

## **B A B III**

### **PENUTUP**

#### **A. Kesimpulan**

Perjanjian ekstradisi antara Indonesia dan Australia merupakan salah satu sarana pemerintah Indonesia untuk meminta kembali para pelaku tindak pidana korupsi yang melarikan diri ke Australia untuk diadili dan dihukum di Indonesia, namun masih ada kendala yang dihadapi dalam pelaksanaannya sehingga jika dilihat perjanjian ini belum efektif dalam rangka penegakan hukum atas pelaku tindak pidana khususnya tindak pidana korupsi yang melarikan diri ke Australia. Perjanjian ekstradisi ini juga tidak menjamin permintaan ekstradisi dapat langsung dilaksanakan.

Berdasarkan kasus Hendra Rahardja dapat disimpulkan bahwa perjanjian ekstradisi ini belum efektif dilakukan untuk meminta penyerahan pelaku beserta harta hasil korupsi ke Indonesia. Penyebab dari belum efektifnya pelaksanaan perjanjian ini adalah adanya perbedaan sistem hukum antara Indonesia dan Australia sehingga meskipun telah ada perjanjian ekstradisi antara kedua negara pelaksanaan ekstradisi masih terhambat. Dalam hukum Australia proses peradilan pemeriksaan permintaan ekstradisi dapat dilakukan upaya banding hingga beberapa tahapan, hal ini cenderung berlangsung lama sehingga menyebabkan pelaksanaan ekstradisi terhambat dan akibatnya tuntutan hukum atas pelaku tindak pidana yang diminta penyerahan tidak dapat dilaksanakan. Begitu pula dalam hukum Indonesia yang mana prosedur ekstradisi yang harus dilalui oleh

pemerintah Indonesia sebagai negara peminta terlalu rumit dan birokrasi yang harus dilalui dalam mengajukan permintaan ekstradisi juga panjang, yaitu mulai dari permintaan Jaksa Agung RI atau Kepala Kepolisian RI kepada Menteri Kehakiman RI yang bertindak atas nama Presiden dan juga harus seizin Presiden. Permintaan ekstradisi ini diajukan melalui saluran diplomatik secara tertulis, surat permintaan ekstradisi tersebut harus sudah dilengkapi dokumen-dokumen yang diperlukan dan harus dilengkapi dengan terjemahannya dalam bahasa negara yang diminta serta disahkan dan dibubuhi cap resmi negara peminta atau dari Menteri.

#### **B. Saran**

Aparat penegak hukum dalam hal ini Kejaksaan Agung dan Kepolisian RI hendaknya selalu berperan aktif dalam menindaklanjuti adanya dugaan koruptor yang bersembunyi di luar negeri dan meningkatkan koordinasi diantara mereka. Selain itu antara Pemerintah Indonesia dan Pemerintah Australia perlu untuk mengadakan pertemuan bilateral guna membicarakan prosedur yang lebih efektif dalam rangka penegakan hukum terutama yang berkaitan dengan tindak pidana korupsi melalui ekstradisi, sehingga pemberantasan korupsi dapat tercapai. Pemerintah Indonesia juga hendaknya merevisi peraturan perundang-undangan yang berkaitan dengan tindak pidana korupsi maupun ekstradisi dan segera meratifikasi konvensi PBB mengenai korupsi maupun kejahatan transnasional yang terorganisir, hal ini agar para pelaku tindak pidana korupsi yang melarikan diri beserta harta curiannya dapat dikembalikan ke Indonesia melalui kerjasama-kerjasama yang diatur dalam konvensi tersebut.

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# LAMPIRAN



**DEPARTEMEN LUAR NEGERI  
REPUBLIK INDONESIA**

**DIREKTORAT PERJANJIAN POLITIK KEAMANAN DAN KEWILAYAHAN  
DIREKTORAT JENDERAL HUKUM DAN PERJANJIAN INTERNASIONAL**

Jl. Taman Pejambon No. 6, Jakarta Pusat 10110  
Telp. 3849618 Fax. 3524154

**SURAT KETERANGAN**

Nomor : 96 /KP/II/2006/59

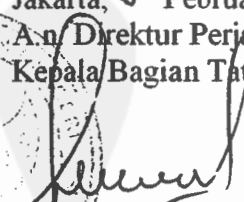
Bersama ini disampaikan bahwa :

Nama : Asina Tabalubun  
NIM : 8081/H  
Fakultas : Hukum  
Perguruan Tinggi : Universitas Atma Jaya Yogyakarta  
Alamat : Jl. Mrican Baru 28 Yogyakarta 55281 Yogyakarta

Telah melakukan penelitian/survey di Direktorat Perjanjian Politik, Keamanan dan Kewilayahan,  
Ditjen HPI, Departemen Luar Negeri.

Demikian Surat Keterangan ini dibuat untuk dipergunakan seperlunya.

Jakarta, 5 Pebruari 2006  
A.n/ Direktur Perjanjian Polkamwil  
Kepala Bagian Tata Usaha

  
Achmad Djunaedi  
NIP. 020004598



PEMERINTAH PROPINSI DAERAH ISTIMEWA YOGYAKARTA  
**BADAN PERENCANAAN DAERAH  
( B A P E D A )**

Kepatihan Danurejan Yogyakarta - 55213  
Telepon : (0274) 589583, (Psw. : 209-217), 562811 (Psw. : 243 - 247)  
Fax. (0274) 586712 E-mail : bappeda\_diy@piasa.com

Nomor : 070/324  
Hal : Ijin Penelitian

Yogyakarta, 23 Januari 2006  
Kepada Yth.  
Menteri Dalam Negeri  
Cq.Ditjen Kesbangpol

di JAKARTA

Menunjuk Surat :

Dari : Dekan FH UAJ  
Nomor : 1495/V  
Tanggal : 20 Januari 2006  
Perihal : Ijin Penelitian

Setelah mempelajari rencana/proyek statement/research design yang diajukan oleh peneliti/surveyor, maka dapat diberikan surat keterangan kepada:

Nama : **ASINA TABALUBUN**  
No. Mhs. : 8081/H  
Alamat Instansi : JL.Mrican Baru 28 Yogyakarta  
Judul Penelitian : **EFEKTIVITAS PERJANJIAN EKSTRADISI ANTARA INDONESIA DAN AUSTRALIA DALAM UPAYA PEMBERANTASAN TINDAK PIDANA KORUPSI DI INDONESIA**

Waktu : 23 - 01 - 2006 s/d 23 - 04 - 2006

Lokasi : **JAKARTA**

Peneliti berkewajiban menghormati/mentaati peraturan dan tata tertib yang berlaku di daerah setempat.

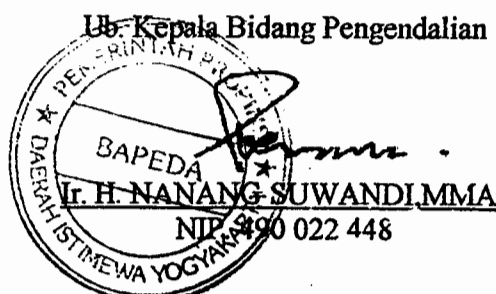
Kemudian harap menjadikan maklum.

A.n. Gubernur Daerah Istimewa Yogyakarta  
Kepala BAPEDA Propinsi DIY

Uu. Kepala Bidang Pengendalian

Tembusan Kepada Yth.

1. Gubernur DIY (sebagai laporan);
2. Dekan FH UAJ
3. Yang bersangkutan;
4. Peringgal.



UNDANG-UNDANG REPUBLIK INDONESIA  
NOMOR 8 TAHUN 1994

TENTANG

PENGESAHAN PERJANJIAN EKSTRADISI ANTARA  
REPUBLIK INDONESIA DAN AUSTRALIA

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

Menimbang :

- a. bahwa pembangunan hukum nasional yang berdasarkan Pancasila dan Undang-Undang Dasar 1945 harus dapat mendukung dan menjamin kepastian, ketertiban, dan perlindungan hukum yang berintikan keadilan dan kebenaran;
- b. bahwa hubungan luar negeri yang dilandasi prinsip politik bebas dan aktif diabdikan pada kepentingan nasional, dikembangkan dengan meningkatkan persahabatan, kerjasama bilateral dan multilateral untuk mewujudkan tatanan dunia baru berdasarkan kemerdekaan, perdamaian abadi dan keadilan sosial;
- c. bahwa kemajuan ilmu pengetahuan dan teknologi, khususnya teknologi transportasi dan komunikasi yang memudahkan lalu lintas manusia dari satu negara ke negara lain telah memberikan peluang yang lebih besar bagi pelaku tindak pidana untuk meloloskan diri dari tuntutan, dakwaan, dan pelaksanaan hukuman dari negara tempat tindak pidana dilakukan, oleh karena itu untuk mencegah hal tersebut diperlukan kerjasama antar negara;
- j. bahwa kerjasama antara Republik Indonesia dan Australia telah berkembang dengan baik dan untuk lebih memperkuat serta meningkatkan daya guna dan hasil guna kerjasama tersebut, khususnya di bidang penegakan hukum dan pelaksanaan peradilan, maka pada tanggal 22 April 1992 telah ditandatangani Perjanjian Akstradisi antara Republik Indonesia dan Australia;
- e. bahwa berdasarkan pertimbangan dimaksud dalam huruf a, b, c, dan d dipandang perlu mengesahkan Perjanjian Ekstradisi antara Republik Indonesia dan Australia dengan Undang-undang;

1945;

2. Undang-undang Nomor 1 Tahun 1979 tentang Ekstradisi (Lembaran Negara Tahun 1979 Nomor 2, Tambahan Lembaran Negara Nomor 3130);

Dengan persetujuan

DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA

MEMUTUSKAN :

Menetapkan :

UNDANG-UNDANG TENTANG PENGESAHAN PERJANJIAN  
EKSTRADISI ANTARA REPUBLIK INDONESIA DAN AUSTRALIA.

Pasal 1

Mengesahkan Perjanjian Ekstradisi antara Republik Indonesia dan Australia yang telah ditandatangani pada tanggal 22 April 1992, yang salinan naskah aslinya dalam bahasa Indonesia dan bahasa Inggris sebagaimana terlampir dan merupakan bagian yang tak terpisahkan dari Undang-undang ini.

Pasal 2

Undang-undang ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Undang-undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Disahkan di Jakarta

pada tanggal 2 Nopember 1994

PRESIDEN REPUBLIK INDONESIA

tttd

SOEHARTO

Diundangkan di Jakarta

pada tanggal 2 Nopember 1994

MENTERI NEGARA SEKRETARIS NEGARA

REPUBLIK INDONESIA

tttd

MOERDIONO

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 1994

NOMOR 58



UNDANG-UNDANG REPUBLIK INDONESIA  
NOMOR 8 TAHUN 1994

## TENTANG

PENGESEAHAN PERJANJIAN EKSTRAADISI ANTARA  
REPUBLIK INDONESIA DAN AUSTRALIA

## I. U M U M

Pembangunan Hukum Nasional yang berdasarkan Pancasila dan Undang-Undang Dasar 1945 yang diarahkan pada terwujudnya sistem Hukum Nasional; dilakukan dengan pembentukan hukum baru, khususnya produk hukum yang sangat dibutuhkan untuk mendukung tugas umum Pemerintahan dan Pembangunan Nasional. Produk hukum nasional tersebut yang menjamin kepastian, ketertiban, penegakan, dan perlindungan hukum yang berintikan keadilan dan kebenaran, diharapkan mampu mengamankan dan mendukung penyelenggaraan politik luar negeri yang bebas aktif untuk mewujudkan tatanan dunia baru berdasarkan kemerdekaan, perdamaian abadi, dan keadilan sosial.

Kemajuan dalam bidang ilmu pengetahuan dan teknologi khususnya teknologi transportasi dan komunikasi memudahkan lalu lintas manusia dari satu negara ke negara lainnya. Hal ini telah dimanfaatkan oleh para pelaku tindak pidana, dalam upaya meloloskan diri dari tuntutan, dakwaan dan pelaksanaan hukuman dari negara tempat seorang melakukan tindak pidana.

Menyadari kenyataan ini, Pemerintah Republik Indonesia dan Australia mengadakan Perjanjian Ekstradisi yang telah ditandatangani di Jakarta pada tanggal 22 April 1992.

Perjanjian Ekstradisi antara Pemerintah Republik Indonesia dan Australia tersebut bertujuan meningkatkan kerjasama dalam bidang penegakan hukum dan pemberantasan kejahatan yaitu, dengan cara mencegah lolosnya pelaku tindak pidana dari tuntutan dakwaan dan pelaksanaan hukuman. Lolosnya tersangka, terdakwa, dan terpidana dari tuntutan hukuman, dakwaan dan pemidanaan, dapat melukai perasaan keadilan korban pelaku tindak pidana beserta keluarganya dan masyarakat, di Negara tempat tindak pidana dilakukan. Selain itu, lolosnya pelaku tindak pidana tersebut dapat merugikan secara materiel. Hal ini terutama terjadi pada tindak pidana dalam bidang ekonomi dan keuangan.

Ekstradisi ini selain dapat memenuhi tuntutan keadilan juga dapat menghindari kerugian-kerugian yang disebabkan lolosnya tersangka, terdakwa atau terpidana bagi kedua pihak, terutama dalam hal tindak pidana yang berhubungan dengan ekonomi dan keuangan.

Untuk menjamin kepastian, ketertiban, penegakan dan perlindungan hukum dalam menanggulangi lolosnya pelaku tindak pidana dari Indonesia ke luar negeri atau sebaliknya, Indonesia telah memiliki Undang-undang Ekstradisi dan berbagai peraturan perundang-undangan lainnya yang berkaitan dengan pelaksanaan ekstradisi, antara lain :

- a. Undang-undang Nomor 13 Tahun 1961 tentang Ketentuan-ketentuan Pokok Kepolisian Negara (Lembaran Negara Tahun 1961 Nomor 245, Tambahan lembaran Negara Nomor 2289);
- b. Undang-undang Nomor 14 Tahun 1970 tentang Ketentuan-ketentuan Pokok Kekuasaan Kehakiman (Lembaran Negara Tahun 1970 Nomor 74, Tambahan Lembaran Negara Nomor 2951);
- c. Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (Lembaran Negara Tahun 1981 Nomor 76, Tambahan Lembaran Negara Nomor 3209);
- d. Undang-undang Nomor 20 Tahun 1982 tentang ketentuan-ketentuan Pokok Pertahanan dan Keamanan Negara Republik Indonesia (Lembaran Negara Tahun 1982 Nomor 51, Tambahan Lembaran Negara Nomor 3234);
- e. Undang-undang Nomor 14 Tahun 1985 tentang Mahkamah Agung (Lembaran Negara Tahun 1985 Nomor 73, Tambahan Lembaran Negara Nomor 3316);
- f. Undang-undang Nomor 2 Tahun 1986 tentang Peradilan Umum (Lembaran Negara Tahun 1986 Nomor 20, Tambahan lembaran Negara Nomor 3327);
- g. Undang-undang Nomor 5 Tahun 1991 tentang Kejaksaan Republik Indonesia (Lembaran Negara Tahun 1991 Nomor 59, Tambahan Lembaran Negara Nomor 3451).

Bagian-bagian terpenting dari Perjanjian ini meliputi hal-hal sebagai berikut :

1. Kejahatan yang dapat diekstradisikan.
- Di dalam Perjanjian ini ditegaskan bahwa kejahatan-kejahatan yang

pernyataan ekstradisi kepada Negara yang Diminta. Permintaan harus tertulis dan disampaikan melalui saluran diplomatik disertai dokumen-dokumen otentik yang diperlukan. Apabila permintaan atas orang yang sama datang dari dua negara atau lebih maka Negara yang Diminta harus menentukan kepada negara mana ekstradisi itu akan dilakukan.

7. Berlakunya Perjanjian.  
Perjanjian akan mulai berlaku 30 (tiga puluh) hari setelah tanggal Negara-negara Pihak saling memberitahukan secara tertulis bahwa masing-masing persyaratan untuk mulai berlakunya Perjanjian ini telah dipenuhi. Masing-masing Negara Pihak dapat mengakhiri berlakunya Perjanjian dengan memberitahukan secara tertulis kepada pihak lainnya yang akan berlaku efektif 180 (seratus delapan puluh) hari terhitung sejak pemberitahuan tersebut diberikan.

## II. PASAL DEMI PASAL

Pasal 1

Cukup jelas

Pasal 2

Cukup jelas

## TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA\* NOMOR 3565

2. Kejahatan yang bertalar belakang politik.

Apabila tindak pidana yang dilakukan merupakan kejahatan yang bertalar belakang politik atau bersifat politik, maka pelaku tindak pidana tidak akan diekstradisi.

Menghilangkan atau mencoba menghilangkan nyawa Kepala Negara atau Kepala Pemerintahan dan keluarganya tidak dianggap sebagai kejahatan politik karena itu pelakunya dapat diekstradisikan.

3. Negara berhak menolak menyerahkan warganegaraanya.

Masing-masing Negara Pihak dalam Perjanjian berhak menolak untuk mengekstradisikan warganegaraanya.

Dalam Perjanjian Ekstradisi ini Negara yang diminta untuk melakukan ekstradisi berhak untuk mempertimbangkan apakah akan menyerahkan atau tidak.

Jika Negara yang Diminta tidak mengekstradisikan warganegaraanya, Negara itu atas permintaan Negara Peminta wajib menyerahkan perkaranya kepada pejabat yang berwenang di Negara yang Diminta.

4. Pelaku tindak pidana yang telah diadili dan diputus bebas atau dilepas dari segala tuntutan.

Apabila seseorang telah diadili dan diputus bebas atau dilepas dari segala tuntutan oleh pengadilan yang berwenang atau telah menjalani hukuman di Negara yang Diminta atau di Negara ketiga sehubungan dengan kejahatan yang dimintakan ekstradisinya, maka ekstradisi atas orang itu tidak akan dikenakan.

5. Tindak Pidana yang diancam dengan hukuman mati.

Perjanjian ini juga mengatur bahwa ekstradisi tidak akan diberikan terhadap kejahatan yang diancam dengan hukuman mati, kecuali jika Negara Peminta itu menjamin bahwa hukuman mati tersebut tidak akan dijatuhkan, atau dalam hal hukuman mati telah dijatuhkan, hukuman mati tersebut tidak akan dilaksanakan.

PERJANJIAN EKSTRADISI  
ANTARA  
REPUBLIK INDONESIA DAN AUSTRALIA

REPUBLIK INDONESIA DAN AUSTRALIA,

BERHASRAT untuk mengadakan kerjasama yang lebih efektif antara kedua negara dalam memberantas kejahatan dan terutama, mengatur dan meningkatkan hubungan antara mereka dalam masalah ekstradisi.

TELAAH MENYETUJUI HAL-HAL SERAGAI BERIKUT:

Pasal 1

Kewajiban untuk Mangaktradisi

1. Masing-masing Negara Pihak sepakat untuk saling mengekstradisi, menurut ketentuan Perjanjian ini, setiap orang yang dicari untuk penuntutan atau penjatuhuan atau pelaksanaan hukuman di Negara Peminta atas suatu kejahatan yang dapat diekstradisi.
2. Jika kejahatan yang dimintakan ekstradisinya telah dilakukan di luar wilayah Negara Peminta, ekstradisi harus diberikan, menurut ketentuan Perjanjian ini, jika orang yang dimintakan ekstradisinya adalah warganegara Negara Peminta. Jika orang yang dimintakan ekstradisinya sehubungan dengan kejahatan tersebut bukan warganegara Negara Peminta, maka Negara yang Diminta dapat, atas kebijaksanaannya, memberikan ekstradisi.

Pasal 2

Kejahatan yang dapat Diekstradisi

1. Menurut ketentuan Perjanjian ini, seseorang dapat:

1. prabunuhan berencana, pembunuhan;
2. kejahatan yang menyebabkan kematian orang;
3. kejahatan terhadap hukum mengenai pengguguran kandungan;
4. membantu atau membujuk atau menasehati atau memberikan sarana kepada orang lain untuk melakukan tindakan bunuh diri;
5. dengan maksud jahat dan berencana melukai atau mengakibatkan luka berat, penyerangan yang menyebabkan luka;
6. penyerangan terhadap Hakim/Magistrat, pejabat polisi atau pejabat umum;
7. penyerangan di kapal atau di pesawat udara dengan maksud membunuh atau menyebabkan luka berat;
8. perkosaan atau penyerangan seks;
9. perbuatan cabul dengan kekerasan;
10. memberi sarana, atau memperjualbelikan wanita atau orang muda dengan maksud amoral, hidup dari hasil pelacuran; setiap kejahatan lain terhadap hukum mengenai pelacuran;
11. bigami;
12. penculikan, melarikan wanita, semenjarkan secara tidak sah, perdagangan budak;
13. mencuri, menelantarkan, menawarkan atau menahan anak secara melawan hukum;
14. kejahatan terhadap hukum mengenai penyusapan;
15. memberikan susupah palsu, membujuk untuk memberikan susupah palsu, menghalangi atau menggagalkan jalannya peradilan;
16. perbuatan menimbulkan kebakaran;

surat-surat berharge;

18. kejahatan terhadap hukum mengenai pemalsuan atau terhadap hukum mengenai penggunaan apa yang dipalsukan;
19. kejahatan terhadap hukum mengenai pajak, bea cukai, pengawasan devise, atau mengenai pendapatan negara lainnya;
20. pencurian; penggelapan; penukaran secara curang; pembukuan palsu dan curang, mendapatkan barang, uang, surat berharga atau kredit melalui upaya palsu atau cara penipuan lainnya; penadahan, setiap kejahatan lainnya yang berhubungan dengan penipuan;
21. pencurian dengan pemberatan; pencurian dengan pengrusakan rumah; setiap kejahatan yang sejenis;
22. perampokan;
23. pemerasan atau pemaksaan dengan ancaman atau dengan penyalahgunaan wewenang;
24. kejahatan terhadap hukum mengenai kepailitan dan keadaan pailit;
25. kejahatan terhadap hukum mengenai perusahaan-perusahaan;
26. pengrusakan barang dengan maksud jahat dan berencana;
27. perbuatan yang dilakukan dengan maksud membahayakan keselamatan orang-orang yang bepergian dengan kereta api, kendaraan darat, kapal laut atau pesawat udara atau membahayakan atau merusak kereta api, kendaraan darat, kapal laut atau pesawat udara;
28. pembajakan;
29. perbuatan yang melawan hukum terhadap kekuasaan nakhoda kapal laut atau kapten pilot pesawat udara;
30. serampas secara melawan hukum, atau menguasai pengendalian atas kapal laut atau pesawat udara, dengan paksaan atau ancaman kekerasan atau dengan setiap bentuk intimidasi lainnya;
31. perbuatan yang melawan hukum dari salah satu perbuatan yang ditentukan dalam ayat 1 Pasal 1 Konvensi mengenai Pemberantasan Tindakan-tindakan Melawan Hukum Yang Mengancam Keamanan Penerbangan Sipil;

32. kejahatan terhadap hukum mengenai obat-obat berbahaya atau narkotika;

33. membantu, ikut serta, menasehati atau memberikan sarana, menjadi pembantu laku sebelum atau sesudah sesuatu perbuatan dilakukan, atau mencoba atau berkomplot melakukan suatu kejahatan yang disebutkan diatas.
2. Ekstradisi dapat juga diberikan berdasarkan kebijaksanaan Negara yang diminta atas perbuatan atau keahlian lain yang merupakan suatu kejahatan jika kejahatan itu, menurut hukum kedua Negara Pihak, adalah salah satu kejahatan yang ekstradisinya dapat diberikan.
3. Menurut Pasal ini dalam menentukan apakah suatu kejahatan adalah kejahatan terhadap hukum kedua Negara Pihak:
  - (a) tidak akan menjadi masalah apakah hukum Negara Pihak menempatkan perbuatan atau keahlian yang merupakan kejahatan tersebut ke dalam golongan kejahatan yang sama atau menamakan kejahatan tersebut dengan istilah yang sama;
  - (b) keseluruhan perbuatan atau keahlian yang disangkakan terhadap orang yang dimintakan ekstradisinya akan dipertimbangkan dan tidak akan menjadi masalah apakah menurut hukum Negara-negara Pihak unsur-unsur utama dari kejahatan itu berbeda.
4. Ekstradisi dapat diberikan sesuai dengan ketentuan dalam Perjanjian ini tanpa mengindahkan waktu dilakukannya kejahatan yang bertalian dengan permintaan ekstradisi itu, dengan syarat bahwa jika kejahatan itu dilakukan sebelum Perjanjian ini berlaku, perbuatan tersebut pada saat itu merupakan kejahatan terhadap hukum kedua Negara Pihak.

Pasal 3

Klausula Wilayah

1. Menurut Perjanjian ini wilayah Negara Pihak adalah :
  - (a) wilayah berdasarkan kedaulatan Negara Pihak dan laut yang berbatasan dengannya dimana Negara Pihak melaksanakan kedaulatannya sesuai dengan Konvensi Hukum Laut Perserikatan Bangsa-Bangsa 1982;

...aw; laut yang berbatasan lainnya dan landas kontinen  
dimana Negara Pihak melaksanakan hak-hak berdaulat atau  
hak-hak lainnya menurut Konvensi Hukum Laut  
Perserikatan Bangsa Bangsa 1982, tetapi hanya dalam  
hubungannya dengan pelaksanaan hak-hak berdaulat dan  
hak-hak lainnya tersebut;

(c) kapal dan pesawat udara milik atau terdafter di Negara  
Pihak jika kapal tersebut berada di laut bebas atau  
jika pesawat udara tersebut sedang dalam penerbangan  
pada saat perbuatan atau koalpeas yang merupakan  
kejahatan yang dimintakan ekstradisinya, dilakukan.

2. Menurut Perjanjian ini, suatu pesawat udara dianggap sedang  
dalam penerbangan setiap waktu sejak semua pintu luar ditutup  
setelah embarkasi sampai saat semua pintu dimaksud dibuka untuk  
disembarkasi.

Pasal 4  
Kejahatan Politik

1. Seseorang tidak akan diekstradisikan jika kejahatan yang  
dimintakan ekstradisinya itu merupakan kejahatan politik, atau  
yang karena keadaan dimana kejahatan yang diduga telah  
dilakukan atau telah dilakukan itu, merupakan kejahatan yang  
bersifat politik.

2. Jika timbul persoalan apakah suatu perkara merupakan  
kejahatan politik atau kejahatan yang bersifat politik, maka  
keputusan pejabat yang berwenang dari Negara yang Diminta akan  
bersifat menentukan.

3. Menurut Perjanjian ini, menghilangkan atau mencoba untuk  
menghilangkan nyawa Kepala Negara atau Kepala Pemerintahan atau  
anggota keluarganya tidak dianggap sebagai kejahatan politik atau  
kejahatan yang bersifat politik.

Pasal 5  
Ekstradisi Wargaanegara

1. Masing-masing Negara Pihak berhak menolak untuk  
mengekradisi warganegaranya.

2. Jika Negara yang Diminta tidak mengekstradie;

warganegaranya, Negara itu atas permintaan Negara Peminta wajib  
menyerahkan perkaranya kepada pejabat yang berwenang dari Negara  
yang Diminta untuk penuntutan. Untuk sakaud ini berkas perkara,  
informasi dan bukti-bukti mengenai kejahatan itu harus diserahkan  
oleh Negara Peminta kepada Negara yang Diminta.

3. Dengan tidak mengurangi ketentuan ayat 2 Pasal ini, Negara  
yang Diminta tidak diwajibkan untuk menyerahkan perkara itu  
kepada pejabat yang berwenang untuk melakukan penuntutan jika  
pejabat yang berwenang itu tidak mempunyai yurisdiksi. Jika  
pejabat yang berwenang itu tidak mempunyai yurisdiksi, Negara  
yang Diminta harus mengekstradisi orang yang dimaksud.

Pasal 6  
Non-Rita in Idem

Ekstradisi atas seseorang tidak akan diberikan jika orang  
itu telah dididili dan diputus bebas atau dibebaskan dari segala  
tuntutan oleh pengadilan yang berwenang, atau telah menjalani  
hukuman di Negara yang Diminta atau di Negara ketiga sehubungan  
dengan perbuatan atau koalpeas yang merupakan kejahatan yang  
dapat dimintakan ekstradisinya.

Pasal 7  
Hukuman Mati

Ekstradisi tidak diberikan jika menurut Perjanjian ini  
kejahatan yang dilakukan oleh orang yang dicari itu dituntut  
atau dihukum, atau dapat ditahan atau dididili, diancam dengan  
hukuman mati berdasarkan hukum Negara Peminta kecuali jika  
Negara itu menjamin bahwa hukuman mati tidak akan dijatuhkan  
atau, jika dijatuhkan, tidak akan dilaksanakan.

Pasal 8  
Asas Keshunaan

1. Menurut ayat 3 Pasal ini seseorang yang diekstradisikan  
berdasarkan Perjanjian ini tidak akan:

(a) ditahan atau dididili, atau dibatasi kebebasan  
pribadinya dengan cara lain, di wilayah Negara Peminta

kejahatan lain yang disebutkan dalam Pasal 2 dengan persetujuan Negara yang Diminta agar orang tersebut ditahan, diadili atau dibatasi kebebasannya pribadinya; atau

(b) ditahan di Negara Peminta dengan maksud untuk mengekstradisinya ke Negara ketiga atas kejahatan yang dilakukan sebelum penyerahannya, kecuali jika Negara yang Diminta menyetujui penahanannya yang demikian itu.

2. Persetujuan persetujuan dari Negara yang Diminta berdasarkan Pasal ini harus dilengkapi dengan salinan semua pernyataan orang yang diekstradisikan itu mengenai kejahatan yang dimaksud, dan dengan dokumen sebagaimana disebutkan dalam sub-ayat (a), (e) dan (f) dari ayat 2 Pasal 11 mengenai kejahatan yang dimaksud.

3. Ayat 1 Pasal ini tidak berlaku jika orang tersebut telah mendapatkan kesempatan untuk meninggalkan Negara Peminta dan tidak menggunakan kesempatan itu dalam jangka waktu 45 hari setelah pembebasannya atas kejahatan yang menyebabkan orang itu diekstradisikan atau jika orang itu telah kembali lagi ke wilayah Negara Peminta setelah ia meninggalkannya.

#### Passal 9

#### Penkucuaian atas Ekstradisi

1. Ekstradisi tidak diberikan dalam salah satu dari hal-hal sebagai berikut:

(a) dimana orang yang dicari telah dibebaskan dari tahanan atau hukuman karena kadaluarsa atau sebab-sebab yang sah lainnya sesuai dengan hukum dari salah satu Negara Pihak sehubungan dengan perbuatan atau kealpaan yang merupakan kejahatan yang dimintakan ekstradisinya;

(b) dimana perbuatan atau kealpaan yang merupakan kejahatan yang dimintakan ekstradisinya adalah jenis kejahatan yang berdasarkan hukum Negara yang Diminta, dianggap sebagai kejahatan yang hanya bertentangan dengan hukum militer;

(c) dimana orang yang dimintakan ekstradisinya layak untuk diadili oleh pengadilan atau mahkamah yang khusus

sewaktu-waktu, atau berdasarkan keadaan khusus, diberi wewenang untuk mengadili perkara tersebut atau yang ekstradisinya, dimintakan agar yang bersangkutan menjalani hukuman yang dijatuhkan oleh pengadilan atau mahkamah semacam itu;

(d) dimana Negara yang Diminta mempunyai alasan yang mendasar untuk menduga bahwa permintaan ekstradisi telah dibuat dengan maksud untuk menuntut atau menghukum seseorang berdasarkan ras, agama, kewarganegaraan atau pandangan politiknya; atau

(e) dimana Negara yang Diminta mempunyai alasan yang mendasar untuk menduga bahwa seseorang yang dimintakan ekstradisinya akan menjadi korban penyiksaan atau perlakuan atau penghukuman yang kejam, tidak manusiawi; atau merendahkan martabat.

2. Ekstradisi dapat ditolak dalam salah satu dari hal-hal sebagai berikut:

(a) dimana suatu penyidikan sedang dalam pelaksanaan atau penuntutan masih sedang dipertimbangkan di Negara yang Diminta sehubungan dengan kejahatan yang dilakukan oleh orang yang dimintakan ekstradisinya;

(b) dimana Negara yang Diminta, dengan memperhatikan sifat dari kejahatan dan kepentingan Negara Peminta, mempertimbangkan dengan melihat keadaan perkara tersebut, termasuk umur, kesehatan atau keadaan pribadi lainnya dari orang yang dimintakan ekstradisinya, ekstradisi orang tersebut adalah tidak adil, bersifat menindas, atau tidak sesuai dengan pertimbangan kemanusiaan;

(c) dalam hal seseorang dinyatakan bersalah dan dijatuhi hukuman sehubungan dengan suatu kejahatan, dengan hukuman penjara atau bentuk lain hukuman kehilangan kebebasan yang dijatuhkan di Negara Peminta dimana hukuman yang masih harus dijalannya kurang dari 6 (enam) bulan, dengan memperhitungkan berat ringannya kejahatan tersebut;

dan kepentingan umum telah memutuskan untuk membebaskan dari penuntutan orang yang dimintakan ekstradisinya; atau

(c) dimana menurut hukum Negara yang Diminta kejahatan yang dimintakan ekstradisinya itu dianggap telah dilakukan baik seluruhnya atau sebagian di Negara tersebut.

#### Pasal 10 Penahanan Sementara

1. Dalam keadaan mendesak Negara Pihak dapat menggunakan saluran International Criminal Police Organization untuk melakukan penahanan sementara atas seseorang yang dicari, sementara menunggu disampaikannya permintaan ekstradisi melalui saluran diplomatik.

2. Permintaan tersebut harus memuat uraian tentang orang yang dicari, pernyataan yang menyatakan bahwa permintaan ekstradisi akan disampaikan melalui saluran diplomatik, pernyataan mengenai adanya salah satu dokumen yang disebutkan dalam ayat 2 Pasal 11 yang memberikan wewenang untuk menahan orang tersebut, pernyataan mengenai hukuman yang dapat dijatuhkan atau yang telah dijatuhkan atas kejahatan itu, jika diminta oleh Negara yang Diminta, pernyataan singkat mengenai perbuatan atau kealpaan yang diduga merupakan kejahatan.

3. Setelah menerima permintaan tersebut Negara yang Diminta wajib mengambil tindakan-tindakan yang diperlukan untuk menjamin penahanan orang yang dicari dan Negara Peminta secepatnya akan diberitahu mengenai hasil permintaan tersebut.

4. Seseorang yang ditahan berdasarkan permintaan tersebut dapat dibebaskan sesudah lewat waktu 45 hari terhitung sejak tanggal penahannya jika permintaan ekstradisinya yang dilengkapi dengan dokumen yang ditentukan oleh Pasal 11, belum diterima.

5. Ayat 4 Pasal ini tidak akan menghalangi dilaksanakannya tata cara untuk mengekstradisi orang yang dicari itu jika permintaan diterima sesudah itu.

#### Pasal 11 Tata Cara Ekstradisi dan Dokumen yang Diperlukan

disampaikan melalui saluran diplomatik. Semua dokumen yang diserahkan untuk mendukung permintaan ekstradisi tersebut harus disahkan sesuai dengan ketentuan Pasal 13.

2. Permintaan ekstradisi harus dilengkapi dengan:

(a) Jika seseorang didakwa melakukan suatu kejahatan - surat perintah penahanan, atau salinan surat perintah penahanan atas orang tersebut, pernyataan mengenai setiap kejahatan yang dimintakan ekstradisinya dan pernyataan mengenai perbuatan atau kealpaan yang didakwakan terhadap orang itu yang berhubungan dengan setiap kejahatan;

(b) Jika seseorang telah dinyatakan bersalah secara in absentia - dokumen pengadilan atau dokumen lain, atau salinannya, yang memberikan wewenang untuk menahan orang tersebut, pernyataan mengenai setiap kejahatan yang dimintakan ekstradisinya dan pernyataan mengenai perbuatan atau kealpaan yang berhubungan dengan setiap kejahatan yang didakwakan terhadap orang tersebut;

(c) Jika seseorang telah dipersalahkan atas kejahatan dengan cara lain selain in absentia - dokumen-dokumen yang merupakan bukti mengenai pernyataan bersalahnya dan hukuman yang akan dijatuhkan, fakta bahwa hukuman tersebut dapat segera dilaksanakan, dan sejauh mana hukuman itu belum dilaksanakan;

(d) Jika seseorang telah dipersalahkan atas kejahatan dengan cara lain selain in absentia tetapi tidak dijatuhkan sesuatu hukuman - dokumen-dokumen yang merupakan bukti mengenai pernyataan bersalah itu dan pernyataan yang menguatkan bahwa hal itu dimaksudkan untuk menjatuhkan hukuman;

(e) dalam semua perkara - naskah mengenai ketentuan undang-undang yang relevan, jika ada, atau dengan pernyataan mengenai hukum yang relevan tentang kejahatan tersebut termasuk ketentuan hukuman yang membatasi tata cara pemeriksaan, apabila dimungkinkan, dan dalam perkara mana pun, pernyataan tentang ancaman hukuman yang dapat dijatuhkan atas kejahatan itu; dan

(f) dalam semua perkara - uraian yang secermat mungkin mengenai orang yang dicari beserta informasi lain yang

3. Sejaht yang diijinkan oleh hukum Negara yang Diminta ekstradisi dapat dilaksanakan terhadap seseorang berdasarkan ketentuan-ketentuan dari Perjanjian ini sekup persyaratan ayat 1 dan ayat 2 Pasal ini belum dipenuhi asalkan orang yang dicari tadi menyetujui perintah yang dibuat untuk mengekstradisinya

4. Dokumen-dokumen yang diserahkan dalam mendukung permintaan ekstradisi tersebut harus dilengkapi dengan terjemahannya dalam bahasa Negara yang Diminta.

Pasal 12  
Informasi Tambahan

1. Jika Negara yang Diminta mempertimbangkan bahwa informasi yang dibutuhkan dalam mendukung permintaan ekstradisi berdasarkan Perjanjian ini belum cukup untuk memungkinkan ekstradisi dilaksanakan maka negara tersebut dapat meminta informasi tambahan yang diperlukan dalam waktu sebagaimana yang ditetapkan.

2. Jika orang yang dimintakan ekstradisinya tersebut sedang ditahan dan informasi tambahan yang diperlukan berdasarkan Perjanjian ini belum cukup atau belum diterima dalam waktu yang telah ditetapkan, maka orang tersebut dapat dilepaskan dari tahanan. Pelepasan orang tersebut tidak akan menghalangi Negara Peminta untuk membuat permohonan baru untuk mengekstradisi orang tersebut.

3. Dimana orang tersebut dilepaskan dari tahanan menurut ayat 2 Pasal ini, maka Negara yang Diminta wajib memberitahu Negara Peminta mengenai pembebasan tersebut sesegera mungkin.

Pasal 13  
Penyediaan Dokumen

Dokumen yang diperlukan untuk mendukung permintaan ekstradisi tersebut dalam setiap tata cara ekstradisi di negara yang Diminta harus diakui, jika telah disahkan.

- Menurut Perjanjian ini suatu dokumen yang sah adalah :  
a. dokumen tersebut ditandatangani atau disahkan oleh Hakim, Magistral, atau pejabat yang berwenang lainnya di atau dari Negara Peminta; dan

Pasal 14  
Penyerahan

1. Negara yang Diminta segera sesudah suatu keputusan mengenai permintaan ekstradisi dibuat, wajib menyampaikan keputusan tersebut kepada Negara Peminta melalui saluran diplomatik.

2. Jika permintaan disetujui, Negara Peminta wajib memberitahu mengenai tempat dan tanggal penyerahan.

3. Menurut ayat 4 Pasal ini Negara Peminta wajib memindahkan orang tersebut dari Negara yang Diminta dalam jangka waktu yang layak sebagaimana ditetapkan oleh Negara yang Diminta dari jika orang tersebut belum d'pindahkan dalam jangka waktu tersebut. Negara yang Diminta dapat menolak ekstradisi untuk kejahatan yang sama tersebut.

4. Jika keadaan diluar kekuasaannya tidak memungkinkan Negara Pihak untuk menyerahkan atau memindahkan orang tersebut untuk diekstradisi, maka Negara Pihak tersebut wajib memberitahukan kepada Negara Pihak lainnya. Kedua Negara akan memutuskan bersama tanggal lain untuk penyerahan tersebut dan ketentuan ayat 2 dan 3 Pasal ini diberlakukan.

Pasal 15  
Penundaan Penyerahan

Negara yang Diminta dapat menunda penyerahan seseorang supaya dapat menuntutnya, atau supaya orang itu dapat menjalani hukuman untuk kejahatan lain selain dari kejahatan yang berupa perbuatan atau kealpaan yang dimintakan ekstradisinya, dan jika Negara yang Diminta itu menunda penyerahan, maka negara tersebut wajib memberitahukan hal itu kepada Negara reminta

Pasal 16  
Penyerahan Barang

Bila ekstradisi orang tersebut dikabulkan, Negara yang Diminta sepanjang ketentuan hukumnya mengizinkan dan sesuai dengan hak-hak Pihak ketiga wajib menyita dan menyerahkan barang, atas permintaan dari Negara Peminta

M yang dapat dipergunakan untuk kepentingan pembukuan kejahatan itu atau



2. Barang yang disebut dalam ayat 1 Pasal ini dapat diserahkan sekalipun ekstradisi yang telah disetujui tidak dapat dilaksanakan karena kematian orang yang diminta penyerahannya atau karena ia melarikan diri.

3. Jika barang tersebut dapat disita atau dirampas dalam wilayah Negara yang Diminta maka Negara tersebut dapat, dalam hubungannya dengan proses pemeriksaan yang sedang berlangsung, menahannya untuk sementara atau menyerahkannya dengan syarat bahwa barang itu akan dikembalikan.

4. Setiap hak yang mungkin diperoleh Negara yang Diminta atau pihak ketiga atas barang tersebut wajib dijamin. Jika hak-hak itu ada, barang tersebut wajib dikembalikan tanpa biaya kepada Negara yang Diminta secepat mungkin sesudah pemeriksaan pengacil selesai jika Negara itu memintanya.

Pasal 17  
Permintaan Berkanda

1. Bila permintaan-permintaan diterima dari dua negara atau lebih untuk mengekstradisi orang yang sama baik untuk kejahatan yang sama, maupun untuk kejahatan yang berbeda, Negara yang Diminta wajib menentukan kepada negara mana orang itu harus diekstradisi dan harus memberitahu Negara Peminta mengenai keputusannya.

2. Dalam menentukan kepada negara mana seseorang akan diekstradisi, Negara yang Diminta wajib memperhatikan keadaan yang berksitan dan, terutama, mengenai:

- (a) jika permintaan-permintaan tersebut menyangkut kejahatan-kejahatan yang berbeda, berat ringannya kejahatan itu secara relatif;
- (b) waktu dan tempat masing-masing kejahatan itu dilakukan;
- (c) masing-masing tanggal permintaan tersebut;
- (d) kewarganegaraan dari orang tersebut;
- (e) tempat biasanya orang tersebut berdiam; dan
- (f) kemungkinan ekstradisi yang berikutnya ke negara lain.

Pasal 18  
Transit

1. Dimana seseorang harus diekstradisi untuk suatu kejahatan oleh Negara ketiga ke Negara Pihak melalui wilayah Negara Pihak lainnya, maka Negara Pihak yang disebutkan pertama wajib meminta Negara Pihak lain untuk memberikan ijin transit bagi orang tersebut untuk melalui wilayahnya.

2. Setelah menerima permintaan tersebut, Negara yang Diminta wajib memenuhinya kecuali jika ada alasan yang dapat diterima untuk menolaknya.

3. Ijin transit orang tersebut menurut hukum Negara yang Diminta, harus mencakup ijin penahanan orang tersebut selama transit.

4. Dimana seseorang ditahan menurut ayat 3 Pasal ini, maka Negara Pihak yang dalam wilayahnya orang tersebut ditahan dapat memerintahkan agar orang itu dilepaskan jika pengangkutan orang yang bersangkutan belum diteruskan dalam waktu yang layak.

5. Negara Pihak kemana orang itu harus diekstradisi wajib membayar kembali kepada Negara Pihak lain untuk setiap biaya yang dikeluarkan oleh Negara Pihak lain itu sehubungan dengan transit tersebut.

Pasal 19  
Biaya-Biaya

1. Negara yang Diminta harus membuat pengaturan yang diperlukan dan memenuhi biaya dari setiap proses permintaan ekstradisi yang timbul dan dengan cara lain wajib memaklumi kepentingan Negara Peminta.

2. Negara yang Diminta wajib menanggung biaya-biaya yang dikeluarkan di wilayahnya dalam penahanan orang yang diminta ekstradisinya tersebut, dan biaya hidup orang tersebut dalam tahanan sampai ia diserahkan kepada seseorang yang ditunjuk oleh Negara Peminta.

3. Negara Peminta wajib menanggung biaya-biaya yang dikeluarkan untuk membawa orang tersebut dari wilayah Negara yang Diminta.

Pasal 20  
Asas-Asas

Perjanjian ini dapat diubah dengan persetujuan tertulis antara Negara-negara Pihak.

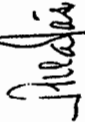
Mulai Berlakunya dan Berakhirnya Perjanjian

1. Perjanjian ini mulai berlaku 30 hari setelah tanggal Negara-negara Pihak saling memberitahukan secara tertulis bahwa masing-masing persyaratan mereka untuk mulai berlakunya Perjanjian ini telah dipenuhi.
2. Masing-masing Negara Pihak dapat mengakhiri Perjanjian ini dengan pemberitahuan secara tertulis pada setiap waktu dan berakhir berlakunya pada hari ke seratus delapan puluh setelah hari pemberitahuan itu diajukan.

SEBAGAI BUKTI, yang bertanda tangan di bawah ini, yang dikuasakan oleh Pemerintah masing-masing, telah menandatangani Perjanjian ini.

DIBUAT dalam rangkap dua di Jakarta pada tanggal dua puluh dua bulan April 1992 dalam bahasa Indonesia dan bahasa Inggris, semua naskah sama-sama sahny.

UNTUK REPUBLIK INDONESIA



ALI ALATAS

UNTUK AUSTRALIA



PHILIP FLOOD

EXTRADITION TREATY BETWEEN  
THE REPUBLIC OF INDONESIA AND AUSTRALIA

THE REPUBLIC OF INDONESIA AND AUSTRALIA,

DESIRING to make more effective the cooperation of the two countries in the repression of crime and specifically, to regulate and thereby promote the relations between them in matters of extradition,

HAVE AGREED AS FOLLOWS:

Article 1

Obligation to Extradite

1. Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the Requesting State for an extraditable offence.
2. If the offence for which extradition is requested has been committed outside the territory of the Requesting State, extradition shall be granted subject to the provisions of this Treaty, if the person whose extradition is requested is a national of the Requesting State. If the person whose extradition is requested in respect of such an offence is not a national of the Requesting State, the Requested State may, in its discretion, grant extradition.

Article 2

Extraditable Offences

1. Persons shall be extradited according to the provisions of this Treaty for any act or omission constituting any of the following offences provided the offence is punishable by the laws of both Contracting States by a term of imprisonment of not less than one year or by a more severe penalty:

1. **WARRANT OFFICERS, MAJORS;**
2. **manslaughter;**
3. an offence against the law relating to abortion;
4. aiding or abetting or counselling or procuring the commission of suicide;
5. maliciously or wilfully wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm;
6. assaulting a Magistrate, a police officer or a public officer;
7. assault on board a ship or aircraft with intent to destroy life or cause grievous bodily harm;
8. rape or sexual assault;
9. indecent assault;
10. procuring, or trafficking in, women or young persons for immoral purposes; living on the earnings of prostitution; any other offence against the law relating to prostitution;
11. **b i g a m y ;**
12. kidnapping; abduction; false imprisonment; dealing in slaves;
13. stealing, abandoning, exposing or unlawfully detaining a child;
14. an offence against the law relating to bribery;
15. perjury; subornation of perjury; obstructing or defeating the course of justice;
16. **s r s o n ;**
17. an offence relating to counterfeiting;
18. an offence against the law relating to forgery or against the law relating to uttering what is forged;

19. **WARRANT OFFICERS, MAJORS;**
20. **stealing; embezzlement; fraudulent conversion; fraudulent false accounting; obtaining property, money, valuable securities or credit by false pretences or other forms of deception; receiving stolen property, any offence involving fraud;**
21. **burglary; housebreaking; any similar offence;**
22. **r o b b e r y ;**
23. blackmail or extortion by means of threats or by abuse of authority;
24. an offence against the law relating to bankruptcy and insolvency;
25. an offence against the law relating to companies;
26. maliciously or wilfully damaging property;
27. an act done with the intention of endangering the safety of persons travelling on a railway, vehicle, ship, or aircraft or of endangering or damaging a railway, vehicle, ship or aircraft;
28. **p i r a c y ;**
29. an unlawful act against the authority of the master of a ship or the commander of an aircraft;
30. the unlawful seizure, or unlawful exercise of control, of a ship or aircraft, by force or threat of force or by any other form of intimidation;
31. an unlawful act of any of the kinds specified in paragraph 1 of Article 1 of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
32. an offence against the law relating to dangerous drugs or narcotics; or

being an accessory before or after the fact or conspiring to commit, an offence described in a preceding item.

2. Extradition may also be granted at the discretion of the Requested State for any other act or omission constituting an offence if the offence, according to the laws of both Contracting States, is one for which extradition can be granted.
3. For the purpose of this Article in determining whether an offence is an offence against the law of both Contracting States:

(a) it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.

4. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is requested was committed provided that if the offence was committed before this Treaty enters into force it was at the time an offence against the laws of both Contracting States.

#### Article 3

##### Territorial Application

1. A reference in this Treaty to the territory of a Contracting State means:

(a) the territory under the sovereignty of a Contracting State and the adjacent seas over which that Contracting State exercises sovereignty consistent with the 1982 United Nations Convention on the Law of the Sea;

(b) other adjacent seas and the continental shelf over which that Contracting State exercises sovereign rights or other rights in accordance with the 1982 United Nations Convention on the

sovereign rights or other rights;

- (c) vessels and aircraft owned by or registered in a Contracting State if any such vessel is on the high seas or if any such aircraft is in flight when the omission constituting the offence for which extradition is requested takes place.

2. For the purposes of this Treaty, an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

#### Article 4

##### Political Offence

1. A person shall not be extradited if the offence for which his extradition is requested is a political offence, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of political character.

2. If any question arises as to whether a case is a political offence or an offence of a political character, the decision of the authorities of the Requested State shall be determinative.

3. The taking or attempted taking of the life of any Head of State or any Head of Government or of a member of his or her family shall not be deemed to be a political offence or an offence of a political character for the purpose of this Treaty.

#### Article 5

##### Extradition of Nationals

1. Each Contracting State shall have the right to refuse extradition of its nationals.

2. If the Requested State does not extradite its nationals, that State shall at the request of the Requesting State submit the case to the competent authorities of the former for prosecution. For this purpose the files, information and exhibits relating to the offence shall be surrendered by the Requesting State to the Requested State.

shall not be required to submit the case to its competent authorities for prosecution if the authorities have no jurisdiction. If it does not have jurisdiction the Requested State shall extradite the person.

#### Article 6

##### Double Jeopardy

Extradition of a person shall not be granted when he has already been tried and discharged or acquitted by a competent tribunal, or has already undergone punishment in the Requested State or in a third State for the act or omission constituting the offense for which his extradition is requested.

#### Article 7

##### Death Penalty

Extradition shall not be granted if the offense with which the person sought is charged or of which he is convicted, or for which he may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the Requesting State unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out.

#### Article 8

##### Rule of Speciality

1. Subject to paragraph 3 of this Article a person extradited under this Treaty shall not:

(a) be detained or tried, or be subject to any other restriction of his personal liberty, in the territory of the Requesting State for any offense committed before his extradition other than an offense for which the extradition was granted or any other offense described in Article 2 in respect of which the Requested State consents to his being so detained, tried or subjected to a restriction of his personal liberty; or

(b) be detained in the Requesting State for the purpose of his being extradited to a third State for an offense committed

2. A request for the consent of the Requested State under this Article shall be accompanied by a copy of any statement made by the extradited person in respect of the offense concerned and by the documents mentioned in subparagraphs (a), (e) and (f) of paragraph 2 of Article 11 in respect of the offense concerned.

3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the Requesting State and has not done so within 45 days of final discharge in respect of the offense for which that person was extradited or if the person has returned to the territory of the Requesting State after leaving it.

#### Article 9

##### Exceptions to Extradition

1. Extradition shall not be granted in any of the following circumstances:

(a) where the person sought has acquired exemption from prosecution or punishment, season or lapse of time or other lawful cause according to the law of either Contracting State in respect of the act or omission constituting the offense for which extradition is requested;

(b) where the act or omission constituting the offense for which extradition is requested is of a kind that, under the law of the Requested State, constitutes an offense only against military law;

(c) where the person whose extradition is requested is liable to be tried by a court or tribunal that is especially established for the purpose of trying his case or is only occasionally, or under exceptional circumstances, authorized to try such cases or his extradition is requested for the purpose of his serving a sentence imposed by such a court or tribunal;

(d) where the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of his race, religion, nationality or political opinions; or

(e) where the Requested State, believing that the person whose extradition is requested will be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. Extradition may be refused in any of the following circumstances:

(a) where an investigation is in progress or a prosecution is pending in the Requested State in respect of the offence for which the extradition of the person is requested;

(b) where the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive or incompatible with humanitarian considerations;

(c) in the case of a person convicted and sentenced in respect of an offence, less than six months of the sentence of imprisonment or any other form of deprivation of liberty imposed in the Requesting State for the offence for which extradition is requested remains to be served, taking into account the serious nature of the offence;

(d) if the competent authorities of the Requested State have decided in the public interest to refrain from prosecuting the person for the offence in respect of which extradition is requested; or

(e) where the offence for which extradition is requested is regarded under the law of the Requested State as having been committed in whole or in part within that State.

#### Article 10

##### Provisional Arrest

1. In case of urgency a Contracting State may apply by means of the facilities of the International Criminal Police Organization for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.

statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 11 authorizing the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the Requested State, a concise statement of the acts or omissions alleged to constitute the offence.

3. On receipt of such an application the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its request.

4. A person arrested upon such an application may be set at liberty upon the expiration of 45 days from the date of his arrest if a request for his extradition accompanied by the documents specified in Article 11 has not been received.

5. Paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

#### Article 11

##### Extradition Procedure and Required Documents

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 13.

2. The request for extradition shall be accompanied:

(a) if the person is accused of an offence - by a warrant for the arrest or a copy of the warrant for arrest of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the person in respect of each offence;

(b) if a person has been convicted in his absence of an offence - by a judicial or other document, or a copy thereof, authorizing the apprehension of the person, a statement of each offence for which extradition is sought and a statement

of the acts or omissions which are the subject of the request in respect of each offence;

(c) if the person has been convicted of an offence otherwise than in his absence - by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;

(d) if the person has been convicted of an offence otherwise than in his absence but no sentence has been imposed - by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;

(e) in all cases - by the text of the relevant provision of the law, if any, creating the offence or a statement of the relevant law as to the offence including any law relating to the limitation of proceedings, as the case may be, and in either case, a statement of the punishment that can be imposed for the offence; and

(f) in all cases - by an accurate description as possible of the person sought together with any other information which may help to establish his identity and nationality.

3. To the extent permitted by the law of the Requested State, extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 1 and paragraph 2 of this Article have not been complied with provided that the person sought consents to an order for his extradition being made.

4. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the Requested State.

#### Article 12 Additional Information

1. If the Requested State considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted that State may request that additional information be furnished within such time as it specifies.

additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting State from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2 of this Article the Requested State shall notify the Requesting State as soon as practicable.

#### Article 13 Authentication of Documents

1. A document that is furnished in support of a request for extradition shall be admitted, if authenticated, in any extradition proceedings in the Requested State.

2. A document is authenticated for the purpose of this Treaty, if:

(a) it purports to be signed or certified by a Judge, Magistrate or other competent authority in or of the Requesting State; and

(b) it is sealed with the official seal of the Requesting State or of a Minister of State, or of a Department or Ministry of the Requesting State.

#### Article 14 Surrender

1. The Requested State shall as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting State through the diplomatic channel.

2. If the request is agreed to, the Requesting State shall be informed of the place and date of surrender.

3. Subject to paragraph 4 of this Article the Requesting State shall remove the person from the Requested State within such reasonable period as the Requested State specifies and if the person is not removed within that period the Requested State may refuse extradition for the same offence.

surrendering or removing the person to be extradited, it shall notify the other State. The two States shall decide on a new date for surrender and the provisions of paragraphs 2 and 3 of this Article shall apply.

#### Article 15

##### Postponement of Surrender

The Requested State may postpone the surrender of a person in order to proceed against him, or so that he may serve a sentence for an offence other than an offence constituted by an act or omission for which extradition is requested and, where the Requested State so postpones the surrender, it shall advise the Requesting State accordingly.

#### Article 16

##### Handing over of Property

1. When the extradition of a person is granted, the Requested State shall, in so far as its law permits and subject to the rights of third parties, at the request of the Requesting State, seize and hand over property:

- (a) which may serve as proof of the offence; or
- (b) which has been acquired as a result of the offence.

2. The property mentioned in paragraph 1 of this Article may be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

3. If the property in question is liable to seizure or confiscation in the territory of the Requested State that State may, in connection with pending proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Any rights which the Requested State or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial if that State so requests.

1. Where requests are received from two or more States for the extradition of the same person either for the same offence, or for different offences, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting State of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

- (a) if the requests relate to different offences, the relative seriousness of the offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person;
- (e) the ordinary place of residence of the person; and
- (f) the possibility of subsequent extradition to another State.

#### Article 18

##### Transit

1. Where a person is to be extradited for an offence by a third State to a Contracting State through the territory of the other Contracting State, the first mentioned Contracting State shall request the other Contracting State to permit the transit of that person through its territory.

2. Upon receipt of such a request, the Requested State shall grant the request unless there are reasonable grounds for refusing to do so.

3. Permission for the transit of a person shall, subject to the law of the Requested State, include permission for the person to be held in custody during transit.



this Article, the Contracting State in whose territory the person is being held may direct that the person be released if his transportation is not continued within a reasonable time.

5. The Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expense incurred by that other Contracting State in connection with the transit.

Article 18  
EXPENSES

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State.
2. The Requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is requested, and in the maintenance in custody of the person until he is surrendered to a person nominated by the Requesting State.
3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

Article 20  
AMENDMENTS

This Treaty may be amended by agreement in writing between the Contracting States.

Article 21  
Entry into Force and Termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

4. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE in duplicate at Jakarta on the twenty-second day of April 1952 in the Indonesian and English languages, each text being equally authentic.

FOR THE REPUBLIC OF INDONESIA

Ali Latas  
ALI LATAS

FOR AUSTRALIA

Philip Flood  
PHILIP FLOOD

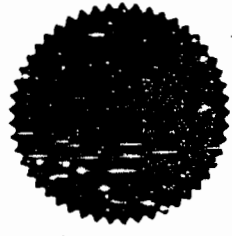



WHEREAS the Government of Australia desires to conclude an Agreement between Australia and Indonesia on Extradition :

NOW THEREFORE THESE PRESENTS CERTIFY that PHILIP JAMES FLOOD has been duly named, constituted and appointed by the Government of Australia as its plenipotentiary and representative having full power and authority to sign the Agreement, for and on behalf of Australia.

IN WITNESS WHEREOF, I, GARETH JOHN EVANS, Minister of State for Foreign Affairs and Trade, have hereunto set my hand and affixed my seal.

DONE at Canberra this twenty-first day of April, One thousand nine hundred and ninety-two.



  
Minister of State for Foreign Affairs and Trade of Australia



# UNITED NATIONS CONVENTION AGAINST CORRUPTION

## PREAMBLE

*The States Parties to this Convention,*

*Concerned* about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

*Concerned also* about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering,

*Concerned further* about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

*Convinced* that 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,

*Convinced also* that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

*Convinced further* that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

*Convinced* that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

*Determined* to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

*Acknowledging* the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

*Bearing in mind* that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and communitybased organizations, if their efforts in this area are to be effective,

*Bearing also in mind* the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

*Commending* the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

*Recalling* the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

*Taking note with appreciation* of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999, and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

*Welcoming* the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,

*Have agreed as follows :*

## **Chapter I**

### **General provisions**

#### *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;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.

#### *Article 2*

##### *Use of terms*

For the purposes of this Convention:

- (a) "Public official" shall mean:
  - 1) 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;
  - 2) 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;
  - 3) 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;
- 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;
- 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;
- 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;

- e) "Proceeds of crime" shall mean any 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;
- g) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property 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
- 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.

*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.
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.

*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.
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.

## **Chapter II** **Preventive measures**

### *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.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
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.

### *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:
  - a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
  - b) Increasing and disseminating knowledge about the prevention of corruption.
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.
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.

*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;
  - 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;
  - c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
  - 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.
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.
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.
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.

*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.
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, honourable and proper performance of public functions.



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.
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.
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.
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 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:
  - 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;
  - b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
  - 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;
  - 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;

- 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.
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;
  - b) Timely reporting on revenue and expenditure;
  - c) A system of accounting and auditing standards and related oversight;
  - d) Effective and efficient systems of risk management and internal control; and
  - 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 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:

- 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;
- b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

*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.
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.

*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.
2. Measures to achieve these ends may include, inter alia:
  - a) Promoting cooperation between law enforcement agencies and relevant private entities;
  - b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable 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;
  - 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;
  - d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;
  - 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;

- 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.
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;
    - b) 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.
  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.

*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 nontolerance of corruption, as well as public education programmes, including school and university curricula;
  - 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.
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.

#### *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;
  - 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.
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.
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;
  - 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.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat moneylaundering.

### **Chapter III** **Criminalization and law enforcement**

#### *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;
- 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.

#### *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.
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.

*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.

*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;
- 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.

*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.

*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.

*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;
- 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.

*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.

*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;
  - (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;
- 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;
  - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.



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;
  - 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;
  - 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;
  - 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.

*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.

*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;
- 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.

Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

*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.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
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.

*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.
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.
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.

*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.

*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.

*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.
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.
3. Each State Party shall endeavour 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.
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.
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.
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.
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.
8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.
  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.

#### *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;
  - b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.
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.
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.
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.
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.

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.
9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.
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.
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;
  - 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.
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.
4. The provisions of this article shall also apply to victims insofar as they are witnesses.
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.

*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.

*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.

*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.

*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 tasks.

*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.

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.
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.
4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article 32 of this Convention.
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.

#### *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
- b) Providing, upon request, to the latter authorities all necessary information.

#### *Article 39*

##### *Cooperation between national authorities and the private sector*

1. Each State 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.
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 in accordance with this Convention.

*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 out of the application of bank secrecy laws.

*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.

*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
  - 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 the offence is committed.
2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:
  - a) The offence is committed against a national of that State Party; or
  - b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
  - c) 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
  - d) The offence is committed against the State Party.
3. For the purposes 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.



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 States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.
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.

#### **Chapter IV** **International cooperation**

##### *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.
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.

##### *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.
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.
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.

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.
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.
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.
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.
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.
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.
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.

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.
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.
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.
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.
16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
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.
18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

*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.

*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
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
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;
  - b) Effecting service of judicial documents;
  - c) Executing searches and seizures, and freezing;
  - d) Examining objects and sites;
  - e) Providing information, evidentiary items and expert evaluations;
  - 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;
  - h) Facilitating the voluntary appearance of persons in the requesting State Party;
  - i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
  - j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;
  - k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.
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.
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.

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.
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.
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 minimis 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.
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.
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.
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.
15. A request for mutual legal assistance shall contain:
- a) The identity of the authority making the request;
  - 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;

- c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
  - d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
  - e) Where possible, the identity, location and nationality of any person concerned; and
  - f) The purpose for which the evidence, information or action is sought.
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.
  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.
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.
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.
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 fulfil 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 multiateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

*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.

*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, whereabouts 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;
  - 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, to 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, the 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.

*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 therefrom.

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.
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.
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.

## **Chapter V** **Asset recovery**

### *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.

### *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.

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 recordkeeping measures to take concerning such accounts; and
  - 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.
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.
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.
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.

*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;
- 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
- 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.

*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;
  - 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
  - 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.
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;

- 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
- 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
  - 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.
  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.
  9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

*Article 56*  
*Special cooperation*

Without prejudice to its domestic law, each State Party shall endeavour 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.

*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.
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.
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 judgement 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;
  - (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 judgement 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.

*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, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

*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.

**Chapter VI**

**Technical assistance and information exchange**

*Article 60*

*Training and technical assistance*

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes 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;
  - b) Building capacity in the development and planning of strategic anti-corruption policy;
  - c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;
  - d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;
  - e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;
  - 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
  - j) Training in national and international regulations and in 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 programmes 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.

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.
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.
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.
6. States Parties shall consider using subregional, 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.
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 programmes and projects.
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, programmes 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 analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.
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.
3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

**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 endeavour 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 programmes 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.

**Chapter VII**  
**Mechanisms for implementation**

*Article 63*  
*Conference of the States 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.
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 programmes, 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 nongovernmental 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.

### **Chapter VIII** **Final provisions**

#### *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.
2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.