Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (review of articles 44-50)

Thematic report prepared by the Secretariat

I. Introduction, scope and structure of the report

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 presents information on the implementation of chapter IV of the United Nations Convention against Corruption. It supplements and builds upon the last set of thematic reports on the implementation of chapter IV of the Convention (CAC/COSP/2013/9 and CAC/COSP/2013/10), in which trends and examples of implementation for 44 States parties under review in the first, second and third years of the first cycle of the Review Mechanism were presented. To avoid repetition, the present report focuses primarily on the 12 newly completed country reviews.\(^1\) In addition, as in previous thematic reports, cumulative tables and figures showing the most common challenges and good practices for all countries under analysis are presented. In addition, examples of implementation are shown in boxes 1-7. An analysis of related technical assistance needs is included in a separate report (CAC/COSP/IRG/2014/3).

II. General observations on challenges and good practices in the implementation of chapter IV of the Convention

2. As requested by the Implementation Review Group, the present report contains an analysis of the most prevalent challenges and good practices in the implementation of chapter IV, organized according to the relevant article of the Convention. The tables and figures below cover the analysis of the completed reviews in 56 States parties.

\(^1\) The present data are based on country reviews completed as of 14 February 2014.
3. It was confirmed that the most prevalent challenges to international cooperation are at the legislative and practical levels (see table 1). Some States parties still lack the basic tools for cooperation, including domestic legislation, the ability to consider the Convention as a legal basis, or sufficient human resources, which may hinder their overall ability to cooperate effectively. A number of States parties should also consider establishing means for collecting statistical data to be able to assess and strengthen the implementation of the Convention.

Table 1

Most prevalent challenges in the implementation of chapter IV of the Convention

<table>
<thead>
<tr>
<th>Article of the Convention</th>
<th>Identified challenges in implementation</th>
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<tr>
<td>Extradition (art. 44)</td>
<td>• Limited capacity and resources&lt;br&gt;• Limited inter-agency coordination&lt;br&gt;• Gaps in the domestic legal framework</td>
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<tr>
<td>Dual criminality (art. 44, para. 2)</td>
<td>• Specificities of the legal system and constitutional constraints&lt;br&gt;• Need to monitor the application of the dual criminality principle</td>
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<tr>
<td>Offences deemed to be extraditable; political offence exception (art. 44, para. 4)</td>
<td>• Need to ensure that all corruption offences are extraditable by virtue of their minimum period of imprisonment&lt;br&gt;• Need to clearly address the political offence exception&lt;br&gt;• Need to include all corruption offences in future treaties</td>
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<tr>
<td>Expedite proceedings or simplify evidentiary requirements (art. 44, para. 9)</td>
<td>• Difficulties with burdensome extradition procedures and high evidentiary requirements; need to simplify</td>
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<tr>
<td>Extradite or prosecute (art. 44, para. 11)</td>
<td>• Need to ensure the application of the principle of “extradite or prosecute” regarding non-treaty partners, or to allow for the extradition of nationals</td>
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<tr>
<td>Enforcement of foreign sentences (art. 44, para. 13)</td>
<td>• Need to develop legislation on the enforcement of foreign sentences&lt;br&gt;• Need to consider the direct application of the Convention to allow for the enforcement of a sentence in cases where the extradition is refused on the grounds of nationality</td>
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<tr>
<td>Discrimination clause (art. 44, para. 15)</td>
<td>• Need to reform legislation and amend treaties to address the right to refuse extradition on the grounds of a discriminatory purpose of the request</td>
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<tr>
<td>Consultation before refusing (art. 44, para. 17)</td>
<td>• Need to establish a duty of prior consultation before extradition is refused&lt;br&gt;• Need to adopt new agreements and expand existing ones&lt;br&gt;• Need to review and renegotiate existing treaties&lt;br&gt;• Need to apply the Convention directly in order to enhance the effectiveness of international cooperation</td>
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<tr>
<td>Article of the Convention</td>
<td>Identified challenges in implementation</td>
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| Transfer of sentenced persons (art. 45) | • Limited capacity and resources  
• Lack of inter-agency coordination and specificities of the legal system |
| Mutual legal assistance (art. 46) | • Limited capacity and resources  
• Gaps in the legal framework, or inadequacy of existing normative measures  
• Need to improve case management systems to respond to requests for mutual legal assistance |
| Legal persons (art. 46, para. 2) | • Need to consider the adoption of legislative measures and the harmonization of the legal framework and treaties  
• Need to regulate the requirements for mutual legal assistance in relation to offences for which a legal person may be held liable |
| Purposes of mutual legal assistance (art. 46, para. 3) | • Need for harmonization of legal framework to render the execution of freezing orders more flexible |
| Spontaneous information disclosure (art. 46, para. 4) | • Need to consider the adoption and formalization of measures pertaining to the transmission of information to a foreign competent authority, without a prior request, where such information could assist in the investigation and prosecution of corruption offences |
| Bank secrecy (art. 46, para. 8) | • Need to formalize measures on spontaneous information-sharing and cooperation involving bank and financial records |
| Central authorities and procedures (art. 46, paras. 13 and 14) | • Need to notify the Secretary-General of the central authority designated and the acceptable language for requests |
| Grounds for refusal (art. 46, paras. 21 and 22) | • Need to formalize the grounds for refusing assistance in law and treaties and ensure that consultations are held before refusing or postponing requests |
| Transfer of criminal proceedings (art. 47) | • Lack of a specific legal framework or inadequate normative measures  
• Limited capacity and resources for implementation |
| Law enforcement cooperation (art. 48, paras. 1 and 2) | • Practical challenges in swift information exchange in time-sensitive cases  
• Need to expand existing agreements and the use of the Convention as the legal basis for mutual law enforcement cooperation  
• Lack of specific rules on law enforcement cooperation  
• Difficulties in establishing effective channels of communication among competent authorities  
• Need to enhance direct law enforcement cooperation, in particular to facilitate communication, information exchange and direct cooperation in investigations |
Article of the Convention | Identified challenges in implementation
---|---
Joint investigations (art. 49) | • Limited experience in conducting joint anti-corruption investigations
Special investigative techniques (art. 50) | • Need to develop legislation to address special investigative techniques and the admissibility of evidence derived therefrom
| • Lack of inter-agency coordination
| • Lack of specific legal basis for corruption offences
| • Limited capacity
| • Unclear guidelines on the use of special investigative techniques for the judiciary and investigation agencies
| • Need to amend legislation to permit these techniques in corruption cases

4. Table 2 below builds on the preliminary list of international good practices contained in the previous reports, including additional information on innovative solutions for the implementation of the Convention. These practices ranged from the facilitation of informal communication and the exchange of personnel to national inter-agency coordination methods and the establishment of case management systems for central authorities. A number of new practical approaches have been identified that could help strengthen implementation of the Convention and contribute to the development of new strategies in the fight against corruption.

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

<table>
<thead>
<tr>
<th>Article of the Convention</th>
<th>Identified good practices in implementation</th>
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Extradition (art. 44, para. 1) and dual criminality (art. 44, para. 2) | • Training on how to use the Convention as a legal basis for extradition
| • Flexible approach to dual criminality focusing on the underlying conduct rather than on the specific categorization
| • Development of new legal frameworks to enhance international cooperation
| • Extradition regimes based on the possibility of granting extradition without a treaty
| • Efficient use of an electronic database allowing case officers to monitor the progress of requests and identify appropriate follow-up

Expedition of proceedings or simplification of evidentiary requirements (art. 44, para. 9) | • The use of the minimum penalty definition instead of a list of offences approach for the identification of extraditable offences
| • Use of simplified extradition procedures and ability to handle high volume of requests involving corruption offences
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<tr>
<td>Extradite or prosecute (art. 44, para. 11)</td>
<td>• Expedition of extradition proceedings through channels such as the International Criminal Police Organization (INTERPOL) and through electronic communication</td>
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<td>Agreements or arrangements (art. 44, para 18; art. 46, para. 30; art. 47; and art. 48, para. 2)</td>
<td>• Possibility to extradite own nationals, which can assist in dealing with issues of double jeopardy, jurisdiction and coordination</td>
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<tr>
<td>Mutual legal assistance (art. 46)</td>
<td>• Conclusion of a significant number of treaties on extradition and mutual legal assistance, transfer of criminal proceedings and law enforcement cooperation</td>
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<tr>
<td>Bank secrecy (art. 46, para. 8)</td>
<td>• Use of the Convention as a legal basis for mutual legal assistance</td>
</tr>
<tr>
<td>Dual criminality (art. 46, para. 9)</td>
<td>• Development of tools such as an electronic database on mutual legal assistance allowing the tracking of requests and the identification of appropriate follow-up actions</td>
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<tr>
<td>Central authorities (art. 46, para. 13)</td>
<td>• Development of a comprehensive anti-corruption strategy</td>
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<tr>
<td>Expeditious execution of requests for mutual legal assistance (art. 46, para. 24)</td>
<td>• Establishment of a commission of integrity, with legal authority to require financial institutions, through judicial order, to provide relevant information as follow-up to a request</td>
</tr>
<tr>
<td>Consultations (art. 46, para. 26)</td>
<td>• Affording mutual legal assistance in the absence of dual criminality</td>
</tr>
<tr>
<td>Law enforcement cooperation (art. 48, paras. 1 and 2)</td>
<td>• Interpretation of the dual criminality requirement focusing on the underlying conduct and not the legal denomination of the offence</td>
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<td></td>
<td>• Proactive role of the central authority on formal and informal communication</td>
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<td>• Development of guidelines on mutual legal assistance to train practitioners on the procedures</td>
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<td></td>
<td>• Informal consultations with foreign authorities before making formal requests to clarify legal uncertainty preventing the assistance required</td>
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<td></td>
<td>• Review of draft requests before submitting formal requests for mutual legal assistance</td>
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<td>• Short time frame for executing requests for mutual legal assistance as a result of the judicial workflow process</td>
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<td></td>
<td>• Use of channels such as INTERPOL or regional bodies to expedite the provision of assistance with counterparts of the same region</td>
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<td></td>
<td>• Frequent informal consultations with foreign authorities before refusing an international cooperation request</td>
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<td></td>
<td>• Flexible approach conducive to effective cooperation with other national law enforcement authorities, particularly regarding the tracing and freezing of assets</td>
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5.

It was confirmed by the current sample of 56 States parties that most of the challenges and good practices identified applied to the same few articles, as shown in figures I and II below. Therefore, States, in their efforts to address challenges, may wish to draw on the good practices of other countries. In order to further facilitate this exchange, the secretariat has created a website where States wishing to share more information on their good practices identified through the reviews can do so on a voluntary basis.

Figure I
Challenges in the implementation of chapter IV of the Convention, by article
III. Implementation of chapter IV of the Convention

A. Extradition

6. Figures III and IV below show the number of challenges and good practices in the implementation of the provisions of article 44.

Figure III
Challenges in the implementation of article 44 of the Convention, by paragraph
Figure IV

Good practices in the implementation of article 44 of the Convention, by paragraph

7. Most States parties under review regulated extradition in the Constitution, laws on extradition or international cooperation or the code of criminal procedure. Three States parties did not have legislation. In one country, an international cooperation law was under development, and a recommendation was made to clarify the procedures for extradition. Two other countries from the current sample indicated that their extradition legislation was under legislative review. In addition to legislation, one country had administrative manuals in place, and it was recommended to another country that it develop guidelines on extradition and to create information systems for timely access by officials to information on the extradition process. In common-law States, the extradition legislation often contained a schedule of States to which extradition can be granted, such as Commonwealth or treaty States. In one State, the countries designated could not be identified with certainty.

8. With regard to non-binding and regional arrangements, three countries of the current sample made reference to the London Scheme on Extradition within the Commonwealth. The Council of the European Union framework decision 2002/584/JHA on the European arrest warrant was mentioned, as well as the Southern African Development Community (SADC) Protocol on Mutual Legal Assistance in Criminal Matters, the Central American Convention on Extradition, the Central American Treaty on Arrest Warrants and Simplified Extradition, the Inter-American Convention on Extradition signed at Montevideo in 1933, the Inter-American Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, the European Convention on Extradition and the Extradition Treaty of the Community of Portuguese-speaking Countries, as well
as ad hoc multilateral treaties such as the multilateral agreement on simplified extradition between Argentina, Brazil, Portugal and Spain.

9. It was confirmed by the current sample of reviews that the majority of States parties used, in their legislation or treaties, a threshold approach to the definition of “extraditable offences”, in which extraditable offences were those punishable by deprivation of liberty for a period of at least one year or by a more severe penalty. In most States, all corruption offences were therefore extraditable; in some States, recommendations were given to ensure that such offences were extraditable. One State used a general minimum threshold of two years for extradition to Commonwealth countries, and in one State an extraditable offence had to fulfil the minimum penalty requirement in both the requesting and requested States.

10. Some States used a list-based approach to extraditable offences in their legislation or treaties, although one of them could also consider offences not included in the lists as extraditable as long as the element of dual criminality was fulfilled. Insofar as not all corruption offences were covered in those lists, it was recommended that they include all United Nations Convention against Corruption offences as extraditable offences in new treaties to ensure flexibility to add offences or that they should consider whether a threshold approach would ensure such flexibility.

11. Very few countries could confirm that each of the offences to which the Convention applied was deemed to be included as an extraditable offence in all extradition treaties to which that State was a party, as foreseen in article 44, paragraph 4, of the Convention. In one country, only money-laundering was deemed to be included in any extradition treaty by virtue of relevant legislation, and a recommendation was made to include all Convention against Corruption offences. Some States parties confirmed that they had included such offences as extraditable offences when concluding new treaties on extradition.

12. A majority of States parties made “accessory offences” extraditable, while 12 States parties, among them 3 of the current sample, confirmed that extradition for accessory offences was not possible.

13. Dual criminality was reported as being a standard condition for extradition. However, two States could waive the requirement if the requesting State guaranteed reciprocity on the same issue. Some States parties could achieve the same aim through direct application of the Convention, and some did so when the conduct was deemed extraditable under an extradition treaty or when an extradition treaty excluded the application of the dual criminality principle. For one State, dual criminality was not required under a regional arrangement, and it reported that another cross-regional arrangement containing a similar regulation was under development. In three countries, one of them from the current sample, concerns were expressed over the lack of full criminalization of corruption offences, and as a result, possible problems with the dual criminality requirement.

14. Most States parties could not reject a request on the sole ground that the offence involved fiscal matters. In the majority of countries there was no such impediment in the national legislation, while in some countries it was explicitly stated that offences involving fiscal matters were also extraditable. In three countries no specific measures had been taken for the implementation of the provision. One of them excluded extradition if the main crime in the case involved
fiscal matters; in another country the involvement of fiscal matters was a discretionary ground for refusal.

15. The majority of States parties could not grant, or could refuse, extradition if there were concerns of discrimination related to the request. Either general constitutional clauses prohibiting discrimination were deemed to be the reason for that or there were specific regulations to that effect in extradition laws, criminal procedure codes, or extradition treaties. In one country, a recommendation was made to consider amending its extradition treaties to ensure that they all complied with the Convention.

16. Nearly all States parties included the commission of a political offence among the grounds for refusing a request for extradition, as regulated in the legislation on extradition or in the extradition treaties. In three States parties the extradition treaties included a definition of a political offence, and in two countries such a definition was contained in constitutional provisions or legislation. In most other States parties, the notion of “political offence” was decided on a case-by-case basis, often relying on criteria elaborated in jurisprudence. While in the majority of States no corruption offence would be treated as a political offence, in others recommendations were made to clarify the law in this sense, including recommendations to define political offences in legislation or to monitor the application of the exception. Two States parties had no exemption for political offences, and one State had political offences as a discretionary ground for refusal. In three countries, no information could be obtained.

17. Most States parties could not extradite their nationals or could not do so unless it was explicitly envisaged in applicable treaties. Ten States could extradite their nationals. In one State of the current sample, extradition of a national was possible if a treaty allowed so, an undertaking of reciprocity was granted, and all criminal process guarantees were given. Several nationals of that country had been extradited on the basis of those requirements. In five States parties, nationality was a discretionary ground of refusal. In one of them, 28 of the 39 persons extradited in recent years were nationals. One country could only extradite nationals in the framework of a regional arrangement. One country specified that individuals with dual nationality could not be extradited.

18. In most States parties any refusal to grant extradition based on the grounds of nationality would trigger domestic prosecution, as envisaged in article 44, paragraph 11. While in some States the principle of “extradite or prosecute” was regulated in the legislation or the Constitution. In others, it was applied based on treaties or as a general principle of law. In one country the obligation to initiate proceedings was independent of a request by the requesting country. Three countries, all of the current sample, had not established any obligation to submit such cases to their authorities, and recommendations were made to that effect.

Box 1

Example of the implementation of article 44 of the Convention

In one country, a Judicial Network in Criminal Matters, composed of prosecutors, judges and the Ministry of Justice, met twice per year and discussed solutions to problems of extradition, to pass them on to the lower level courts or regional forums.
19. Eight States parties, three of them from the current sample, made reference to the possibility of temporary surrender of nationals on condition that they be returned after trial to serve the sentence imposed in the requesting State (art. 44, para. 12). Three of them addressed it in the context of regional treaties or arrangements.

20. Many States parties were not able to enforce a foreign sentence in cases where they rejected a request for extradition (made for enforcement purposes) on the grounds of nationality. Of the current sample, approximately half of the States parties either did not have any regulation on the enforcement of a foreign judgement or had only provisions in some bilateral treaties. Three countries had relevant legislation. One State party could only enforce a prison sentence with the consent of the sentenced person.

21. With regard to the legal basis for extradition, the majority of States did not require a treaty base. One of the countries of the current sample required a treaty base only for the extradition of nationals. Some common-law countries did not require a treaty base for extradition between Commonwealth countries, while for extradition to countries not belonging to the Commonwealth a treaty base was required. Four States parties enabled their competent authorities to make an ad hoc declaration of other countries as “extradition countries” or “comity countries”. In States parties, where extradition could be granted regardless of a treaty, extradition was based on the principles of reciprocity or courtesy.

22. States parties had concluded between 1 and 133 extradition treaties. Only three States had not yet concluded any bilateral treaties.

23. Many States parties could use the Convention as a basis for extradition. However, the current sample confirmed that this was not a frequent practice. From the six countries in the current sample that could use the Convention as a legal basis, three had not received or sent a request on the basis of the Convention. One State party had sent two requests on the basis of the Convention, of which one request was pending and the other had been rejected by the requested State party on the grounds that no bilateral treaty existed between the two States. From the whole sample, four States parties had not yet reached a clear position.

24. A number of States were currently negotiating new bilateral treaties to enhance the effectiveness of extradition. One State, being already a party to 10 bilateral treaties, was currently negotiating five new ones.

25. The substantial divergences regarding the average duration of extradition proceedings, with a lower range of 1.5-4 months and an upper range of 12-18 months in the former sample, were confirmed. Several countries had strict time frames in their legislation. The legislation of one country of the new sample foresaw, for example, that the request for extradition had to be submitted within four weeks of the provisional arrest of the person sought, and appeals had to be made within three days of a court decision. Another State confirmed that currently a reform was under consideration that would expedite the procedure further.

26. About half of the States parties under review envisaged simplified proceedings, based on the person’s consent or on privileged cooperation with specific countries. In one country, extradition cases could be solved in two to three months if the person did not contradict. Otherwise, the proceeding could take more than five years. Several States members of the European Union mentioned the
European arrest warrant, and in one country such an extradition request could be resolved within three months, while requests coming from elsewhere required approximately one year. Similar figures were given for countries adhering to the Schengen Agreement. The Nordic arrest warrant foresaw a simplified proceeding on the basis of consent in three days and, in all other cases, in three weeks. One country described a recent regulation that allowed extradition on the basis of an arrest warrant, and a reduced evidentiary standard by which an affidavit of the requesting country was deemed sufficient.

27. As has been reported previously, some States parties did not require any evidence about the commission of the offence, while others set standards such as “probable cause” or “prima facie case”. Among the current sample, one country required “substantial amount of evidence”, another one required evidence that would “justify the committal for trial of the person if the act or omission had taken place within its jurisdiction”, and another one even required evidence of “just and sufficient cause of guilt”.

28. With regard to due process guarantees, general process guarantees were deemed sufficient if they were applicable to extradition proceedings. Some countries also had relevant regulations in their extradition laws. Great differences were found with regard to the right to appeal against the extradition decision. When such right did not exist, in some cases recommendations were issued, while in others the reviewers held this practice to be compliant with the Convention. One country mentioned only the habeas corpus rights.

29. Almost all States parties had measures in place to ensure the presence of the sought person, either through the rules of the criminal procedure law or in the international cooperation laws or extradition treaties. Only one country from the current sample did not have any relevant regulations.

30. The requirement to engage in consultations with the requesting State before refusing extradition was regulated in legislation, treaties or applied as a matter of practice. In a number of countries of the current sample, only the request for additional information was regulated, not consultations before refusal, and one country did not have any relevant regulation on both aspects.

31. Only four States of the current sample presented statistics on extradition cases. The former trend that the majority of countries did not have specific statistics for extradition for corruption offences was confirmed. Two countries stated that no extradition cases on corruption offences had been recorded yet.

B. Transfer of sentenced persons

32. Most States parties had a legal framework for the transfer of sentenced persons in bilateral and regional agreements. Some countries had enacted transfer of prisoners acts. In earlier reports, it was found that the number of treaties on this matter varied considerably, with some countries having entered into up to 28 bilateral agreements. Countries of the current sample had only between 2 and 10 bilateral agreements. Two States were not yet parties to any such agreement. Among the regional agreements, the Inter-American Convention on Serving Criminal Sentences Abroad and the Council of Europe Convention on the Transfer
of Sentenced Persons were mentioned. Some countries could also transfer sentenced persons in the absence of a treaty: generally, no statistics were provided in that regard, but several country reports contained case examples.

C. Mutual legal assistance

33. Figures V and VI below show the number of challenges and good practices in the implementation of the provisions of article 46.

Figure V
Challenge in the implementation of article 46 of the Convention, by paragraph

Figure VI
Good practices in the implementation of article 46 of the Convention, by paragraph
34. The trends in similarities and differences in the implementation of article 46 remained largely the same compared with previous reports. Considering mutual legal assistance to be a vital tool within the criminal justice system, a number of States parties had a domestic legal framework in place to grant mutual legal assistance. Twenty-six States parties had adopted legislation with different degrees of detail, regulating the procedures and requirements of judicial assistance. A number of States had yet to enact legislation to facilitate judicial cooperation.

35. In the absence of comprehensive domestic legislation, 20 States parties facilitated mutual legal assistance primarily through multilateral and bilateral treaties or on a case-by-case basis. It was noted that some States did not yet have a sufficient number of treaties that would support such cooperation. The majority of State parties, however, could also use the Convention as a legal basis for mutual legal assistance. Generally, States did not require a treaty base for mutual legal assistance, but could afford assistance based on the principle of reciprocity or on a case-by-case basis.

36. Mutual legal assistance frameworks depended on the nature of the legal systems, especially on the question of whether treaties could be applied directly or required implementing legislation. To a certain extent, the distinction between civil-law and common-law countries correlated to the question of whether treaties could be applied directly or not. Differences between judicial systems were still considered an important challenge for the provision of swift and efficient mutual legal assistance. While a majority of States parties had become parties to international instruments that could bridge gaps between legal systems, challenges in the criminalization of and jurisdiction over offences also had an adverse impact on mutual legal assistance.

37. A majority of States parties could grant mutual legal assistance requests in relation to alleged offences involving legal persons. In several countries, this could be attributed to a broad interpretation of the concept of “person” in general legislation. Requests regarding physical and legal persons were treated equally. However, only a small percentage of States provided examples of requests concerning corruption offences attributed to legal persons.

38. The different forms of mutual legal assistance were covered by domestic legislation and international treaties in 23 States parties. Some States lacked specific domestic provisions on this point but could still provide the requested assistance based on the treaties to which they were a party. Although in the legislation of most States parties, questions pertaining to asset recovery were not explicitly mentioned, the legislation of some States parties contained provisions to facilitate assistance pertaining to the identification, freezing and confiscation of proceeds of crime, with a view to enabling the recovery of assets. In some cases, national legislation included a catch-all clause allowing for other assistance to be rendered.

39. The spontaneous transmission of information to foreign authorities, envisaged in article 46, paragraphs 4 and 5, of the Convention, has repeatedly been considered in international forums as a good practice that reflected cooperation between States. The procedures in place for the exchange of information without prior request were generally not specifically regulated. The majority of States parties reported that the right to exchange information spontaneously was applied a contrario sensu, if it was not expressly prohibited in domestic legislation. Many States could use this practice
on the basis of direct application of the Convention; one State reported on experience on the basis of the principle of reciprocity. In a few States the spontaneous transmission of information was not possible, thereby limiting expeditious communication. The exchange of information without prior request was largely realized through regional bodies or in the framework of direct contacts between law enforcement bodies.

40. Bank secrecy did not appear to impede the provision of assistance in the vast majority of States parties. Explicit provisions were recommended in this regard in several cases, even where bank secrecy was not foreseen as grounds for refusing assistance.

41. Dual criminality was not a requirement for granting mutual legal assistance in the majority of States parties. In 16 States parties, dual criminality was required, although a flexible approach was used by some of them, allowing for some types of assistance to be provided in the absence of dual criminality. For several States, mutual legal assistance requests involving coercive measures were subject to the principle of dual criminality, while non-coercive measures were not. The majority of States had reportedly not refused requests based on these grounds.

42. Regarding the transfer of detainees for the purpose of assisting with investigations and in the absence of a regulation on bilateral or multilateral treaties, 13 States parties directly applied the provisions of article 46, paragraphs 10-12. Nineteen States parties had domestic legal provisions establishing a safe conduct guarantee. The procedural requirements and protective measures regarding the transfer of prisoners providing assistance were adequately covered in most cases.

43. Central authorities played a crucial role in the cooperation between requesting and requested States. The central authorities were enhancing their role by providing their counterparts with updated guidelines, contact information and follow-up procedures. Of 56 States, all but three had designated central authorities for mutual legal assistance, and 13 States had not notified the Secretary-General of the designation. Confirming the trend in previous reports, the Ministry of Justice was the most frequently designated central authority, followed closely by the office of the Attorney General. Five States had designated the Ministry of Foreign Affairs as the central authority. Of the current sample, some States provided further information on the specific department of the designated authority, while one State reported that the designated central authority varied depending on the treaty applied. Roles and functions were further explained, including the participation in networks to expedite processes. Different to the observation in the previous report, all countries of the current sample had designated only a single central authority under the Convention.

Box 2

Examples of implementation of article 46, paragraph 13

One State party’s central authority developed guidelines on mutual legal assistance and the transfer of sentenced persons, which were used to train practitioners at the central and regional levels on procedures related to the direct applicability of the Convention.
44. Regarding the channels for the submission of a request, 13 States parties required the use of diplomatic channels. The majority of States parties allowed direct communication between central authorities. Nine countries allowed even direct communication with the executing agency from which assistance was sought.

45. Urgent requests could be expedited through the International Criminal Police Organization (INTERPOL) in most States parties, notwithstanding the requirement to submit subsequent requests through official channels. Some States could agree to submissions through INTERPOL subject to reciprocity. Other States used regional networks as secure means of communication.

46. With regard to language and format of mutual legal assistance requests, 35 States parties required that requests for cooperation be accompanied by a translation into the official language of the requested State, unless otherwise stipulated. In 14 countries, the official language of the State was the sole acceptable language for incoming requests. Several States agreed to receive requests in English, while 12 States parties accepted requests if submitted in the official language of the requested country, in English or in another official language of the United Nations.

Box 3

Examples of the implementation of article 46, paragraph 14, of the Convention (on languages)

In order to expedite the process, one State requested the information in English instead of its local language.

One State reported accepting requests submitted in English and in all the official languages of the neighbouring countries.

47. Ten States parties would accept oral requests, followed by written confirmation, while 12 States confirmed that requests submitted electronically would also be accepted. Other States emphasized the importance of written submissions.

48. The majority of States would endeavour to execute a request in accordance with the procedures specified in the request. In that regard, procedures were characterized by flexibility as long as such requirements from the requesting State were not in conflict with domestic legislation or constitutional principles. The decision on the execution of such procedures was normally taken on a case-by-case basis.

49. Hearing witnesses by videoconference could be used under the domestic law of 20 States parties, thereby enabling speedy procedures while ensuring the protection of witnesses. The Convention was used as a legal basis by some States when there was no applicable domestic legislation. Some States indicated that weaknesses in the availability of technological resources limited the provision of such forms of assistance.

50. Domestic law ensured respect of the specialty rule in the vast majority of States. Confidentiality provisions were also adequately covered, if the requesting State so required. The Convention, internal law and treaties could be used in this
process as a legal basis, or the principles would be applied as a matter of practice. If there was a need to use the evidence for any other proceedings, permission would need to be sought from the foreign State.

51. The grounds for refusing assistance foreseen in the majority of States parties were in line with the Convention. States distinguished between mandatory and optional grounds in their applicable treaties or laws, keeping the mandatory ones as limited as possible with the rationale that it allowed for extensive mutual legal assistance.

52. In the majority of States, assistance would not be refused on the sole ground that the offence also involved fiscal matters. Most countries would also provide reasons for refusal or postponement. Although they had not included specific provisions in their legislation or treaties, they would apply the Convention directly or comply with the provision as a matter of practice.

53. While the timely execution of mutual legal assistance requests and responses to status updates did not appear to be addressed in internal legislation or guidelines, the provision appeared to be implemented largely in practice. Several States parties had introduced adequate mechanisms such as case-handling measures in the central authorities to respond promptly and effectively to requests of information submitted by international counterparts.

54. The length of time between the receipt and execution of a request depended on its nature or complexity. The average time needed to respond to a request was up to six months. Given some States’ scarce resources and capacity, some of them gave priority to cases involving serious criminal offences or those involving evidence that was at risk of being concealed or destroyed or where the safety of witnesses or the public was at risk. Some States also prioritized requests whose urgency was indicated by the requesting State at the time of the submission of the request. Similarities in the legal systems involved had a positive impact on the expeditious processing of the request.

Box 4

**Examples of the implementation of article 46, paragraph 24, of the Convention**

In order to expedite the exchange of information, the central authority of one country had taken the initiative of gathering all information following an informal request. By the time the official mutual legal assistance request reached the central authority, the information could already be communicated to the foreign State. While a request for mutual legal assistance would normally be answered within 8-12 months, this practice reduced the execution time to 2-3 months.

55. Most States did not prohibit consultations with a requesting State party before refusing or postponing a request. Where this was not explicitly regulated, some countries could carry out these consultations by direct application of the Convention.
Box 5

**Examples of the implementation of article 46, paragraph 25, of the Convention**

One State party cooperated and consulted with requesting States, where possible, to clarify any ambiguity or legal uncertainty in a request. This contributed to the fact that no requests had been refused to date.

One State party indicated that standard practice was to issue a letter of refusal as a matter of last resort. The first step was to write to the requesting State identifying potential grounds for refusal and then request it to make a new or supplementary request. A refusal letter was issued only if the requesting State did not submit such supplementary request.

56. Safe conduct of witnesses was addressed in the vast majority of States in domestic legislation or treaties, but these provisions had not always been applied in practice. In two States it was recommended to amend the relevant legislation in line with the Convention regarding the period after which safe conduct would cease.

Box 6

**Examples of the implementation of article 46, paragraph 27, of the Convention**

One State reported a longer safe conduct period of 30 days, which was longer than the 15 days provided for in the Convention.

57. With respect to costs associated with mutual legal assistance requests, the general rule was that ordinary costs related to the execution of a mutual legal assistance request were incurred by the requested State with the possibility of other arrangements for extraordinary costs. Although not specifically set out in the law of many States parties, paragraph 28 was mostly complied with in practice. At times, arrangements were made on a case-by-case basis. Mutual legal assistance treaties, legislation and some networks foresaw consultations in case of extraordinary expenses incurred by the requested State.

58. According to the domestic framework or treaties, most States parties indicated that documents available to the general public would be provided to the requesting State. Three countries reported that provisions on records of government agencies existed in their mutual legal assistance treaties. Another country indicated that assistance was granted without restriction, regardless of whether the documents requested were available to the general public or not, and only possibly limited by interests of sovereignty, security, public policy and others. Another country stated that it provided copies of publicly available records or of records that were not publicly available to the extent and under the same conditions as to domestic law enforcement, prosecution or judicial authorities. One country used the Convention as the legal basis for the provision of such information.

59. Variations were found on the ways and means of obtaining information and providing it to the requesting State. It was noted that the limitation on the provision of information came from data protection acts. Only one State party reported that documents that were not publicly available could not generally be provided pursuant to a mutual legal assistance request.
60. Although the majority of States reported never to have refused assistance in a corruption matter, it was difficult for some States to provide statistics or examples of how mutual legal assistance was implemented in practice. A centralized system of tracking and collating such statistics was recommended to some States. In other countries, statistics were provided but not specifically on corruption offences.

61. More than 10 years after the adoption of the Convention, mutual legal assistance in the fight against corruption remained a challenge. The number of bilateral and regional treaties ratified by countries in the current sample varied between 1 and 28 treaties. Countries made efforts to bridge the difference between legal systems through international cooperation and the exchange of information, which were considered to speed up and simplify procedures. Challenges were still present at both the legislative and the practical levels.

62. The 56 country reports showed that many States made increasing efforts to improve cooperation. The role of central authorities had been strengthened in many countries, and regional organizations were recognized as having contributed greatly to the improvement of judicial cooperation by developing effective and advanced regional instruments and mechanisms for cooperation.

D. Transfer of criminal proceedings

63. Half of the States parties, and more than half of the current sample, noted that their legal systems did not contain any provision regulating the international transfer of criminal proceedings. In 18 countries, the possibility of transferring proceedings was foreseen in legislation or bilateral or multilateral treaties. Some countries mentioned the European Convention on the Transfer of Proceedings in Criminal Matters. In one country, the international cooperation legislation foresaw a procedure of information-sharing when possible parallel proceedings came to light, and regulated direct consultations and criteria for the transfer.

E. Law enforcement cooperation

64. Figures VII and VIII below show the number of challenges and good practices in the implementation of the provisions of article 48.

Figure VII
Challenges in the implementation of article 48 of the Convention, by paragraph
65. Law enforcement cooperation was not necessarily based on national legislation: in the current sample, it was the case in only four countries. A number of law enforcement institutions had concluded memorandums of understanding or service-level agreements. In one country, the Prosecutor’s Office had concluded 20 bilateral memorandums of understanding with foreign counterparts, and the police had concluded 18 such agreements. In another country, the financial intelligence unit had concluded 36 such agreements.

66. Many countries were parties to bilateral agreements (in the current sample, between 3 and 17 agreements). Four countries did not have any bilateral or multilateral agreements, and others based their law enforcement cooperation on their mutual legal assistance treaties. While 19 States parties could use the Convention as a legal basis for law enforcement cooperation, many had not yet used it in practice. Only four States parties explicitly excluded the Convention as a legal basis.

67. In addition to the regional networks and organizations mentioned in earlier reports, States mentioned the Association of Caribbean Commissioners of Police, the Caribbean Community and its Regional Intelligence Committee, Joint Regional Communications Center and Regional Intelligence Fusion Center, the Southern African Forum against Corruption, the Southern African Development Community Police, the Indian Ocean Commission, the International Association of Chiefs of Police, Eurojust, European Judicial Network, Task Force on Organized Crime in the Baltic Sea Region, COMIFROM (Colombia, Costa Rica and Panama), the Network for International Legal and Judiciary Cooperation of the Community of Portuguese-speaking Countries, the European Partners against Corruption and European contact-point network against corruption, the Southeast European Law Enforcement Centre and the Eastern African Police Chiefs Cooperation Organization. One State was actively engaged in the establishment of the Asset Recovery Inter-agency Network for Asia and the Pacific.
68. All States of the current sample were members of INTERPOL and made reference to the I-24/7 global police communications system. A number of national financial intelligence units were members of the Egmont Group of Financial Intelligence Units. Only two States of the current sample were not part of or had applied for membership in the Egmont Group.

69. Eleven States parties provided information on inquiries that had been effectively conducted in cooperation with other States.

70. Twenty-two States parties confirmed the posting of liaison officers of the police or prosecution to other countries or international organizations, among them six from the current sample. One State had placed seven legal attachés and police attachés in 32 countries.

Box 7

**Institutional arrangements for the implementation of article 48, paragraph 1, of the Convention**

In one country, the National Authority for Investigation and Prosecution of Economic and Environmental Crime had a specialized unit dedicated to providing assistance to foreign and national law enforcement units.

In another country, the Ministry for Security convened a weekly meeting with the director of all security agencies of the State, to build a solid basis for international law enforcement cooperation.

The law of a third country established an international assistance office in its directorate for investigating organized crime and terrorism, which was to provide mutual consultations with similar bodies in other countries.

F. **Joint investigations**

71. Approximately half of the States parties had adopted agreements or arrangements on joint investigative bodies, some of them at the regional level. In another 12 States, joint investigations could be conducted on a case-by-case basis, and 11 of them had practice in it. Other States had enacted domestic legislation on the issue, or could use the Convention as a legal basis. In one of the States, joint investigative teams were frequently established in the framework of Eurojust and the system of Nordic joint investigations.

G. **Special investigative techniques**

72. Figure IX shows the number of challenges in the implementation of article 50.
Figure IX

Challenges in the implementation of article 50 of the Convention, by paragraph

73. Special investigative techniques were regulated in the legislation of the majority of the States. This has been confirmed in the current sample, where 10 out of 12 States permitted all techniques mentioned in the Convention, and the other two States permitted at least two of them. Some countries permitted special investigative techniques as a matter of practice. In four countries — two of which in the current sample — the techniques were authorized solely with respect to specific criminal offences.

74. International agreements or arrangements on the use of such techniques had been concluded by 15 countries of the full sample. In 25 other States, the techniques could be used at the international level in the absence of relevant international agreements and on a case-by-case basis, and in some States parties only on condition of reciprocity.