible if the suspect has died or is otherwise not amenable to justice. In addition, under section 132 of the Anti-Corruption Act, where there is no prosecution of or conviction for a corruption offence, but ACC is satisfied that property has been obtained as a result of or in connection with a corruption offence, it can refer the matter to the Office of the Attorney General, which must apply for a confiscation order. Courts, prior to issuing an order, must make efforts to notify potential owners of the property, and must be satisfied that the property was used or destined for use in the commission of a corruption offence and was not purchased in good faith. Moreover, the possession of unexplained wealth has been criminalized, and a conviction for that offence can be pursued as an alternative to a criminal conviction for an offence with a higher evidence threshold. Lastly, Bhutan can try to convict offenders in absentia. Although the law does not require there to be a foreign conviction for the Attorney General to apply for a domestic forfeiture order, authorities stated that in practice, to observe the rule of law and the rights of legitimate owners, foreign orders should be conviction-based.

The procedure for freezing and seizure based on a foreign order or request is identical to that for confiscation orders. The request must be accompanied by proof that criminal charges have been filed in the requesting State. The mutual legal assistance bill sets out procedures for obtaining a seizure order on the basis of a foreign order or request.

If Bhutan receives a request from another country to seize property in writing, accompanied by an affidavit confirming that a person has been charged with a relevant offence in the foreign country, ACC can apply to the High Court to issue a domestic

seizure order to preserve the person's property for confiscation, pursuant to section 144 (2) (b) of the Anti-Corruption Act.

At the time of the country visit, the Department of Law and Order had recently been designated as the central authority. As it had not received any requests or collected any experience, the implementation of article 55, paragraph 1, of the Convention could not be assessed.

All asset tracing measures that are available domestically can in principle also be requested through international cooperation. Measures include search warrants, property tracking orders, production orders and orders for financial institutions not to part with documents (sects. 141 et seq. and 261 et seq. of the Anti-Corruption Act; sects. 139 et seq. of the Anti-Money-Laundering and Countering of Financing of Terrorism Act (for money-laundering and predicate offences)). A dedicated forensic unit within ACC has access to several registries to facilitate asset tracing.

Requirements with regard to the form and content of mutual legal assistance requests do not exceed those stipulated by the Convention. Grounds for refusing a request (sect. 146 of the Anti-Corruption Act) include violation of the Constitution or prejudice to the national interest. Bhutan would not refuse cooperation or lift provisional measures in the absence of sufficient and timely evidence or in the case of property of a de minimis value (sect. 154 of the Act) but would provide the other State with the opportunity to supplement the request, based on customary practice.

The rights of bona fide third parties in confiscation proceedings are protected (sects. 132 and 144 of the Anti-Corruption Act).

Return and disposal of assets (art. 57)

According to section 155 of the Anti-Corruption Act, the Minister of Finance may order forfeited property, or the value thereof, to be given or remitted to the requesting State, provided that the Minister considers this appropriate, either because an international instrument so requires or permits or in the interest of comity. According to section 144 of the Act, reasonable expenses can be deducted by means of asset disposal.

Currently, there is no legal basis for entering into agreements or arrangements on a case-by-case basis, including for the final disposal of confiscated property; however, Bhutanese authorities stated that it was possible in practice. There have been no such agreements to date.

3.2. Successes and good practices

- The variety of options available to facilitate confiscation without a criminal conviction.
- A balanced approach to criminal law, with high regard for the rule of law and due process.

3.3. Challenges in implementation

It is recommended that Bhutan:

- Amend the regulatory framework against money-laundering and the financing of terrorism to ensure relatives and close associates of politically exposed persons are subject to enhanced customer due diligence (art. 52, para. 1).
- Adopt the Mutual Legal Assistance Act with a view to:
 - Introducing a legal regime for mutual legal assistance and asset recovery and clarifying and streamlining the procedures (arts. 51, 54 and 55, para. 1);
 - Allowing for the direct execution of foreign confiscation orders (art. 54, para. 1 (a));

- Allowing for the freezing and seizure of property based on a foreign order or request, including in the absence of charges having been filed in the requesting State (art. 54, para. 2);
- Introducing a legal basis for the spontaneous exchange of information (art. 56);
- Consider ensuring legislative consistency between the Anti-Corruption Act and the Anti-Money-Laundering and Countering of Financing of Terrorism Act regarding the possibility of non-conviction-based confiscation in the event of death of the offender (art. 54, para. 1 (c)).
- Ensure that any discretion is exercised in a way that takes into account the mandatory requirements of the Convention (art. 54, paras. 1 (a) and 2, and art. 57).
- Take legislative and other measures to provide for the return of property as specified in article 57, paragraph 3, of the Convention.

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

- Capacity-building on mutual legal assistance.
 - Capacity-building on criminal asset tracing and the recovery and management thereof.
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