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English only

**Implementation Review Group
of the United Nations Convention
against Corruption****Third session**

Vienna, 18-22 June 2012

**Implementation of chapter IV (International cooperation) of
the United Nations Convention against Corruption****Thematic report prepared by the Secretariat***Summary*

The present thematic report contains information on the implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption and technical assistance needs of States parties under review in the first year and second years of the first cycle of the Mechanism for the Review of Implementation of the Convention, established by the Conference of the States Parties to the Convention in its resolution 3/1.

I. Implementation of chapter IV**A. Introduction and scope and structure of the report**

1. In its resolution 3/1, the Conference adopted the terms of reference of the Review Mechanism, contained in the annex to that resolution, as well as the draft guidelines for governmental experts and the secretariat in the conduct of State party reviews and the draft blueprint for State party review reports, contained in the appendix to the annex to resolution 3/1, which were finalized by the Implementation Review Group at its first session, held in Vienna from 28 June to 2 July 2010.

2. In accordance with paragraphs 35 and 44 of the terms of reference of the Review Mechanism, the present report has been prepared in order to compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the country review reports,



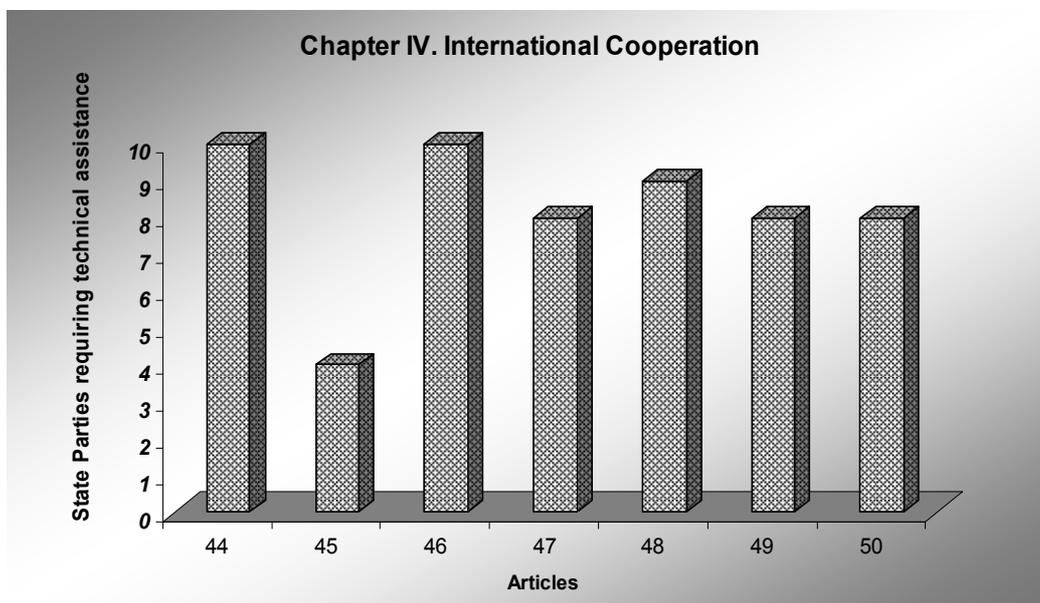
organized by theme, for submission to the Implementation Review Group, to serve as the basis for its analytical work.

3. The present report contains information on the implementation of chapter IV (International cooperation) of the Convention by States parties under review in the first and second years of the first cycle of the Review Mechanism and related technical assistance needs. It is based on information included in review reports of nineteen States parties that had been completed, or were close to completion, at the time of drafting.¹

B. General observations on technical assistance

4. Pursuant to paragraph 11 of the terms of reference, one of the goals of the Review Mechanism is to help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance. Pursuant to paragraph 44 of the terms of reference, the Implementation Review Group is to consider technical assistance requirements in order to ensure effective implementation of the Convention. As had been previously requested by the Group, this report contains a thematic overview of technical assistance needs, and where possible with a regional breakdown.

5. Of the nineteen States parties included in this report, thirteen requested technical assistance for chapter IV of the Convention. These included five States parties from the Group of Asian and Pacific States, five from the Group of African States, five from the Group of Eastern European States, and one from the Group of Latin American and Caribbean States. As the report is based on a limited number of responses received from States parties under review, it does not purport to be exhaustive regarding overall technical assistance needs.



¹ The present data are based on the country reviews as on 31 May 2012.

C. Implementation of chapter IV (International cooperation)

Extradition

6. All States parties regulated extradition in their domestic legal systems, most of them in their code of criminal procedure or special laws on international cooperation. Not all States parties, however, regulated extradition with the same level of detail. In one case, no domestic regulation existed apart from limited extradition-related provisions in the Constitution. In another case, national legislation on extradition was in place, but only with respect to money laundering offences, thus suggesting a “compartmentalized” approach to extradition. This is likely to be confirmed with the adoption, by the same State party, of an anti-corruption bill which will contain extradition-related provisions limited to the area of corruption. While some States relied heavily on treaties, others mentioned the importance that non-binding arrangements had in their extradition practice and arrangements made at the sub-regional level, which often provided a less formalistic approach to the mutual surrender of fugitives than fully-fledged treaties.

7. A significant difference among States parties stemmed from their belonging to different legal systems: whereas the Constitution of some allowed for the direct application of duly ratified international treaties, other States parties could only enforce treaties by enacting enabling legislation. Accordingly, most States parties belonging to the first category did not need to adopt detailed implementing legislation by virtue of the fact that the extradition-related provisions of the Convention had become an integral part of their domestic legal system. One State party confirmed compliance with most provisions of the Convention by referring to very similar or equivalent provisions to be found in a regional treaty on corruption to which it was party.

8. The majority of States parties considered as “extraditable offences” only those punished by deprivation of liberty for a period of at least one year or a more severe penalty. As a result, whenever Convention-based offences were punishable by a lesser penalty, extradition would not be possible. It was noted that this situation might be addressed by increasing the applicable penalties to ensure that all conducts criminalized in accordance with the Convention become extraditable. In one bilateral treaty, the threshold for making offences extraditable was a period of deprivation of liberty of at least two years. Most treaties appeared to identify “extraditable offences” based on a minimum penalty requirement as opposed to a list of offences. One country highlighted that its increasing reliance on the minimum penalty requirement approach in the negotiation of new international treaties injected an important element of flexibility into the practice of extradition.

9. Regarding “accessory offences” (those included in the extradition request without reaching the prescribed punishability threshold), most States parties made them extraditable if the main offence satisfied the minimum penalty requirement. Slight variations to this rule were detected in two cases. In one case, sought persons had to express their consent in order to be extradited for accessory offences. In the other case, accessory offences were considered to be extraditable only if the maximum penalty incurred by all such offences considered together reached a certain threshold (two years’ imprisonment). Only two States parties confirmed that extradition for accessory offences would never be possible.

10. Dual criminality appeared invariably as a standard condition for granting extradition. Only Member States of the European Union stated that the surrender of fugitives in execution of the European Arrest Warrant would not be subject to this requirement. The majority of States parties set out the dual criminality principle explicitly in their domestic legislation, with the exception of two, which applied it in practice. The dual criminality principle was usually interpreted in a flexible manner, in accordance with article 43(2) of the Convention which deems it fulfilled regardless of the terminology used to denominate the offence in question. Only the Government of one State party expressed an interest in modifying its legislation to remove the dual criminality requirement for some or all of the offences set forth in its penal laws, thus indicating the intention to align itself with article 44(2) of the Convention. In one case the full criminalization of all Convention-based offences was recommended as a way to ensure that the absence of the dual criminality requirement would no longer constitute an obstacle to the surrender of suspected offenders. Only one State party made specific comments on the application of the dual criminality principle vis-à-vis corruption-related offences. That State party highlighted that the absence of a definition of “foreign public officials” and “officials of public international organization” in its domestic legislation, coupled with a strict reading of the dual criminality principle, meant that extradition for the offences set forth in article 16 of the Convention was not possible.

11. Most States parties under review had an exhaustive list of grounds for refusal in their legislation except for one, which deduced them from general principles of international law when the extradition request was not based upon a treaty. Only one State party made a distinction between compulsory and optional grounds for refusal, while another one took the approach of listing the grounds for refusal directly in its Constitution.

12. Most States parties could not reject a request on the sole ground that the offence involved fiscal matters. In two cases, lack of legislation or practice left a degree of uncertainty as to whether an extradition request might be denied on these grounds.

13. Concerning the so called “non-discrimination” clause as set forth in article 44(13) of the Convention, the majority of States parties could not grant extradition when grounds existed to believe that the request had been formulated with a view to persecuting the sought person on account of his or her sex, race, religion, nationality, ethnic origin or political opinions. In four cases the risk of sex-based discrimination was not considered, although one State Party announced that this particular type of discrimination would be reflected in its new extradition law. In two countries, domestic legislation did not make any reference to the “non-discrimination” clause.

14. All of the States parties’ legislation specifically listed the commission of a political offence among the grounds for refusal of an extradition request. One State party mentioned that this was the most common cause of rejection of incoming requests (together with the circumstance that the prosecution of the offence is statute-barred). However, all of the States parties shared the same approach not to define the notion of “political offence” in legislative terms. As a result, decisions on whether to reject an extradition request on these grounds were taken on a case-by-case basis. In one case only, the Constitution mentioned that extradition was not allowed for “political reasons”, an expression that the reviewers found to be

ambiguous as to its actual scope of application. The majority of States parties confirmed that under no circumstances would a Convention-based offence be treated as a political offence. Two of them mentioned that their domestic legal systems excluded the possibility to invoke the political nature of an offence where an obligation to extradite or prosecute had been undertaken internationally.

15. Several States parties reported that they could not extradite their own nationals unless this possibility was explicitly envisaged in applicable treaties. Only one country excluded the extradition of nationals unless the concerned person would be “better judged” in the place where the offence had been committed. All States parties except one specified that any refusal to grant extradition based on these grounds would trigger a domestic prosecution, in accordance with article 44(11) of the Convention. In one country the scope of the domestic prosecution in lieu of extradition was narrowed down by the need to receive the victim’s complaint or the official accusation by the authorities of the country where the offence was committed.

Box 1

Example of the implementation of article 44 (11)

One State party gave its nationals the choice of whether they wished to be extradited or judged domestically. If they chose the second option, the person was judged domestically following consultation with the requesting State on condition that the latter renounced its jurisdiction and transmitted all available evidence.

16. All States parties but one had either no information available or could not allow the temporary surrender of nationals on condition that they be returned after trial to serve the sentence imposed in the requesting State, as envisaged in article 44(12). Similarly, States parties did not generally appear to be able to enforce a foreign sentence whenever they rejected an extradition request (sought for enforcement purposes) on nationality grounds, as envisaged in article 44(13) of the Convention. One State, in particular, mentioned that it was not in a position to execute a foreign court order. If a sentenced person, regardless of nationality, was present in its territory, the competent authorities of that State could only initiate a new criminal proceeding for the same facts.

17. With regard to the legal basis for receiving or sending an extradition request, the majority of States parties confirmed that a treaty basis was not necessary. This was also true of some States parties belonging to the so called “common law” legal tradition, which typically required the existence of a treaty. Three States parties, in particular, enabled their respective competent authorities to make an ad hoc declaration for the purpose of considering other countries as either “extradition countries” or “comity countries” in the absence of a treaty. In most cases where extradition could be granted outside a treaty framework, a condition of reciprocity was set, with only one State party subordinating extradition to its own interest and good relationship with the requesting country. Indirectly highlighting the importance of having the proper treaty bases in place, however, the same State party reported major problems with offenders fleeing to a country in the region with which it had not concluded an extradition treaty.

18. Despite the fact that the majority of States Parties did not require a treaty as a basis for extradition, in practice they all relied to a greater or lesser extent on treaties (whether bilateral or regional). One country reported having concluded bilateral extradition treaties with 133 States or multilateral organisations, such as the European Union, and that 30 new treaties had entered into force since the entry into force of the Convention. In one case a number of bilateral treaties were considered to be valid and applicable although they had been concluded by the former colonial power. Regional treaties took the form either of fully-fledged extradition treaties or treaties on corruption containing specific provisions on extradition. In general, bilateral treaties tended to be concluded with States parties of the same region or those speaking the same language. In one case, it was recommended that the Convention be extensively used as a legal basis for extradition to compensate for the very limited number of bilateral treaties in place.

Box 2

Example of the implementation of article 44(6)

One State Party adopted regulations specifically implementing the extradition related provisions of the Convention. Such regulations provide, among others, that any country that is a party to the Convention at any given time will be considered as an 'extradition country'. This ensures the ability of that State party to meet its international obligations under the Convention without the need to amend the regulations each time a new State becomes party to the Convention.

19. Most States parties confirmed that the Convention could be used as a basis for extradition. Only two countries expressed a degree of uncertainty in this regard. In one case, although the Convention could not alone constitute a legal basis, it could be used to expand the scope of a bilateral treaty in terms of extraditable offences. Overall, it emerged that the Convention was not widely utilised in practice for this purpose. One State party argued that bilateral treaties generally provided a more comprehensive and detailed regulation of extradition matters than the Convention. Another State party offered a different explanation, namely that domestic practitioners generally lacked knowledge about the possibility to use the Convention as a concrete legal tool for international cooperation.

20. On plans to conclude new treaties to enhance the effectiveness of extradition, the majority of the States parties indicated their general willingness to explore possibilities in this regard. Only one provided the names of the countries with which treaty negotiations were ongoing. Interestingly, one State party highlighted its current policy to prioritize negotiations with those States parties in which there was a high presence of its own nationals.

21. As to the average duration of extradition proceedings, the information provided pointed to substantial differences among States parties, ranging from two to three months to twelve to eighteen months. Individual countries also reported differences in their ability to extradite depending on the circumstances in which the request had been submitted. One EU country, for example, indicated that a longer time (of one year approximately) was needed on average in order to extradite fugitives to non-EU countries. In another case, a proceeding that would normally

last twelve months could be reduced to four months if the documentation supporting the extradition request was properly submitted.

22. One country mentioned that it had faced several obstacles in obtaining cooperation from other States, including delays in receiving assistance due to the high costs involved and cumbersome procedures. Another country highlighted that it had made several extradition requests related to corruption offences, none of which was granted due to differences in legal systems. Only one country mentioned explicitly that it had neither received nor sent an extradition request for corruption-related offences.

23. Lack of uniformity was also recorded in terms of evidentiary threshold prescribed by domestic laws in order to grant extradition. While some States parties did not require any evidence about the commission of the offence, others set a number of standards. These were expressed in terms of “probable cause” or “prima facie case”. Recommendations were made to the latter States parties to introduce a lower burden of proof in extradition proceedings to make it easier for requesting States to formulate an extradition request with higher chances of it being granted. Half of the States parties provided for a simplified extradition proceeding based on the sought person’s consent to be transferred.

Box 3

Example of the implementation of article 44 (9)

As a member of a subregional organisation, one State party reported about its extradition arrangements with countries belonging to the same organisation and confirmed that no evidentiary requirements were in place. Instead, extradition was implemented through a system of mutual endorsement of arrest warrants, which the reviewers praised as greatly facilitating the prompt and effective surrender of fugitives.

24. According to most States parties, the main due process guarantees were enshrined in their Constitution. Only one State party mentioned that, absent a Constitution, relevant protections were available under “common law principles”. A few States parties explicitly mentioned the applicability of relevant human rights conventions, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Some countries provided a list of the rights and guarantees applicable under their domestic legal systems. These included: the right to a defence counsel, the right to an interpreter, the right to appeal both the court ruling imposing preliminary detention and the court order authorizing extradition. The extradition law of one State party applied a whole range of human rights safeguards to the extradition process, among which the right of the individual with respect to conditions of imprisonment pending extradition. Although in most countries these rights appeared to be applicable to the conduct of criminal proceedings, they were normally considered to be extendable to other judicial proceedings, including extradition.

25. All States parties had measures in place to ensure the presence of the sought person at extradition proceedings. Custody, in particular, could invariably be ordered upon request. In one case, local courts were empowered to consider the legality of detention during extradition proceedings in the same way as they would

do for pre-trial custody. In another case, while arrest during extradition proceedings remained the rule, it was possible to order the release of the sought person on bail in exceptional circumstances, notably when the chances of granting extradition would be slim or on health grounds. In some instances, the role of Interpol's red notice system was highlighted as an important conduit for executing the arrest of fugitives.

26. There appeared to be no uniform interpretation and application of the requirement to engage in consultations with the requesting State before refusing extradition. Some States parties considered that no implementing legislation was needed, either because they regarded the duty of consultation as part of international comity or practice or because they interpreted this provision of the Convention as being directly applicable and self-executing in their own legal system. One State party argued that prosecutors, in their capacity as representatives of the requesting State before the extradition authorities, were implicitly bound to keep the requesting State informed of all of their actions. Another State Party mentioned that, although consultations could take place through the diplomatic channel and its results presented to the judge during the extradition hearing, the judge could not have direct contact with the foreign authorities. In two cases, lack of both legislation and practice resulted in the non-implementation of the requirement.

Box 4

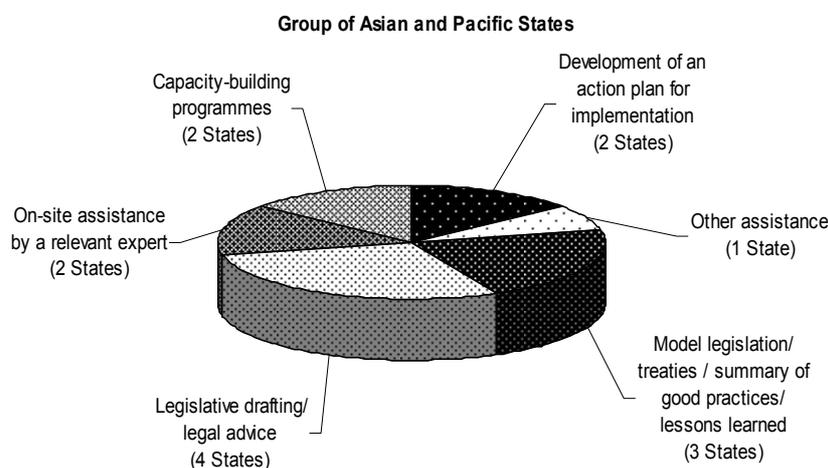
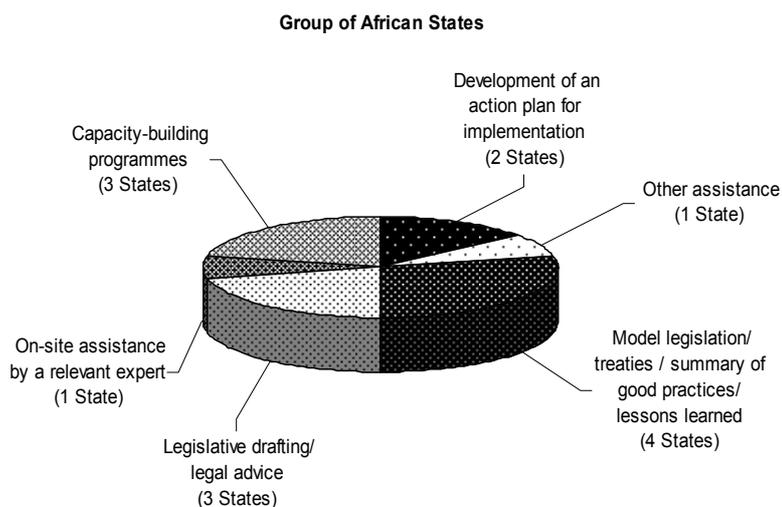
Example of the implementation of article 44 (17)

One State party reported that its central authority in charge of incoming and outgoing extradition requests would make every effort to consult with the requesting party if a request made under the Convention appeared to be deficient. This would include giving the requesting country the opportunity to supplement the request with additional evidence or explanations. The central authority routinely contacted treaty partners to solicit their views and encourage the supply of additional information if an extradition request appeared likely to be denied.

27. Some of the States parties under review provided statistics and figures about the number of extradition requests sent out and received over the past few years, including the percentage of granted requests. However, the data provided was of a general nature and did not provide an overview of how many extradition cases were handled concerning corruption-related offences.

Technical assistance needs relating to article 44

28. Of the ten States parties requesting technical assistance to support the implementation of article 44 of the Convention, the types of assistance requested were: legislative drafting and legal advice (seven States); model legislation and treaties, a summary of good practices and lessons learned (seven States); capacity-building programmes (five States); the development of an implementation action plan (four States); on-site assistance by an anti-corruption expert (three States); and other assistance in the form of capacity-building through networks and informal interactions (three States). One country from the Group of Eastern European States requested other assistance in the form of capacity-building through networks and informal interactions.



Transfer of sentenced persons

29. Most States parties had the necessary legal framework to carry out transfer of sentenced persons in accordance with article 45 of the Convention, notably via bilateral and regional agreements. No precise figures could be gathered about the number of prisoners that each State party had received or transferred abroad. One State Party pointed to thousands of prisoners having being transferred to and from it since 1977, pursuant to relevant treaties.

30. The number of treaties concluded by States parties on this matter varied considerably. Whereas one State was bound by twenty-eight bilateral agreements covering transfer of sentenced persons, another one mentioned only two. Similarly to what was observed in relation to extradition, a tendency was detected to conclude relevant agreements with neighbouring States or States which share the same

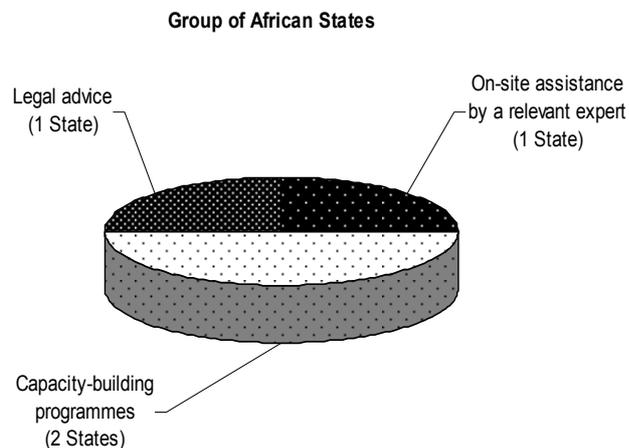
language. Regional agreements also appeared to be used rather extensively, particularly the 1983 European Convention on the Transfer of Sentenced Persons among Council of Europe Member States

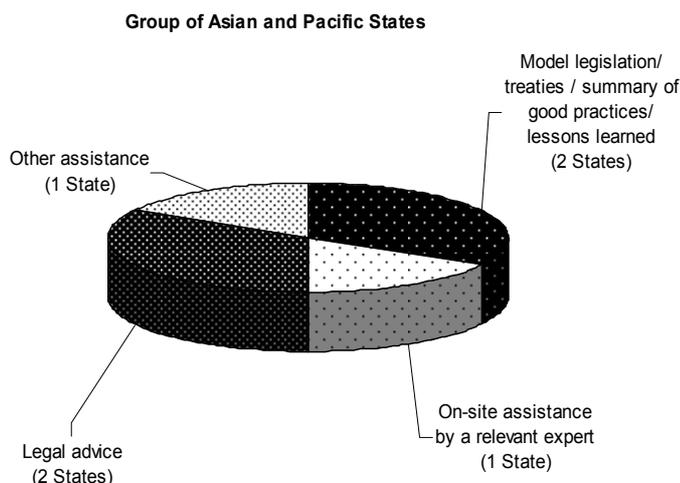
31. In four cases no agreement was in place, with one State party arguing that its national legislation barred such transfers when the person concerned was serving any sentence under any conviction within its territory until his or her discharge. However, the same State expressed the intention to amend such legislation in order to ensure compliance with the Convention. Another country reported that it had refused a request for transfer because of the absence of a legal framework.

32. Outside of any treaty regime, most States parties indicated that they were in a position to transfer sentenced persons on the basis of domestic laws. In one case this possibility was limited to persons sentenced for money laundering or drug-related offences. However, the same State specified that, in practice, all transfers had taken place through treaties. Another State party specifically mentioned reciprocity and dual criminality as conditions to execute transfers. Only one State party mentioned that it had used the diplomatic channel twice to transfer sentenced persons.

Technical assistance needs relating to article 45

33. Of the four States parties requesting technical assistance to support the implementation of article 45 of the Convention, the types of assistance requested were: legal advice (three States); model legislation and treaties, a summary of good practices and lessons learned (two States); on-site assistance by an anti-corruption expert (two States); capacity-building programmes (two States); and other assistance in the form of capacity-building through networks and informal interactions (one State).





Mutual legal assistance

34. The extent and scope of regimes of mutual legal assistance in the States parties under review varied significantly. Eleven States had adopted specific domestic legal provisions, either as distinct laws or forming part of broader pieces of legislation such as the Penal Code or the Criminal Procedure Code. Most of those States parties had also concluded international treaties regulating international cooperation in criminal matters. Six States parties reported that, in the absence of comprehensive domestic legislation on the matter, mutual legal assistance was provided on the basis of multilateral and bilateral treaties. In four cases, it was noted that mutual legal assistance could be afforded even in the absence of treaties, based on principles such as reciprocity.

Box 5

Example of the implementation of article 46 (1)

One State party reported that its legislation on mutual legal assistance in criminal matters was complemented by specific regulations facilitating the submission and reception of mutual legal assistance requests to and from States parties to the Convention and relating to offences established in accordance with the Convention.

35. Like in the case of extradition, mutual legal assistance frameworks were influenced by the nature of the legal system of each State. In States where the direct application of treaties was permitted, the self-executing provisions of the Convention would apply without the need for specific implementing legislation. In States where implementing legislation was required to enact international treaties, the provisions of the Convention would not be applicable without the adoption of enabling laws.

36. A majority of States parties were able to grant assistance in relation to offences for which legal persons may be held liable, but only a small number of States provided examples of actual cases where assistance had been provided in such a

case. In four of those States parties the principle of criminal liability of legal persons was not established, but mutual legal assistance was possible to the extent that dual criminality was not required. One country reported its intention to adopt legislation expressly regulating mutual legal assistance in relation to offences for which a legal person may be held liable. Five countries did not provide any information in this respect.

37. The purposes for which legal assistance may be requested according to article 46(3) of the Convention were in nine States parties to a large extent covered by domestic legislation. Seven of them indicated that the purposes were specified or supplemented in the applicable bilateral or multilateral mutual legal assistance treaties. In most States parties, asset recovery in accordance with Chapter V of the Convention was not explicitly listed among the purposes for which legal assistance might be requested. However, some States reported that their domestic legislation contained specific provisions to facilitate assistance pertaining to the identification, freezing and confiscation of proceeds of crime, with a view to enabling the recovery of assets.

38. Spontaneous transmission of information to foreign authorities and the modalities thereof, envisaged in art. 46(4) and 46(5) of the Convention were not specifically regulated in the domestic legislation of the majority of States parties under review. One State party expressly regulated spontaneous exchange of information between judicial authorities, and another one had even designated a specific authority empowered to transmit information without prior request. Several States parties reported that even if not foreseen, spontaneous transmission was possible to the extent that it was not explicitly prohibited, and noted that such transmission occurred frequently through informal channels of communication available to law enforcement authorities.

Box 6

Examples of the implementation of article 46(4)

<p>One State party reported that it had designated a specific domestic authority that was empowered to transmit information relating to criminal matters to foreign authorities without prior request.</p>
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39. In States where direct application of treaties was not permitted, legislation was required to ensure that mutual legal assistance provisions of the Convention were applied. In most States, requests for legal assistance could not be declined on the ground of bank secrecy, although in some cases access to bank records had to be duly authorized by prosecuting or judicial authorities.

Box 7

Examples of the implementation of article 46(8)

The vast majority of States parties under review confirmed that bank secrecy legislation did not constitute an obstacle to the provision of mutual legal assistance under the Convention, and several States parties reported that they regularly provided requesting States with information obtained from financial institutions.

40. The majority of States parties provided that dual criminality was not a requirement for granting mutual legal assistance. In three cases, in the absence of dual criminality, assistance would not be rendered for coercive measures. In some States parties the absence of dual criminality was an optional ground to refuse assistance. It should be noted that in three cases the reviewers were not provided with a clear response on the matter. Two States parties indicated that dual criminality was required, without specifying whether assistance would be granted when involving non-coercive measures.

41. Eight States parties indicated that they applied directly the provisions of article 46(10), 46(11) and 46(12) of the Convention on transfer of detainees for purposes of identification, if the matter was not regulated by specific bilateral or multilateral mutual legal assistance treaties. Six States parties confirmed that the matter was regulated in their domestic legislation in accordance with the requirements of the Convention, in particular with regard to safe conduct and the consent of the detainee for the execution of the transfer. One State party reported that it was party to a regional instrument on judicial cooperation which contained provisions on the matter.

42. All States parties but one had designated central authorities to receive requests for mutual legal assistance. The notification to the Secretary-General was missing in three cases. In most countries, the central authority was the Ministry of Justice; one State had designated the Ministry of Home Affairs, two States the Ministry of Foreign Affairs, and three States the Office of the Attorney-General. Several countries had identified a specific department, or even a specific official, within the designated Ministry.

43. Seven States parties required that requests for mutual legal assistance be submitted through diplomatic channels. One of those limited the use of diplomatic channels for requests submitted by States with which it had no treaty in force or in cases where a treaty envisaged such use. In one case, it was accepted that the request for mutual legal assistance be addressed directly to the competent authority from which assistance was sought. Most States parties reported that, in urgent circumstances, requests addressed through INTERPOL were acceptable, even though in some cases subsequent submission through official channels was required.

Box 8

Examples of the implementation of article 46(13)

One of the States parties that did not require requests for mutual legal assistance to be submitted through diplomatic channels accepted that such requests be submitted directly to its competent authority for execution.

One State party had designated the same Government department as being in charge, as the central authority, for all international treaties on cooperation in criminal matters, whenever such treaties called for the establishment of a central authority. Within this central authority, a special unit had been created to handle all mutual legal assistance requests. This allowed the streamlining of the process and the timely identification of weaknesses in the system.

In another State party, the website of the central authority provided detailed information about how the central authority could assist foreign countries in the provision of mutual legal assistance, links to domestic mutual legal assistance legislation and information about bilateral mutual legal assistance treaties and multilateral agreements to which it is a party.

44. Thirteen States parties had provided information on the languages acceptable for incoming requests. In six cases, the official language of the State was the sole acceptable. Two States parties had notified the Secretary-General that requests for legal assistance would be accepted if submitted in the official language or in English. One of those States accepted such requests if submitted without a translation in any one of the five foreign languages. Another State indicated that it would accept requests translated into any of the official languages of the United Nations. Four States parties indicated that oral requests would be acceptable, and five States affirmed that so would be requests submitted by electronic mail; in three cases, subsequent formalization in writing was explicitly required. Most States parties confirmed that their legislation did not hinder the request for additional information subsequent to the receipt of the original request.

45. With regard to the implementation of article 46 paragraphs 17, the majority of States confirmed that they would endeavour to satisfy conditions or follow procedures stipulated by the requesting States, in particular regarding compliance with evidentiary requirements, insofar as such requirements were not in conflict with domestic legislation or constitutional principles.

46. Hearing of witnesses by videoconference as provided for by article 46(18) of the Convention was permissible under the domestic law of eight States parties. Five States parties reported having handled requests for mutual legal assistance involving a hearing through videoconference. One of those regularly sought assistance from, and provided assistance to, foreign countries in the form of taking testimony via video link. Another State party reported that it had concluded a regional convention regulating all aspects of the use of video conferencing in international cooperation in judicial matters.

Box 9

Example of the implementation of article 46(18)

Several States parties reported that they made extensive use of video conferencing to take testimony, which allowed them to avoid lengthy procedures and high costs associated with transfer of witnesses.

47. The rule of specialty in the supply of information or evidence, established in article 46(19) of the Convention, was respected in most cases. Similarly, a majority of States parties indicated expressly that they ensured confidentiality of the facts and substance of the request if the requesting State so required.

48. The majority of States parties had legislation in place which did not provide for grounds for refusal other than those listed in the Convention. However, in some States domestic law contained grounds for refusal not envisaged in the Convention, such as the prejudice to an ongoing investigation in the requested country, the excessive burden imposed on domestic resources, and the political nature or the insufficient gravity of the offence.

49. Most States parties indicated that a mutual legal assistance request would not be refused on the sole ground that the offence also involved fiscal matters. They would also provide the reasons for refusal.

50. According to the information provided by the States parties under review, the average time needed for a response to a mutual legal assistance request ranged from one to six months. However, several States stressed that the time required to execute requests would depend on the complexity of the matter; it was noted that, in some cases, the processing of the request could take over one year. On the other hand, some States parties reported that where the requesting State indicated the need to address the matter urgently, the request would be responded to within a few days. One State affirmed that it would respond to all requests generally within two weeks, which was regarded as an exemplary performance. It was generally accepted that requests submitted by States sharing the same legal, political or cultural background as the requested State were responded to more rapidly.

Box 10

Examples of the implementation of article 46(24)

One State party reported that the staff of its central authority engaged in constant, nearly daily communication with counterparts in countries that had submitted a large number of mutual legal assistance requests. This central authority further sought to have regular annual consultations with the largest partners in the areas of extradition and mutual legal assistance.

Another State party followed the status of execution of mutual legal assistance requests using a specially designed casework database, which contained features enabling case officers to track each action taken on a matter and thus to identify delays in the execution of the request.

51. Most States parties indicated that nothing in their domestic legislation would prohibit consultations with the requesting State party before refusing or postponing

a request, and some States referred to bilateral treaties expressly regulating the matter. However, only a limited number of examples of such consultations were provided. Although no concrete cases of postponement of execution of requests were reported due to interference with ongoing investigations, several States argued that such postponement might be envisaged in accordance with domestic legislation or by direct application of the Convention.

Box 11

Examples of the implementation of article 46(25)

Upon receipt of a mutual legal assistance request which did not contain the prescribed elements, the central authority of one State party would, as a standard practice, contact the Embassy of the requesting State in order to clarify conditions under which the request could be executed.

52. Safe conduct of witnesses, envisaged in article 46(27) of the Convention, was addressed in the majority of States, either in multilateral or bilateral treaties or in domestic legislation.

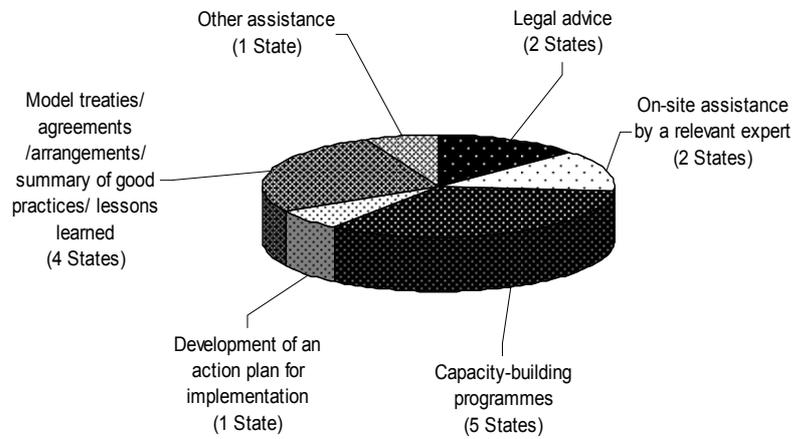
53. With respect to costs associated to mutual legal assistance requests, the general rule was that these would be covered by the requested State. Three States parties reported cases where extraordinary expenses were covered in part by the requesting State pursuant to an ad hoc arrangement. Further, the domestic legislation of some States parties provided that the requesting State should cover some costs associated with the execution of specific requests, such as costs incurred by expert testimony or for transferring detained witnesses. In one State party, the applicable law provided that costs would be borne by the requesting State, unless stipulated otherwise by the States concerned.

54. Most States parties indicated that documents available to the general public would be provided to the requesting State, but only three had expressly addressed the possibility to provide documents not publicly available. One of the latter States parties affirmed that it often provided such documents, which included police and law enforcement reports, to requesting States. In another case, all documents in possession of the authorities were by virtue of the law public, and thus potentially available to requesting countries.

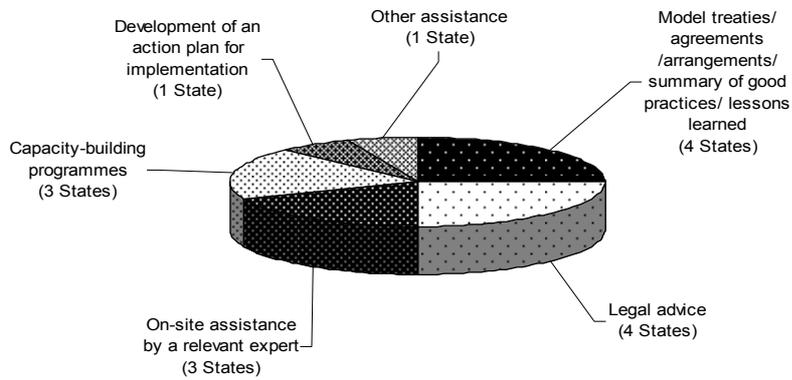
Technical assistance needs relating to article 46

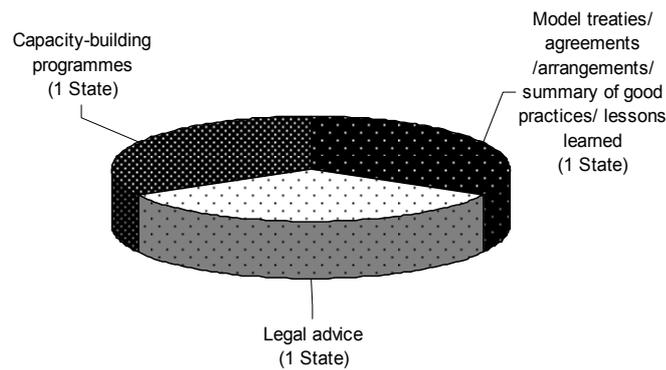
55. Of the ten States parties requesting technical assistance to support the implementation of article 46 of the Convention, the types of assistance requested were: model treaties, agreements or arrangements, a summary of good practices and lessons learned (nine States); capacity-building programmes (nine States); legal advice (seven States); on-site assistance by a relevant expert (five States); the development of an implementation action plan (two States); and other assistance in the form of capacity-building through networks and informal interactions (two States).

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Transfer of criminal proceedings

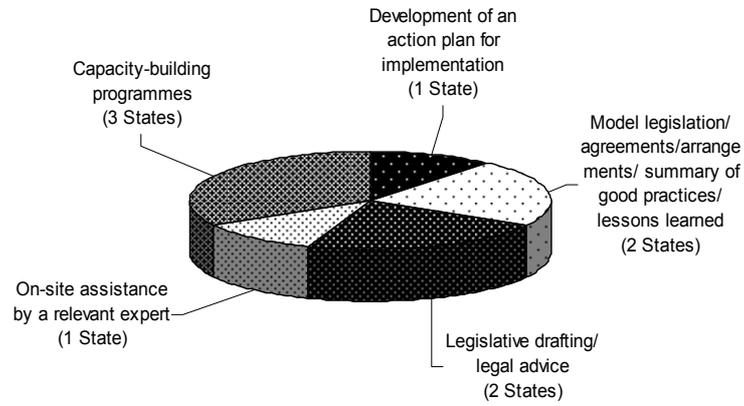
56. Nine States parties noted that their legal system did not contain any provision regulating the transfer of criminal proceedings between States. However, one of these States reported a case of such transfer taking place on the basis of an ad hoc arrangement. Further, the possibility of transferring criminal proceedings was addressed in general terms in a regional instrument signed, but not yet ratified, by one State. In seven States parties the possibility to transfer proceedings was foreseen in domestic legislation or bilateral or multilateral treaties in general terms, but no such transfer had taken place. The domestic legislation of another State provided for such a possibility within the framework of a regional international organization in relation to money laundering offences.

57. In one case it was argued that transfer of criminal proceedings was a routine practice, without concrete examples of implementation. No information was provided as to whether States parties considered the possibility of transferring proceedings to one another for the prosecution of corruption-related offences established in accordance with the Convention.

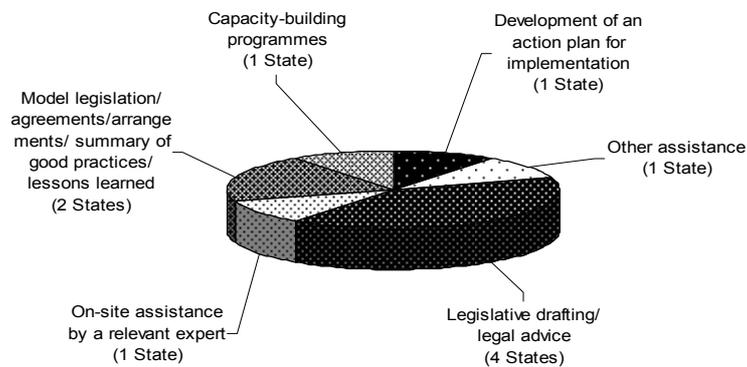
Technical assistance needs relating to article 47

58. Of the eight States parties requesting technical assistance to support the implementation of article 47 of the Convention, the types of assistance requested were: legislative drafting and legal advice (six States); model legislation, agreements or arrangements, a summary of good practices and lessons learned (four States); capacity-building programmes (four States); the development of an implementation action plan (two States); on-site assistance by an anti-corruption expert (two States); and other assistance in the form of capacity-building through networks and informal interactions (one State).

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Law enforcement cooperation

59. Channels of communication between competent anti-corruption authorities and services were reported to be more frequent at the regional level, be it at the bilateral level, under the regulatory framework of regional international organizations (including the European Union and the Organisation of American States), or within regional networks. In the context of regional cooperation, tools such as secure databases for the sharing of information among law enforcement authorities had been developed.

60. Membership to INTERPOL was generally regarded as a condition to facilitate law enforcement cooperation at the broader international level. However, it was noted by reviewers that INTERPOL could not replace direct channels of communication between law enforcement authorities, agencies and services of other States; the scarcity of such channels beyond the regional context was a common feature among States parties under review.

61. The exchange of information appeared to be a common feature among Financial Intelligence Units (FIUs), as 14 States indicated actual or developing engagement between their units and foreign FIUs, mainly through conclusion of Memoranda of Understanding or membership to the Egmont Group.

Box 12

Examples of the implementation of article 48(1)

The majority of States parties had established mechanisms allowing for the exchange of information among financial intelligence units. Informal channels of communication, established in the framework of regional networks, were also deemed to facilitate law enforcement cooperation.

With regard to effective coordination between authorities, agencies and services, one State party, together with other countries of the same region, had set up a joint network of liaison officers, enabling police officers of any one of those States to act on behalf of the police of any of the others.

One State party reported that its police authority had engaged in several joint activities with States of the same region in the areas of capacity building, coordination and collaboration against transnational crime, including corruption related offences. These activities were undertaken through a regional transnational crime network, funded by this State party, which had developed a series of multi-agency (law enforcement, customs, immigration) units against transnational crime, active across several countries of the region.

62. With respect to measures of cooperation in inquiries concerning offences covered by the Convention, most States parties under review did not provide information on their specific regulation or implementation, but rather provided an overview of the general legal framework within which such measures could be taken. Four States parties provided information on inquiries that had been effectively conducted in cooperation with other States. Only one State party provided information on specific measures regarding supply of items or substances

for analytical purposes and means or methods used to commit offences covered by the Convention.

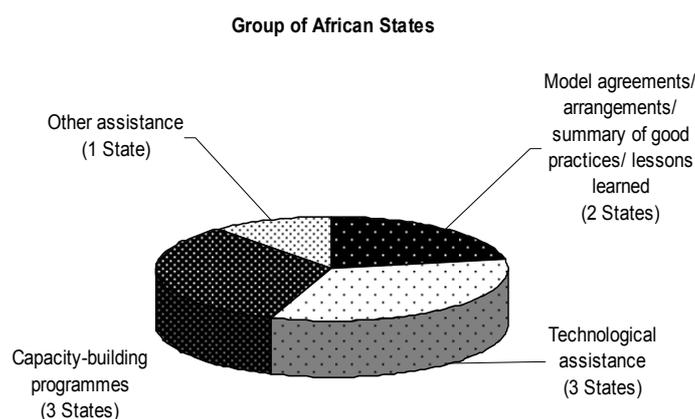
63. Regarding coordination through exchange of personnel or experts, six States parties had explicitly confirmed the posting of police liaison officers to other countries or international organizations, and three had deployed liaison officers to 20 or more foreign countries. Several States parties reported that officials from their law enforcement agencies frequently participated in joint training activities with international counterparts.

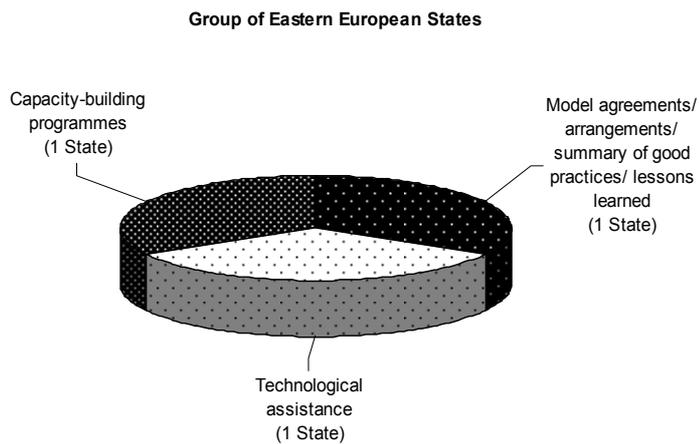
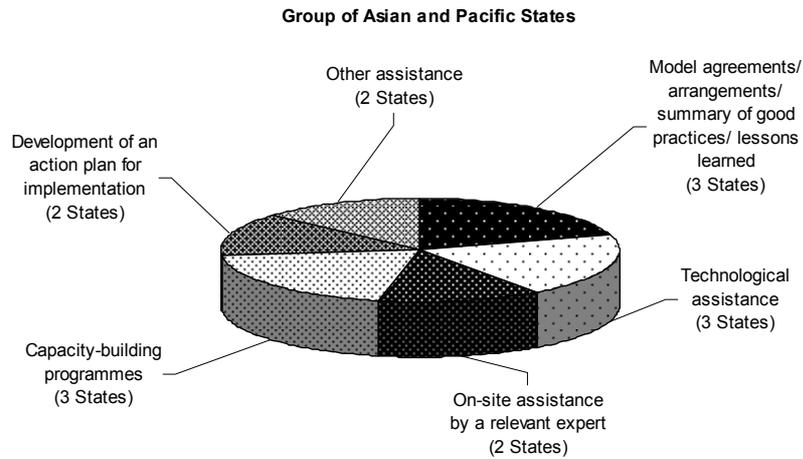
64. Conclusion of bilateral or multilateral agreements or arrangements on direct cooperation between law enforcement authorities appeared to be part of the practice of a majority of States parties, as most countries indicated that they had entered or were considering entering into such agreements, predominantly with countries in the same region or language community. Only five States parties mentioned explicitly that they used the Convention as basis for mutual cooperation in respect of offences covered by the Convention.

65. Cooperation in response to offences committed through the use of modern technology was not established among the States parties under review. The majority of States had not provided specific information on modalities of cooperation to respond to such offences. Only one State mentioned as a means of cooperation the establishment of a permanently available focal point in the framework of a regional treaty addressing all forms of cybercrime, whereas another State referred to a multilateral agreement and a bilateral treaty addressing the issue.

Technical assistance needs relating to article 48

66. Of the nine States parties requesting technical assistance to support the implementation of article 48 of the Convention, the types of assistance requested were: technological assistance (seven States); capacity-building programmes (seven States); model agreements or arrangements, a summary of good practices and lessons learned (six States); other assistance in the form of capacity-building through networks and informal interactions, as well as information technology trainings (three States); the development of an implementation action plan (two States); and on-site assistance by an anti-corruption expert (two States).





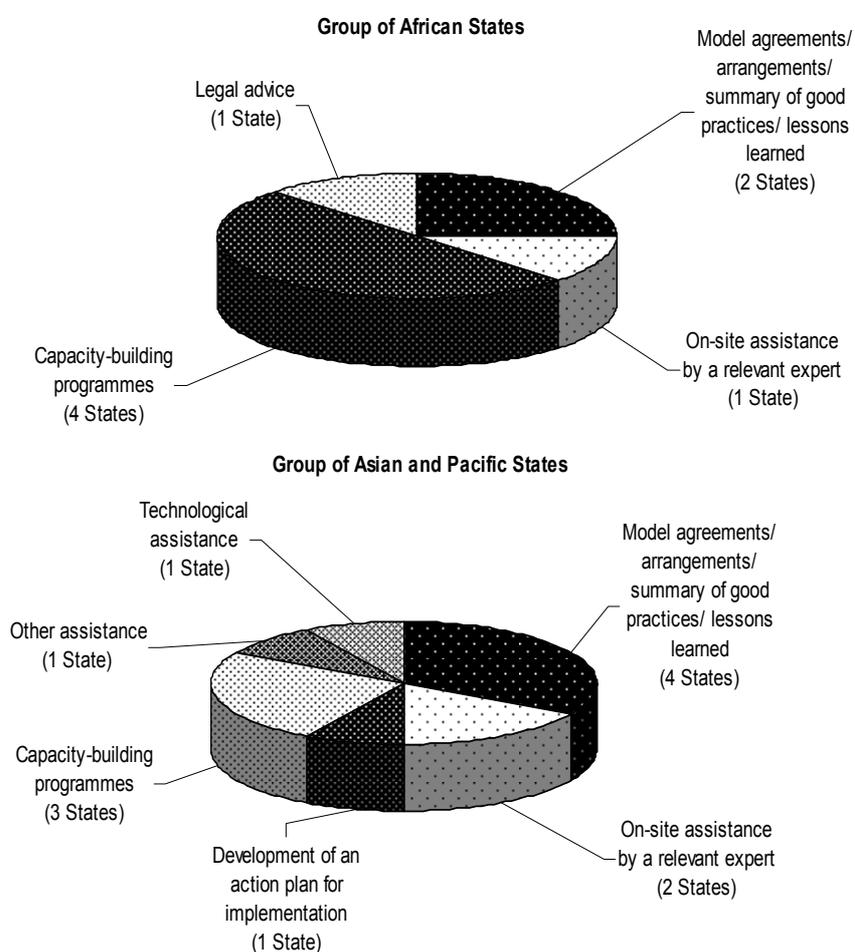
Joint investigations

67. Only six States parties were parties to bilateral or multilateral agreements or arrangements allowing for the establishment of joint investigative bodies. Another six mentioned that their legal systems and practice allowed requesting and conducting joint investigations on a case-by-case basis, and confirmed that they had done so on a number of occasions. Seven States parties had neither concluded bilateral nor multilateral agreements with a view to carrying out joint investigations nor had undertaken such investigations on an ad hoc basis; however, one of these States indicated that draft legislation under consideration at the time of the review

addressed the establishment of joint investigative teams. Three States reported on cases where joint investigative bodies were formed with foreign counterparts; only one of these cases (France) was related to an offence established according to the Convention.

Technical assistance needs relating to article 49

68. Of the eight States parties requesting technical assistance to support the implementation of article 49 of the Convention, the types of assistance requested were: model agreements or arrangements, a summary of good practices and lessons learned (six States); capacity-building programmes (seven States); and on-site assistance by an anti-corruption expert (three States). Individual requests were received for: legal advice; technological assistance; the development of an implementation action plan; and other assistance in the form of capacity-building through networks and informal interactions.



Special investigative techniques

69. Special investigative techniques and their admissibility in court were regulated in the legislation of the majority of the States parties under review; however, in two cases the utilization of such techniques was authorized solely with respect to specific criminal offences which did not include corruption-related offences. Most commonly used techniques included controlled deliveries, interception of telephone communications and undercover operations. In five other States parties, domestic provisions did not cover the use of special investigative techniques, but two of those States had noted that special investigative techniques would be allowed under draft legislative provisions under discussion at the time of the review.

Box 13

Examples the implementation of article 50(1)

The law enforcement agencies of one State party had made regular use of special investigative techniques such as telecommunication surveillance and interception or undercover operations. Examples of utilization of such techniques in investigations of corruption related offences were provided during the review.

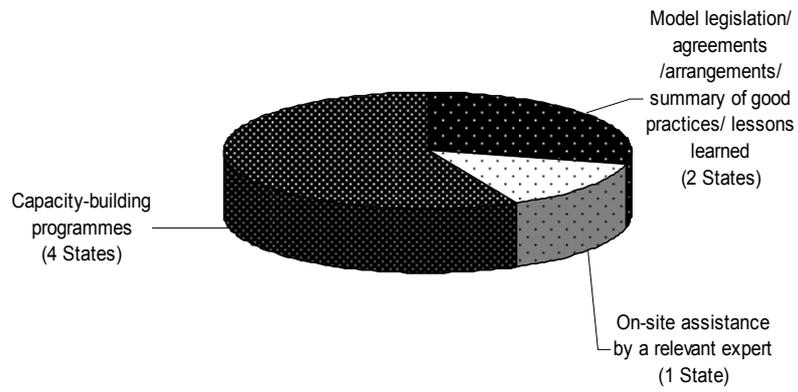
70. International agreements or arrangements mentioned in article 50(2) of the Convention had been concluded by seven countries, usually involving counterparts in the same region or members of the same regional organization. Among the six States that had not concluded such agreements, one reported that it would be possible to use special investigative techniques if requested by States with which a treaty on mutual legal assistance in criminal matters had been concluded.

71. The information provided further suggested that special investigative techniques could be used at the international level in the absence of relevant international agreements and on a case-by-case basis in seven States. Among those, two States noted that they would use such techniques only on condition of reciprocity.

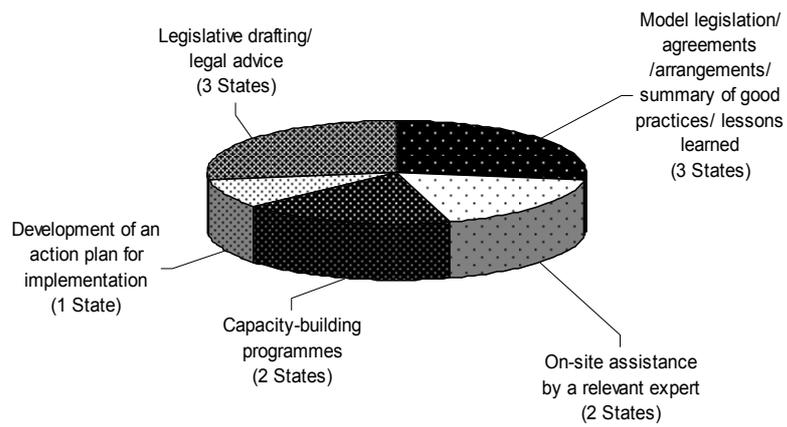
Technical assistance needs relating to article 50

72. Of the eight States parties requesting technical assistance to support the implementation of article 50 of the Convention, the types of assistance requested were: capacity-building programmes (seven States); model legislation, agreements or arrangements, a summary of good practices and lessons learned (six States); on-site assistance by an anti-corruption expert (four States); legislative drafting and legal advice (three States); and the development of an implementation action plan (one State).

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