



# General Assembly

Distr.: Limited  
7 January 2003  
English  
Original: Arabic

---

## Ad Hoc Committee for the Negotiation of a Convention against Corruption

Fourth session

Vienna, 13-24 January 2003

Item 3 of the provisional agenda\*

### Consideration of the draft United Nations Convention against Corruption, with particular emphasis on articles 2 (remaining definitions), 3, 4, 20, 30, 32-39 and 40-85

## Proposals and contributions received from Governments

### Yemen: amendments to articles 40, 40 bis, 42, 43, 46, 48, 48 bis, 49, 55, 58 and 62-72

#### Article 40: Prosecution, adjudication and sanctions

##### *Paragraphs 2, 3 and 5*

1. The delegation of Yemen proposes to amend paragraphs 2, 3 and 5 to read as follows:

“2. Each State Party shall endeavour to take such measures as may be necessary to limit any immunity or any jurisdictional privilege of its public officials with respect to the investigation, prosecution and adjudication of criminal offences established in accordance with this Convention under its legal system to what is strictly necessary in order to guarantee to persons entitled to such privileges and immunities appropriate protection in the exercise of their functions and shall take the necessary measures to regulate the removal of such immunities and jurisdictional privileges.

“3. Each State Party shall endeavour to ensure that legal powers relating to the prosecution of persons for the commission of criminal offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those criminal offences and with due regard to the need to deter the commission of such criminal offences.

---

\* A/AC.261/10.



“5. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the criminal offences covered by this Convention when considering the eventuality of early release or parole, during the investigation or trial stage, of persons convicted or accused of committing such criminal offences.”

*Paragraph 6*

2. Yemen proposes to add a new option for paragraph 6:

“6. States Parties shall take such measures as may be necessary to disqualify, indefinitely or temporarily, persons convicted of offences covered by this Convention from holding or being nominated to any public office or from occupying any post, unless rehabilitated, and to establish a national record of disqualified persons in order to ensure that they do not hold nor are nominated to any other office, provided that any public official accused of committing a criminal offence established under this Convention is temporarily suspended until a final decision is made in connection with the criminal offence.”

**Article 40 bis: Statute of limitation**

3. Yemen proposes to amend this article to read as follows:

*“Article 40 bis  
“Statute of limitation*

“Each State Party whose domestic law provides for a statute to regulate the limitations period applicable to the criminal offences established in accordance with this Convention shall, where appropriate, apply a long statute of limitations period, which shall allow an adequate period of time for the investigation and prosecution of such criminal offences. That limitation period shall be longer in cases where the alleged offender is evading the administration of justice.”

**Article 42: Confiscation and seizure**

*Paragraph 3*

4. Yemen proposes to amend the last sentence of paragraph 3 so that the paragraph would read as follows:

“3. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized or confiscated property that is the proceeds of crime and shall ensure that that property is administered by an official body established for that purpose. Such measures shall include standards relating to the return of secured property, which will remain at the disposal of the person who has a right to such property. Each State Party shall also consider measures relating to the administration and use of abandoned property, as well as respect for the time limits that result in abandonment, in accordance with the principles of its domestic law.”

*Paragraph 8*

5. Paragraph 8 should be amended to read as follows:

“8. For the purpose of this article and article [...] [International cooperation for confiscation] 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 when required on legal grounds.”

*Paragraph 9*

6. Paragraph 9 should be amended to read as follows:

“9. States Parties may consider the possibility of requiring, according to guarantees and legitimate means, that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with fundamental principles of their domestic law.”

**Article 43: Protection of witnesses and victims***Title*

7. Yemen proposes to amend the title of the article to read “Protection of persons in criminal proceedings”.

*Paragraph 1*

8. Paragraph 1 of this article should be amended to read as follows:

“1. Each State Party shall take appropriate measures within its means to provide effective protection from retaliation or intimidation for persons who give testimony or provide expertise concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.”

**Article 46: Measures to enhance cooperation with law enforcement authorities**

9. Yemen proposes to amend this article to read as follows:

*“Article 46**“Measures to enhance 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 by 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 the recovery of proceeds, property or any other funds derived from criminal offences established under this Convention.

“2. Each State Party shall consider providing in its domestic law for the possibility, in appropriate cases, of mitigating punishment or exempting from criminal responsibility of an accused person where he or she provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

“3. Protection of such persons shall be as provided for in article [...] [Protection of persons in criminal proceedings] of this Convention.

“4. Where a person referred to in paragraph 1 of this article located in one State Party is prepared to 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 paragraph 2 of this article.”

**Article 48: Cooperation with and between national authorities**

**Article 48 bis: Cooperation between the private sector and national authorities**

10. Yemen proposes to merge articles 48 and 48 bis, in view of the common provisions contained therein, as follows:

*“Article [...]”*

*“Cooperation with investigating authorities”*

“1. Each State Party shall take such measures as may be necessary to ensure that public authorities, public officials and officials of the private sector cooperate, in accordance with its domestic law, with its authorities responsible for investigating and prosecuting criminal offences. Such measures may include:

“(a) Informing the investigating authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with this Convention has been committed; or

“(b) Providing, upon request, to the investigating authorities all necessary information.

“2. Each State Party shall consider, where appropriate, the establishment, in accordance with its domestic law, of an obligation for its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of a criminal offence covered by this Convention.”

**Article 49: Establishment of criminal record**

11. Yemen proposes to amend this article to read as follows:

*“Article 49”*

*“Establishment of criminal record”*

“Each State Party shall 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 duly contested conviction in another State of an alleged offender for the purpose of establishing a criminal record to regulate the use of such information in any criminal proceedings relating to an offence covered by this Convention.”

**Article 55: Law enforcement cooperation**

12. Yemen proposes to delete this article since article 53 (Mutual legal assistance), contains the provisions of article 55 and there is no need for repetition.

**Article 58: Bank secrecy**

13. Yemen proposes to delete article 58, since the provisions of this article appear in paragraph 6 of article 5 and paragraph 8 of article 42 and are implied in paragraph 2 and clearly provided in paragraph 3 of article 53.

**Article 62: Return of property to the country of origin in cases of damage to state property**

14. Yemen proposes to delete this article: since States Parties would be under an obligation to implement the provisions of the Convention relating to confiscation, seizure and disposal of proceeds and to provide mutual international assistance, they would be under an obligation, in accordance with those provisions, to return such property to the affected country of origin.

**Article 63: Use of terms**

15. Yemen proposes to delete this article for the following reasons:

(a) With regard to paragraphs (a)-(d):

(i) They contain definitions of terms already defined in article 2;

(ii) Legal usage requires that definitions of terms should appear in one article at the beginning of the legal instrument;

(b) With regard to paragraphs (d) and (e), there is no legal requirement to define “requested State Party” or “requesting State”, because these terms are axiomatic.

**Article 64: General provisions***Paragraph 1*

16. Yemen proposes to amend subparagraphs (a)-(d) of paragraph 1 to read as follows:

“(a) Exchanging with other States Parties information on unlawful methods and expedients employed in carrying out transfers of assets and funds derived from any of the criminal offences established in accordance with this Convention;

“(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection and freezing of transfers and transactions in the economic and financial systems, involving assets, including funds, of illicit origin derived from any of the criminal offences established in accordance with this Convention;

“(c) In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets,

including funds, of illicit origin derived from any of the criminal offences established in accordance with this Convention;

“(d) States Parties shall afford one another mutual technical assistance in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from any of the criminal offences established in accordance with this Convention. When appropriate, such assistance shall also include the assessment of the legislation in force for the purpose of updating it in the light of relevant current legal trends and theories.

The provisions of this article should include all the criminal offences established under the Convention and not to be limited to any particular offence.

*Paragraphs 2 and 3*

17. Yemen proposes to delete paragraphs 2 and 3 since their provisions appear in articles 42 and 53 of the draft Convention.

**Article 65: Detection [and prevention] of transfers of illicitly acquired assets**

**Article 66: Financial intelligence units**

**Article 67: Recovery mechanisms**

**Article 68: Special cooperation provisions**

**Article 69: Contents of a request**

**Article 70: Limitations on cooperation**

**Article 71: Disposition of assets**

18. Yemen proposes to delete these articles since their provisions appear in articles 43 and 53 of the draft Convention.

**Article 72: Additional provisions**

19. Yemen proposes to delete this article since it is linked with the preceding articles, which it is also proposed to delete. It should be replaced by a new article containing final clauses that should be drafted after agreement is reached on the final text of the articles of the Convention. It should contain articles regulating the settlement of disputes, signature, ratification, acceptance, approval, accession, denunciation, entry into force and amendment of the Convention.