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**Review of the implementation of the United
Nations Convention against Corruption**

**Implementation of chapter II (Preventive measures) of the
United Nations Convention against Corruption**

Thematic report prepared by the Secretariat

Summary

The present report contains the most common and relevant information on successes, good practices, challenges and observations identified in the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, with a focus on the implementation of chapter II (Preventive measures) of the Convention.

* [CAC/COSP/2019/1](#).



I. Introduction, scope and structure

1. In accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, the present thematic report has been prepared to compile the most common and relevant information on successes, good practices, challenges and observations contained in the country review reports, organized by theme, for submission to the Implementation Review Group, in order to serve as the basis for its analytical work.
2. The present thematic report contains information on the implementation of chapter II (Preventive measures) of the Convention by States parties under review in the second cycle of the Implementation Review Mechanism. It is based on information provided in the 27 executive summaries and country review reports that had been completed, or were close to completion, at the time of drafting. The report focuses on existing trends in and examples of implementation and includes tables, text boxes and figures on the most commonly encountered challenges and good practices. The trends identified in the present report are largely consistent with those identified in the previous thematic report, which is likely due in part to the limited amount of new data available. However, relevant regional trends have been reflected in the present report. As more data become available from completed country reviews, a more comprehensive analysis of trends and nuances will be reflected in future iterations of the thematic reports and regional addenda.
3. Given the close links between the various articles of the four substantive chapters of the Convention, the present report builds upon the previous thematic reports on the implementation of chapters III and IV, which were under review in the first cycle of the Implementation Review Mechanism. The structure of the present report follows that of the executive summaries by clustering certain articles and topics that are closely related.

II. General observations on challenges and good practices in the implementation of chapter II of the United Nations Convention against Corruption

4. The present report contains an analysis of the most prevalent challenges and good practices in the implementation of chapter II, organized by article of the Convention. The figures and tables below cover the 27 countries under analysis.¹

¹ Data used in the preparation of the present report are based on country reviews finalized as at 20 September 2019.

Figure I
Challenges identified in the implementation of chapter II of the Convention

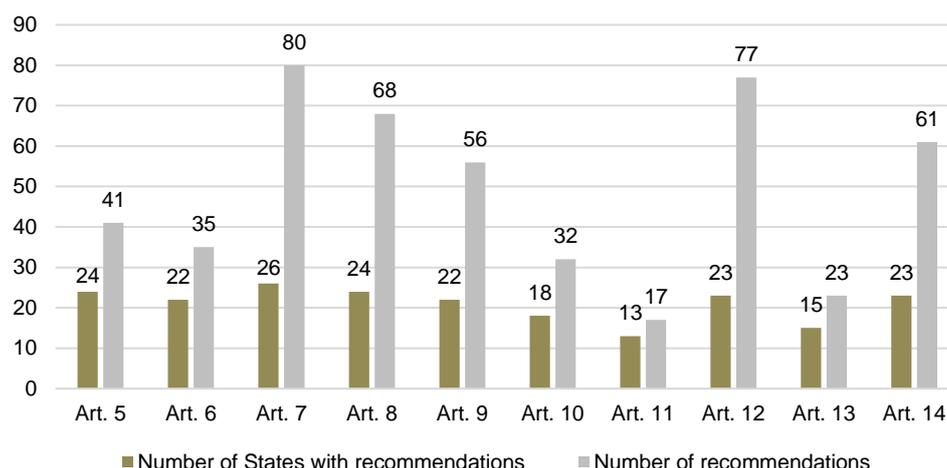


Table 1
Most prevalent challenges in the implementation of chapter II of the Convention

Article of the Convention	Number of States with recommendations	Number of recommendations issued	Most prevalent challenges in implementation (in order of article of the Convention)
Article 5	24	41	Weak coordination and implementation of anti-corruption policies; limited coherence, comprehensiveness and effectiveness of national anti-corruption policies; lack of coordination bodies; lack of corruption prevention measures; and lack of evaluation of the legal instruments and administrative measures in preventing and combating corruption
Article 6	22	35	Lack of designated preventive anti-corruption bodies; insufficient resource allocation for corruption prevention bodies; inadequate legal and operational independence of anti-corruption bodies with preventive functions; and poor coordination among various anti-corruption bodies
Article 7	26	80	Lack of adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and for their rotation; insufficient transparency in the recruitment of public officials; inadequate criteria concerning candidatures for and election to public office; lack of comprehensive legislation or administrative measures to regulate the funding of candidatures for elected office and the funding of political parties; and lack of legislation or mechanisms to prevent or regulate conflicts of interest
Article 8	24	68	Lack of codes of conduct for public officials, or their limited application to certain groups of public officials; limited reporting channels and protection measures for public officials to report acts of corruption; and inadequate measures to prevent conflicts of interest, including measures on outside activities, secondary employment, asset declarations and acceptance of gifts
Article 9	22	56	Ineffective systems of national review and appeal in public procurement matters; inadequate selection and screening methods and training for procurement officials; no obligation for procurement officials to declare their interests, in particular in public procurements and their assets; information and communications technology are not being used to promote the effectiveness of the procurement systems (e-procurement); limited transparency in the budget adoption process; no or limited systems of risk management and internal control in the area of public financial management; and need to strengthen audit procedures in order to improve reporting on revenues and expenditures
Article 10	18	32	Lack of legislation or measures to regulate public access to information comprehensively and, where such legislation and measures are in place, gaps in the existing frameworks and inadequate application thereof; complex administrative procedures for public service delivery; burdensome procedures for accessing

Article of the Convention	Number of States with recommendations	Number of recommendations issued	Most prevalent challenges in implementation (in order of article of the Convention)
Article 11	13	17	information and insufficient proactive information-sharing; and lack of or insufficient information published on corruption risks in the public administration
Article 12	23	77	Insufficient measures to strengthen judicial integrity and integrity in the prosecution service
Article 13	15	23	Limited cooperation between law enforcement agencies and relevant private entities; insufficient measures to prevent conflicts of interest, including a lack of or narrowly defined post-employment restrictions for former public officials; inadequate measures to prevent the misuse of procedures regarding subsidies and licences granted by public authorities for commercial activities; limited or inadequate standards and procedures, such as codes of conduct, aimed at safeguarding the integrity of private entities and inadequate measures to monitor compliance with those standards and procedures; and lack of or inadequate legislation on the non-deductibility of expenses that constitute bribes or are incurred in furtherance of corrupt conduct
Article 14	23	61	Limited participation of civil society in the prevention of and fight against corruption, including, inter alia, as a result of the lack of or inadequate implementation of relevant laws and procedures and limited corruption awareness campaigns; insufficient collaboration between relevant government agencies and civil society; and inadequate measures or mechanisms for reporting corruption
Article 14	23	61	Country-specific gaps in the legislation and regulations aimed at countering money-laundering and the financing of terrorism; institutional weaknesses in financial supervision; incomplete implementation of standards and recommendations issued by other international monitoring bodies; inadequate measures to detect and monitor the cross-border transfer of cash and bearer negotiable instruments; and insufficient supervision of money or value transfer services

Figure II
Good practices identified in the implementation of chapter II of the Convention

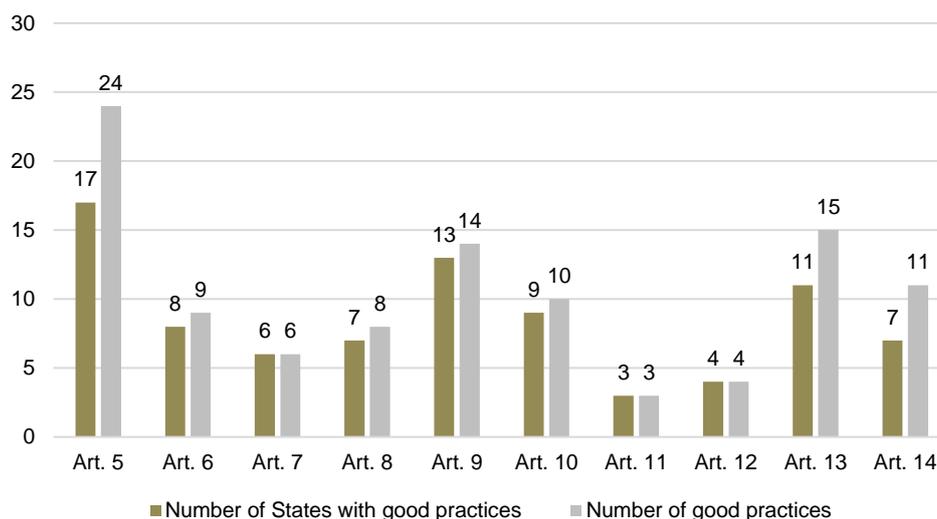


Table 2
Most prevalent good practices in the implementation of chapter II of the Convention

<i>Article of the Convention</i>	<i>Number of States with good practices</i>	<i>Number of good practices issued</i>	<i>Most prevalent good practices (in order of article of the Convention)</i>
Article 5	17	24	Active participation of international and regional organizations and programmes that address anti-corruption; establishment of anti-corruption strategies and policies with broad involvement of society; and establishment of a wide range of activities and measures in the prevention of corruption
Article 6	8	9	Independent budget for the preventive anti-corruption bodies; and provision of adequate resources and specialized staff for such bodies
Article 7	6	6	Identification of positions considered especially vulnerable to corruption and adoption of additional measures to regulate such positions; and advertising vacancies for public positions by various means
Article 8	7	8	Measures to promote integrity and ethics in the public service; and establishment of integrity units in different ministries and offices
Article 9	13	14	Use of electronic procurement systems and integrity pacts; diverse measures to ensure transparency in public tendering; and measures to promote transparency in the budget process
Article 10	9	10	Strong framework for access to information; and simplification of administrative procedures through the use of electronic means
Article 11	3	3	Development of a case management system to enhance transparency in case distribution
Article 12	4	4	Broad participation of the private sector in the development of anti-corruption policies; and measures to promote transparency among private entities
Article 13	11	15	Effective role played by civil society; measures to promote public participation and broad consultations; facilitation of the reporting of corrupt conduct to anti-corruption bodies through multiple channels; and tailored educational programmes
Article 14	7	11	Well-established national regime for anti-money-laundering and combating the financing of terrorism; and sound inter-agency coordination

III. Implementation of chapter II of the United Nations Convention against Corruption

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

5. The Convention recognizes that the various legal systems and traditions of States parties may require different approaches to the implementation of article 5 of the Convention, including with regard to the adoption of national preventive anti-corruption policies. The different approaches taken by States to implement article 5 could be broadly categorized as follows: (a) the development of a comprehensive national anti-corruption strategy, as a single document or as a document embedded in other strategic government documents; or (b) the formulation of an implicit policy, which may not always be codified in a specific document, but is nevertheless implemented through consistent efforts to prevent corruption when drafting legislation and through the adoption of specific measures to address corruption.

6. The majority of States have adopted or are in the process of adopting specific anti-corruption strategies and action plans, while some States have also developed plans at the sectoral and organizational levels.
7. Eight of the countries have either formulated implicit anti-corruption policies or have instead focused on issues at the sectoral level, without developing a comprehensive document with a national scope.
8. A key element of any robust anti-corruption strategy is the establishment of an effective coordination mechanism, which ensures that all public bodies with responsibilities under the strategy will be involved in the implementation of that strategy. All but one State have sought to establish such a mechanism, with two approaches emerging as trends.
9. While some countries have opted for the establishment of a centralized body close to the centre of the Government to coordinate implementation and oversight, others have charged the existing structures, such as anti-corruption bodies and line ministries, with that task.
10. The coordination of anti-corruption policies at the national level continued to pose challenges, and reviewers noted the need to ensure greater coherence and coordination of the policies adopted. The need to enhance coordination between national and departmental anti-corruption policies, in particular with regard to implementation, monitoring and revision and information exchange, is one of the most frequently issued recommendations.
11. In some instances, the anti-corruption policies are contained in legislation, departmental policy documents and national integrity plans, which was seen as sufficient by the reviewers.
12. An interesting practice identified in the course of the country reviews is the inclusive nature of the processes for developing national anti-corruption strategies or policies, namely the engagement with a wide range of stakeholders, including civil society.
13. A broad variety of practices aimed at the prevention of corruption have been identified, including the introduction of anti-corruption measures at the organizational level, the development of codes of conduct, the introduction of asset and interest disclosure systems, the organization of awareness-raising and education activities, the introduction of whistle-blowing regimes for public officials, the provision of training for public officials, and the development of corruption risk management tools and various reports, surveys and studies. The establishment of integrity and anti-corruption units in governmental bodies and departments and the publication of annual reports by the panels and committees of the anti-corruption bodies, as well as surveys of public perception of corruption, have been identified as good practices in some countries.
14. Gaps in the implementation of articles 5 and 6 of the Convention have been identified in all States under review. However, while the main challenges for States in the African Group and the Latin American and Caribbean Group are the lack of effective policies, for those in the Asia-Pacific Group, the gaps are mostly found in the coordination and implementation of anti-corruption policies and the lack of corruption prevention measures, such as awareness-raising or education campaigns.
15. The insufficient resource allocation for corruption prevention bodies are a common problem for States in the African Group, and the inadequate legal and operational independence of anti-corruption bodies with preventive functions, as well as poor coordination of the anti-corruption bodies, are a main challenge for States in the Asia-Pacific Group.
16. Many States have reported that their anti-corruption bodies play a role in the review of relevant legal instruments and administrative measures, with a view to determining the adequacy of those measures in preventing and combating corruption.

17. All countries have reported on their membership or involvement in regional and international organizations, programmes and projects aimed at the prevention of corruption, including the Group of States against Corruption of the Council of Europe, the Working Group on Bribery in International Business Transactions of the Organization for Economic Cooperation and Development (OECD), the Anti-Corruption Initiative for Asia and the Pacific of the Asian Development Bank and OECD, the International Anti-Corruption Academy, the International Association of Anti-Corruption Authorities, the Global Anti-Corruption Initiative of the United Nations Development Programme, the Advisory Board on Corruption of the African Union, the Network of National Anti-Corruption Institutions in West Africa, the Extractive Industries Transparency Initiative, the Pacific Islands Law Officers' Network, the Pacific Islands Forum Secretariat, the Pacific Community and the Pacific Association of Supreme Audit Institutions. International treaties, such as the African Union Convention on Preventing and Combating Corruption and the Economic Community of West African States Protocol on the Fight against Corruption have also been noted as relevant. One country has provided information on numerous memorandums of understanding in the area of anti-corruption that have been agreed with other States.

18. While the majority of countries have established dedicated anti-corruption bodies responsible for the implementation of policies and activities on the prevention of corruption, some States have taken a different approach, relying on existing institutions, such as ethics committees, line ministries, financial intelligence units and public service departments, to prevent corruption and implement national anti-corruption policies (relating to art. 6 of the Convention). Only one country has reported that it had no specialized anti-corruption preventive body in place. A recommendation has been issued in that regard.

19. The place of anti-corruption preventive bodies in national institutional structures, and therefore their independence, varies. Two general approaches have emerged as prevalent: establishing a new, autonomous institution; or tasking existing institutions with the relevant preventive functions.

20. The establishment of special high-level committees is a preferred method to ensure the effective coordination of anti-corruption policies. Those committees usually consist of high-level appointed and elected public officials, including government ministers.

21. There are different approaches to ensuring the independence of the corruption prevention bodies, such as the provision of constitutional guarantees and the adoption of appropriate legal provisions, including on security of tenure, budget and staffing, and the use of the traditional civil service structures and legislation, with no special guarantees being provided.

22. A total of 19 countries have officially informed the Secretariat of their designated preventive bodies. The others have been encouraged to submit information in that respect.

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

23. All of the reviewed States have established rules and procedures governing the recruitment, hiring, retention, promotion and retirement of public officials in their constitutions or national legislation, in particular laws governing the civil service. Most countries have merit-based systems for the administration of public officials (relating to art. 7 (1) of the Convention). For example, the majority of States apply competitive procedures for the recruitment and promotion of public officials, such as written tests and interviews. However, one State follows an internal rotation system for the selection of individuals for lower-ranking positions, while another has

indicated that qualified officers are generally given priority in recruitment over external candidates. In one country, a competitive procedure is only applied to the recruitment of applicants for certain categories of positions.

24. There is some variance among the reviewed States regarding their institutional structures for the administration of public officials. Some countries have established centralized bodies in charge of recruitment, retention and disciplinary action in relation to their public officials, while other States use a more decentralized approach by delegating such authority to various government agencies.

25. Half of the countries advertise vacancies publicly on the Internet or in newspapers. In that regard, one country has created a one-stop website for submitting applications for all positions in the public service. A good practice identified in another country is the obligation for recruitment authorities to ensure that all vacancy advertisements draw attention to the principles of integrity, honesty, accountability, efficiency and transparency. States that do not provide clear rules for advertising vacancies have received recommendations to promote transparency in this regard. In addition, some countries have appeal mechanisms in place through which unsuccessful candidates may challenge a hiring decision. Such mechanisms vary across countries and range from lodging a complaint to a designated agency to filing administrative appeals to the courts.

26. In general, States have not elaborated on or defined “positions considered especially vulnerable to corruption”. Nevertheless, a number of States have taken additional measures for the selection, rotation and training of individuals for public positions deemed vulnerable to corruption or have specifically identified such positions in their public administration systems, such as legislature, law enforcement, judiciary and procurement personnel or officers involved in the allocation of licences and permits. Owing to their inadequate implementation of their obligations under article 7 (1) (b) of the Convention, the majority of States have received recommendations with regard to the selection and training of individuals for public positions considered especially vulnerable to corruption. For example, while one country has reported the existence of a rotation system for public officials, that system is not specifically for positions considered vulnerable to corruption. Furthermore, several countries do not have any rotation systems in place, while others apply the same requirements to all public positions, without providing enhanced measures for positions especially vulnerable to corruption.

Box 1

Good practices identified in the implementation of article 7 (1) (b) of the Convention

The Anti-Corruption Commission in one State has assessed corruption risks in the public service and drawn a list of areas especially vulnerable to corruption, such as procurement, law enforcement, licensing, land matters and construction. On the basis of this risk matrix, this State has taken concrete measures to mitigate the risks, including through specific staff training and rotation systems.

27. A significant number of States have highlighted that education programmes or specialized training, especially on anti-corruption, integrity and ethics, are available to enhance awareness of the risks of corruption among public officials. One country review has identified the absence of specific integrity and anti-corruption components in the country’s training programmes for public officials as an implementation gap. Many of the countries have also demonstrated that adequate remuneration is provided to public officials.

28. With respect to regional trends, it should be noted that most States in the African Group face challenges, in particular with regard to the identification of positions considered especially vulnerable to corruption. Some States in the African Group also have reported difficulties in providing adequate ethics and integrity training to public officials. About half of the States in the Asia-Pacific Group and the Group of Western

European and other States have received recommendations, especially regarding their implementation of article 7 (1) (b) of the Convention. In addition, gaps in the implementation of this provision have been identified in all States in the Eastern European Group and the Latin American and Caribbean Group.

29. All countries have relevant laws in place setting out criteria concerning candidature for and election to public office, though a few have rather limited rules and regulations on that issue (relating to art. 7 (2) of the Convention). In order to enhance transparency, some countries also require candidates for certain positions to declare their assets or potential conflicts of interest.

30. With regard to the issue of transparency in the funding of elections and political parties, more than a dozen States in the sample have referred to the rules on the funding of candidatures for elected public office, with more than half of the countries indicating that the funding of political parties is governed by relevant legislation (relating to art. 7 (3) of the Convention). However, two States have reported that they have no political parties and that, consequently, no law pertaining to that issue was needed. Several States are either planning to draft specific laws in that area or had drafts under consultation at the time of the country visits.

31. In addition, it has been observed that the relevant national legislation in various States differs significantly in its content and coverage. For instance, the legislation in some States allows for funding from both public and private sources, while in other States, the legislation either provides for public funding as the main source of political financing or only allows for private funding for elections and political parties. Furthermore, several States do not regulate private donations in their national laws or provide no limit for contributions. However, the prohibition of anonymous donations, gifts or loans of a monetary nature or in kind from national or foreign legal persons to political parties has been identified as a good practice in one country. In terms of institutional arrangements for reporting on political funding, a number of States have established dedicated national election commissions to supervise or monitor campaigns and elections.

32. Regarding regional differences in the implementation of articles 7 (2) and 7 (3) of the Convention, gaps have been identified in all States in the African Group and almost all States in the Group of Western European and other States, while half of the States in the Asia-Pacific Group and the Latin American and Caribbean Group have been found to face challenges. Among the main challenges is the lack of comprehensive legislation or administrative measures to regulate the funding of candidatures and political parties, including on such issues as private donations and the disclosure of donations.

33. Almost all countries have put in place rules on the prevention of conflicts of interest and reported on various regulatory measures for the public sector in that regard (relating to art. 7 (4) of the Convention). The scope and content of the applicable frameworks for preventing conflicts of interest and the types of prohibited interests and activities vary. Countries have referred to a range of prohibited interests, such as prohibiting the engagement of public officials in secondary employment or outside activities, limitations on gifts and financial disclosure requirements for certain public officials. Many States have also adopted systems and procedures for public officials to declare their existing or potential conflicts of interest, with possible sanctions for non-compliance. In one State, any legal act or contract in which a conflict of interest is identified may be annulled. However, the question of what constitutes a conflict of interest is not adequately addressed in some countries, thus making the implementation of relevant preventive measures difficult.

34. In terms of regional differences, the majority of States in the African Group have received recommendations, while gaps in the implementation of article 7 (4) of the Convention have been identified in half of the States in the Asia-Pacific Group and the Group of Western European and other States, as well as in one State in the Eastern European Group. One trend across all regional groups is the lack of good practices in the implementation of article 7.

35. With regard to article 8 of the Convention, all countries have referred to their various laws and measures in promoting integrity, honesty and responsibility among public officials. All States have also reported that various codes of conduct or ethics are in place or under review for public officials. In that regard, most countries have adopted general codes of conduct for setting out duties, principles and guidelines either for all public officials or for a majority of civil servants. However, the code of conduct in one country is not applicable to elected public officials, while in another, international standards have not been fully considered in drafting the code. Recommendations have been issued accordingly. Apart from the general codes of conduct, more than half of the States have adopted sectoral codes of conduct or specific codes for certain types of public officials. It has been found that countries have diverging approaches to codes of conduct, some having developed both general codes for all public officials and separate codes for individual agencies and statutory bodies, while others either have a principal code or maintain several sectoral codes to cover a wide range of government officers. In general, more challenges have been identified in African States compared with other regional groups in this respect.

36. In some States, the codes of conduct are not merely of an aspirational nature but also have enforceable power (relating to art. 8 (6) of the Convention). For example, in two countries, violations of the codes of conduct are addressed through administrative procedures. In several other countries, codes of conduct serve to raise awareness, but not as a disciplinary tool. Moreover, a number of countries have designated a special agency or the head of each agency to monitor the enforcement of the codes of conduct. Almost half of the States in the African Group and one third of the States in the Asia-Pacific Group have received recommendations regarding this provision.

37. Measures or procedures to facilitate the reporting by public officials of acts of corruption vary among the States in the sample (relating to art. 8 (4) of the Convention). A near majority of States have reported that public officials have a duty to report any suspected crime, including corruption, to various authorities. In some countries, sanctions could also apply to public officials in case of failure to report acts of corruption or other misconduct. With respect to reporting channels, several countries have referred to the diverse platforms or dedicated reporting channels that may be utilized by public officials under certain circumstances, while a few others have indicated that public officials are subject to the common reporting channels available to the general public. However, some States have been identified as having inadequate measures in place to facilitate reporting by public officials, including a lack of proper systems. Recommendations have been issued in those cases. In terms of protection of reporting persons, almost one third of the States have reported legislative and other measures for whistle-blower protection, in particular in respect of public officials. With respect to regional differences, again the majority of States in the African Group are facing challenges in implementing this provision and have identified technical assistance needs.

38. Most countries have put in place requirements for the regular submission of asset declarations for certain levels of public officials (relating to art. 8 (5) of the Convention). Some States have reported that the family members of selected public officials, such as spouses and children, are also subject to the same financial disclosure obligations, while a few States have extended such disclosure systems to all public officials. Recommendations have been issued in instances where the scope of public officials subject to such declaration systems was too narrow. The issue of verification of declarations is also seen as a challenge. In this regard, some States have stressed that resources or means are inadequate to verify asset declarations. A few countries have also indicated that electronic tools could be used or developed for the submission and verification of such declarations. Of those countries that have financial disclosure systems in place, almost half impose sanctions for non-compliance. States in the sample reported further information on asset and income disclosure systems in relation to their implementation of article 52 (5) of the Convention.

39. In addition, countries have referred to other measures, such as requiring public officials to make declarations regarding, inter alia, their outside activities, employment, gifts or benefits from which a conflict of interest might arise. A number of countries have reported on restrictive measures on outside activities of public officials, while other States have prohibited secondary employment of public officials or have allowed for such employment only on an exceptional basis, with a view to preventing abuse of office and promoting transparency in the public sector. Half of the countries in the sample have rules in place prohibiting the acceptance of gifts by public officials, except those of low value or “courtesy presents”. Most of those countries also require the reporting of gifts above a certain value. However, States differ on the interpretation of “low” or “*de minimis*” value. For example, a recommendation has been made to a country that has a threshold of \$200 for reporting to consider lowering the limit for gifts to public officials who are subject to mandatory declaration and refusal or remittance.

40. States from all regional groups have received recommendations on this provision. Gaps in its implementation have been identified in more than two thirds of the States in the African Group, the Asia-Pacific Group and the Group of Western European and other States.

41. With regard to article 11 of the Convention, the independence of the judiciary is enshrined in the Constitution or relevant laws on the organization of the court system in the majority of countries. Most countries have referred to their legislation that set out the duties and rights of judges and rules on recruitment, tenure and dismissal of judges. The selection of judges is usually conducted by dedicated bodies, such as commissions, councils or committees. These bodies, to a large extent, also serve as disciplinary bodies for appointed judges and impose disciplinary measures as required. In addition, all countries have reported on measures to address conflicts of interest among members of the judiciary, including the recusal of judges, the prohibition of acceptance of gifts and restrictions on outside activities. In some States, judges are required to comply with the asset declaration systems. More than half of the countries have reported on specific codes of conduct or guidelines for judges. A significant number of countries have also reported on training programmes for judges, in particular on judicial integrity.

42. With regard to the prosecution services, States have adopted various laws, regulations and policies that set out the rights and duties of prosecutors, including rules that govern their independence and conduct. Many States have reported specific codes of conduct for prosecutors, while in one State, members of the prosecution service are also required to adhere to the general code of conduct for public officials. In a small number of countries, public prosecutors are expected to submit asset declarations or disclose conflicts of interest, if necessary. In addition, several countries have reported on measures to enhance integrity among prosecutors, including integrity training and procedures on case management. Some States have also adopted guidelines or policies to control the exercise of prosecutorial discretion.

43. In terms of regional differences, challenges have been identified evenly in the African Group, the Asia-Pacific Group and the Group of Western European and other States. It is noteworthy that good practices have only been identified in three States. As outlined in table 2, these good practices are measures to promote integrity and ethics in the public service, as well as the establishment of integrity units in various ministries and offices.

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

44. While all the States have adopted measures to regulate public procurement, the overall approach to regulation differs. The vast majority of States have adopted national legislation that is based on the principles of competition, transparency and objectivity and through which the provisions of article 9 of the Convention are implemented.

45. Four countries have regulated procurement through regulations and ordinances or by delegating the issuance of rules and regulations to government ministers. Most of the States have implemented decentralized procurement systems, whereby the individual government bodies are responsible for their own procurement processes. Exceptions to that model are countries that either centralize all, or only high-value, procurements through a central procurement body.

46. Gaps in the implementation of articles 9 (1) and 9 (2) of the Convention have been identified in almost all States under review. The need to establish effective systems of national review and appeal in public procurement matters and to take measures to improve selection and screening methods and training for procurement officials is the most common.

47. Integrity in procurement requires that all participants in the procurement process have the same information on deadlines, participation and selection criteria and have sufficient time to prepare for the submission of the tender documentation. All States had adopted legislative procedures to ensure the transparency of the procurement process, including, at a minimum, the publication of invitations to tender. While many countries do that through publication in newspapers or official journals, websites and Internet portals are increasingly used for this purpose. In all the countries, the procurement legislation requires that the publication of procurement notices be made early so as to allow for sufficient time to prepare and submit tenders.

48. Using the open tender procedure by default reduces the risks to integrity associated with artificially restricted competition and ensures that the goods or services are procured at a fair market price. The free competition of many participants in the tender process makes bid rigging and collusion less likely and easier to detect.

49. All but one country have established systems for the review of procurement decisions to address complaints lodged by participants. Such a system is indispensable for the integrity of the procurement system. While some countries rely on systems of administrative review, others provide either judicial review or a combination of the two, depending on the specificities of their legal systems.

50. Sound and merit-based procedures for the selection of procurement personnel is an important prerequisite for ensuring the effectiveness and integrity of the procurement system. Selection systems should take into account the provisions of article 8 of the Convention, with due regard to the specificity of the positions involved in procurement.

51. Whether they use a centralized or decentralized procurement system, States parties are required under the Convention to undertake special measures to promote ethical conduct and to prevent and manage conflicts of interest effectively in order to ensure the integrity of the procurement process. In terms of regulating the personnel responsible for procurement, three States have adopted screening procedures for recruitment, legislation or rules on accountability, conflict of interest declaration systems and a policy of periodic training. One State has no specific requirements for relevant personnel to declare their interests or assets. Recommendations have been issued accordingly.

Box 2

Good practices identified in the implementation of article 9 of the Convention

An important trend that can be seen in most of the States is the introduction of electronic tools to facilitate procurement procedures and strengthen the integrity of the procurement process, ranging from using electronic tender notices posted on the government websites to full-scale, integrated Internet portals, allowing for the electronic submission of offers by bidders.

52. A strong system for the management of public finances ensures the proper expenditure of public finances, strengthens confidence in the institutions and ensures a high quality of public services. To meet this challenge, States parties are required

under article 9 (2) of the Convention to promote transparency and accountability in the management of public finances.

53. To that end, the procedures for adoption of the national budget are of primary importance. They require a process of drafting, reviewing and adopting the budget by a number of institutions usually involving all three branches of power. Effective and inclusive budget planning helps to prioritize projects that meet the real needs of society.

54. All States had adopted laws, regulations and procedures regulating the adoption of their national budgets. The execution of financial operations and budget implementation are subject to varying levels of control, although in all States, frequent and timely reporting is required, and corrections may be made in case of failure. One State has developed a rating system to measure budgetary controls, and an accountability index has been formulated. In another State, all ministries are required to establish budget implementation committees to identify priority areas and address relevant issues.

55. Several States use their supreme audit institutions for oversight purposes. Audit reports are generally accessible by the public, with a few exceptions, and follow-up action may be taken to resolve issues raised in the reports. Nevertheless, in one State, there is no effective mechanism of audit and oversight for certain categories of expenditure, and a recommendation has been issued accordingly.

56. The storage and preservation of financial documents are provided in States that allow open access to archives and use electronic systems to manage files. One State requires that original records be kept for a period of 10 years, despite the use of electronic copies, which has been seen as a good practice.

D. Public reporting (art. 10) and participation of society (art. 13)

57. All States have taken measures, to varying degrees, to facilitate public access to information, with 19 countries having relevant legislation in place. One State that does not have relevant legislation provides platforms for the public to obtain information on public administration through open data initiatives. Another State has relevant legal requirements, but they concern only public procurement, the budget and public financial management. In another State, although the right to information is included as a general principle in the national anti-corruption strategy, no specific legislation has been adopted. In five States, legislation on access to information either has not yet been adopted or is under development, and recommendations have been issued in that regard, including regarding the need to enhance transparency and strengthen procedures to allow for greater public access to information.

58. It is worth noting that almost all the States provide multiple channels to access information on public administration. In addition to Internet portals, such as e-government, e-citizen, e-procurement, e-invoice and e-tax portals, such channels include official gazettes, national television, press releases, publications, newsletters, websites or mobile telephone applications. In most States, government authorities post the majority of their reports online, while in some States all open data are released to the public. Electronic services and information centres are widely used to handle information requests, with a view to simplifying administrative procedures. Eight States have made reference to their participation in the Open Government Partnership.

59. The majority of States have also designated or established dedicated agencies and offices (and, in one instance, transparency units and committees) to deal with access to information requests or to monitor relevant practices. In general, government agencies publish annual reports or share information proactively on various platforms. However, one State has indicated that only some government divisions published information online and that most ministries did not maintain official websites. A recommendation has been issued in that regard.

60. Most States have appeals mechanisms for recourse to administrative or judicial remedies in cases where access to information is not granted. However, in one State, that is only possible for information on public procurement. Moreover, most States allow decisions to deny access to information to be made on legitimate grounds, provided that the reasons are well explained. In that context, the balance between the protection of privacy and personal data, national security and the right to information has been raised. For instance, in some States, it is an offence to wrongfully disclose official confidential information, such as Cabinet documents. Other States have also reported that the application of national secrecy laws gave limited access to classified government information, and recommendations have been issued in that regard.

61. Most States respect the freedom of association, which is enshrined in their legislation or, in the case of 18 States, their constitutions. Freedom of expression is equally protected in most States.

62. Almost all States attach importance to the role played by civil society during the decision-making and policymaking processes. In line with national legislation, initiatives and policies, various means, such as referendums, elections and direct consultation, in particular with civil society, are regularly used to promote public participation in the fight against corruption. In addition, one State has designated a seat on the policy council of its anti-corruption national authority for civil society, and most States invite non-governmental organizations to provide comments on draft laws, participate in policy review exercises or engage with civil society on corruption prevention measures. Of those, five States have reported that civil society organizations have been invited to participate in the drafting and implementation of national anti-corruption strategies or policies. In one State, civil society has not been consulted on the development of laws or the national budget but has been more engaged in the dissemination of information and awareness-raising campaigns. A recommendation has been issued in that regard.

63. Numerous anti-corruption awareness-raising activities are in place in the countries in the sample. Those activities include special curricula and events in schools, frequent training and information campaigns, television programmes and periodic reports. Civil society organizations are heavily involved in the process and in the various activities. However, statistics on the impact of those measures are not available.

64. Regarding the freedom to publish and disseminate information concerning corruption, 19 States provided for freedom of the press in their legislation, albeit with legal restrictions to protect legitimate interests, such as public order and national security. No data on the application of those restrictions are available. At the same time, in some States, the freedom of the press appears to be curtailed, despite relevant provisions in the national legislation.

65. In order to facilitate the reporting of complaints and allegations to anti-corruption bodies and authorities, the majority of States provide a range of channels, including websites, in some cases, and methods, including mail or electronic means, toll-free numbers or hotlines and mobile applications. In 21 States, anonymous reporting is allowed and protected, not only at a policy level but also by legal provisions. However, in one State, which has legislation to protect anonymous reporting, concerns over the scope of protected disclosures and follow-up mechanisms on reports have been raised. That State has committed to reviewing its legislation and providing greater protection to reporting persons in combating corruption. Two other States do not provide for the possibility of anonymous reporting.

E. Private sector (art. 12)

66. All States have adopted standards and procedures designed to prevent corruption in the private sector to various degrees. Most States have adopted national legislation either on corporate governance or in specific areas, such as accounting, auditing and

business registration. Some States can directly apply international or regional legal instruments or accounting standards to business entities. In more than two thirds of the countries, special agencies or authorities have been designated to supervise corporate governance, and companies are obliged to report periodically on their compliance. One State has also developed a specific corporate social responsibility system.

67. The majority of States promote cooperation between law enforcement agencies and private entities through legislation or special initiatives. For example, one State provides in its anti-money-laundering law that private companies are required to provide information to and collaborate with prosecution and judicial authorities, in particular with regard to freezing and confiscation measures and the reporting of suspicious transactions. Another State is taking steps to establish a whistle-blowing mechanism for auditors, to facilitate such cooperation.

68. In order to safeguard the integrity of private entities, most States have adopted a variety of standards and procedures, such as codes of conduct, compliance requirements, business judgment rules and mechanisms concerning the prevention of conflicts of interest in the private sector. Under the anti-corruption strategy of one State, private sector investors are required to implement anti-corruption compliance programmes, and non-compliance may lead to sanctions. However, in another country, only some large companies have begun to develop compliance programmes, and another State has not taken sufficient steps to preserve integrity in the private sector. Recommendations have been issued to both States in that regard.

69. Nineteen States have adopted specific business registration requirements for companies and corporations, with a view to enhancing transparency among private entities. In one country, non-registration of the entity may even lead to penal consequences. Nevertheless, owing to the complex composition of the private sector, some legal arrangements, such as trusts, are not fully covered by the registration provisions.

70. No comprehensive information is available on public oversight of the use of subsidies by private entities and licences granted by public authorities for commercial activities (relating to art. 12 (2) (d) of the Convention) or on the restrictions on the professional activities or employment of former public officials (relating to art. 12 (2) (e)). Regulations on post-employment restrictions for public officials have been put into place in half of the States, although in some States there is no enforcement mechanism to ensure compliance. In one State, there are insufficient measures to prevent the improper use of regulatory procedures for private entities and inadequate restrictions on the exercise of professional activities by former public officials in the private sector. In another State, a regulation prohibiting former public officials from being employed in the private sector after their resignation or retirement is under development. Recommendations have been issued to address the gaps identified.

71. Almost all States have established accounting and auditing standards for the private sector in different forms. Half of them rely on their national laws and regulations, while the rest can apply relevant international standards.

72. As for specific requirements on the maintenance of books and records, most States apply legal sanctions for violations thereof. Those sanctions include criminal punishment for certain offences, such as forgery and falsification of documents, use of false documents, aggravated fraud and deceit. However, except in one State, not all acts enumerated in article 12 (3) of the Convention, such as the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions and the intentional destruction of bookkeeping documents earlier than foreseen by the law, are criminalized. In that context, such conduct is always subject to fines and, on a few occasions, the relevant private sector entities may be held individually or jointly liable.

73. There is some variation among the States with regard to prohibiting the tax deductibility of expenses that constitute bribes. Although the legislation of more than half of the States clearly provide that the tax deduction of expenses constituting bribes is prohibited, the tax legislation of the remaining States is silent on the issue.

74. With regard to regional nuances, gaps have been identified in almost all States in the African Group and the Group of Western European and other States, in particular on the weak standards and procedures to safeguard the integrity of private entities and the lack of measures to regulate post-employment restrictions and prevent the misuse of procedures regarding subsidies and licences.

F. Measures to prevent money-laundering (art. 14)

75. The States in the sample have received a number of recommendations in relation to the implementation of article 14 of the Convention.

76. All the countries have cited various pieces of legislation, in particular their laws on anti-money-laundering and countering the financing of terrorism, and detailed their regulatory and supervisory regimes. In most countries, legislation on the prevention of money-laundering contains provisions on the identification of customers and beneficial owners, customer due diligence, record-keeping and the submission of suspicious transaction reports by reporting entities. In addition, all but two countries have introduced rules for conducting enhanced scrutiny of accounts sought or maintained by or on behalf of politically exposed persons, including their family members and close associates, as well as other high-risk accounts and transactions.

77. Countries differ in the designation of their supervisory authorities for banks and non-bank financial institutions. Some States have designated various authorities to supervise different sectors, while one State has established a financial market authority as the sole, integrated and independent supervisory authority. Entities that are subject to anti-money-laundering obligations always include banks and non-bank institutions. In a number of countries, they also include designated non-financial businesses and professions. However, some States have limited lists of non-financial businesses and professions, and recommendations have been issued in that regard.

78. A risk-based approach is applied in a large number of countries, although some States do not articulate such an approach in their legislation but use it more in practice. That approach requires that the levels of scrutiny (typically normal, enhanced and simplified due diligence) apply to customers and transactions commensurate with the relevant risks. Recommendations for providing a specific reference to a risk-based approach or considering using that approach in the anti-money-laundering regime have been issued in several cases. Almost two thirds of the countries have completed or are in the process of completing their national risk assessments on money-laundering.

79. Almost all the countries have established financial intelligence units. In many instances, the unit is an administrative-type financial intelligence unit, which has been placed under different authorities in the countries in the sample. Most of the units in the reviewed States are members of the Egmont Group of Financial Intelligence Units. Some are also members of regional groups of financial intelligence units. In general, obliged entities are responsible for the filing of suspicious transaction reports to the units.

Box 3

Good practices identified in the implementation of article 14 of the Convention

One State holds periodical coordination meetings attended by all national supervisory and oversight authorities involved in anti-money-laundering activities and combating the financing of terrorism, as well as the public prosecution office and the financial intelligence unit. In two States, the wide range of training on anti-money-laundering provided to other countries has been identified as a good practice.

80. All the countries have, to various extents, adopted rules or measures to monitor the cross-border movement of cash and appropriate bearer negotiable instruments. Such monitoring is usually based on disclosures, with a typical reporting threshold equivalent to approximately \$10,000. Almost all the States have also reported on their regimes to govern electronic transfers of funds, including measures on money remitters. However, money or value transfer services, including informal money transfer services, are not adequately regulated in some countries, and recommendations have been issued, as appropriate.

81. Many countries have referred to their membership in the Financial Action Task Force or Financial Action Task Force-style regional bodies, such as the Committee of Experts on the Evaluation of Anti-Money-Laundering Measures and the Financing of Terrorism of the Council of Europe, the Asia-Pacific Group on Money-Laundering or the Intergovernmental Action Group against Money-Laundering in West Africa. A large number of recommendations have been issued in relation to follow-up measures to address gaps or challenges identified in previous evaluations, especially by the Task Force. The mutual evaluations carried out by the Task Force and Task Force-style regional bodies appear to have ensured a high level of compliance.

82. With regard to global, regional, subregional and bilateral cooperation among different authorities for the purposes of combating money-laundering, many States have referred to the possibility for their financial intelligence units to share information on their own initiative with both national authorities and foreign counterparts. In addition, a number of States can provide assistance on the basis of bilateral memorandums of understanding or through various multilateral forums, such as the Financial Action Task Force and the International Criminal Police Organization.

83. Overall, gaps in the implementation of article 14 of the Convention have been identified in almost all reviews and across all regional groups. The main challenges include country-specific gaps in anti-money-laundering legislation and regulations, institutional weaknesses in financial supervision and the incomplete implementation of standards and recommendations issued by other international monitoring bodies.