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Review of implementation of the United Nations Convention against Corruption

Implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption (review of articles 15-29)

Thematic report prepared by the Secretariat

Summary

The present thematic report contains information on the implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption by 123 States parties under review in the first cycle of the Mechanism for the Review of Implementation of the Convention, established by the Conference of the States Parties to the United Nations Convention against Corruption in its resolution 3/1.

* CAC/COSP/IRG/2016/1.

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I. Introduction, 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 country reviews and the draft blueprint for country review reports (contained in the appendix to the annex to resolution 3/1), which were finalized by the Implementation Review Group at its first meeting, 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, thematic reports have been prepared in order to compile the most common and relevant information on successes, good practices, challenges and observations contained in the country review reports, organized by theme, for submission to the Implementation Review Group, to serve as the basis for its analytical work.

3. The present thematic report supplements and builds upon the previous thematic reports on the implementation of chapter III of the Convention (contained in documents CAC/COSP/IRG/2014/6 and CAC/COSP/IRG/2014/7) and the thematic study entitled *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation* (see CAC/COSP/2015/5), which analysed trends and examples of implementation for 68 States parties under review in the first cycle of the Review Mechanism. To avoid repetition and allow greater focus on specific trends and nuances, the present report focuses primarily on the 55 newly completed country reviews,[1] for which specific examples of implementation are highlighted in the text boxes. In addition, as in previous thematic reports, cumulative information is presented in tables and figures showing the most common challenges and good practices for all 123 States parties covered by the analysis.

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

4. As requested by the Group, the present report contains an analysis of the most prevalent challenges and good practices in the implementation of chapter III, organized by article of the Convention (see tables 1 and 2). For article 30 (Prosecution, adjudication and sanctions), which covers a range of topics and for which a number of challenges and good practices were identified in the country review reports, a further breakdown according to paragraphs of the article is provided. The figures and tables below cover all 123 countries under analysis.

[1] Data used in the preparation of the present report are based on country reviews as at 15 April 2016.

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

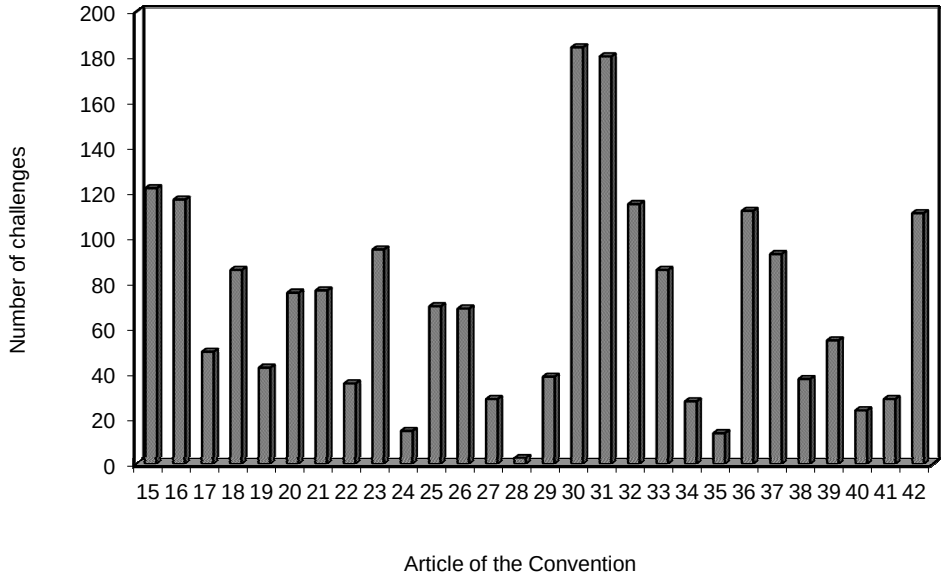


Table 1
Most prevalent challenges in the implementation of chapter III of the Convention

Article of the Convention	*Most prevalent challenges in implementation (in order of prevalence of identified challenge, organized by article of the Convention)*
Prosecution, adjudication and sanctions (art. 30)	
Sanctions for offences under the Convention (para. 1)	Enhancing the levels of monetary and other sanctions, especially against legal persons, and considering a more coherent approach in the sanctioning of corruption-related offences (e.g., the harmonization of existing penalties for bribery and embezzlement), in order to ensure the efficiency, proportionality and dissuasive effect of such sanctions.
Immunities and jurisdictional privileges (para. 2)	1. Establishing a greater balance between privileges and jurisdictional immunities afforded to public officials to perform their official functions and the possibility of effectively investigating, prosecuting and adjudicating offences under the Convention, as well as assessing whether immunities go beyond the protections necessary for public officials to perform their official functions. 2. Revisiting the procedures for lifting immunities, in particular to avoid potential delays and the loss of evidence in criminal cases.
Disqualification of convicted persons (para. 7)	Considering the adoption of measures for the disqualification of public officials convicted of offences under the Convention.

Article of the Convention	*Most prevalent challenges in implementation (in order of prevalence of identified challenge, organized by article of the Convention)*
Freezing, seizure and confiscation (art. 31)	1. Measures to facilitate confiscation are absent or inadequate, in particular for identifying, freezing and seizing assets; excessively burdensome formal or evidentiary requirements for freezing financial accounts; and challenges in establishing non-mandatory measures requiring an offender to demonstrate the lawful origin of alleged proceeds of crime (para. 8). 2. Challenges in the administration of frozen, seized or confiscated property, in particular the absence of an office dedicated to that function. 3. Application of existing measures to transformed, converted and intermingled proceeds of crime, as well as the income and benefits derived from them. 4. Definition of the proceeds of crime, property and, in particular, instrumentalities that are subject to the measures in article 31. 5. A need to overhaul, enhance and ensure greater coherence of existing measures, frameworks and capacity to conduct asset confiscation, freezing and seizure (for example by allowing the confiscation of assets for all offences under the Convention).
Bribery of national public officials (art. 15)	1. Expanding the definition of the bribery offence to include benefits extended to third persons and entities. 2. Extending the scope of public officials who can be held liable for bribery to include, in particular, members of Parliament. 3. Explicit coverage of all three modalities of bribery (promise, offer and giving of an undue advantage). 4. The scope of the undue advantage, in particular as regards non-material benefits and “facilitation payments”.[a] 5. Coverage of indirect bribery, in accordance with article 15. 6. Applicable distinctions between acts within and outside the scope of official duties of public officials.
Specialized authorities (art. 36)	1. Strengthening law enforcement and prosecutorial bodies, in particular to enable them to conduct investigations without prior external approval, enhancing the efficiency, expertise and capabilities of their staff, and ensuring the existence of specialized law enforcement capacity for offences under the Convention. 2. Strengthening the independence and resources of law enforcement and prosecutorial bodies. 3. Increasing inter-agency coordination among relevant institutions, considering reconstituting their functions, and assessing how to make existing systems and operations more effective.
Illicit enrichment (art. 20)	1. Domestic decisions not to establish illicit enrichment as a criminal offence, or criminalization of illicit enrichment not considered. 2. Issues relating to asset and income disclosure systems (e.g. lack of verification or scope of the disclosure obligation).

Article of the Convention	*Most prevalent challenges in implementation (in order of prevalence of identified challenge, organized by article of the Convention)*
	3. Constitutional requirements, in particular requirements relating to the principle of the presumption of innocence and the burden of proof.
	4. Particularities of domestic legislation not provided for under article 20.
	5. Application of existing laws, such as tax and anti-money-laundering legislation, to cases of illicit enrichment, and potential overlap between those laws.
Laundering of proceeds of crime (art. 23)	1. Scope of predicate offences committed within and outside the jurisdiction, and application to offences under the Convention.
	2. Application to specific acts of laundering (subparas. (1)(a)-(b)(i) of art. 23), in particular the acquisition, possession or use of the proceeds of crime.
	3. Coverage of acts of participation in money-laundering, including association and conspiracy.
	4. Furnishing copies of legislation to the United Nations.
	5. Self-laundering not addressed.
Bribery of foreign public officials and officials of public international organizations (art. 16)	1. Absence of a criminal offence addressing the bribery of foreign public officials and officials of public international organizations.
	2. Insufficiency or lack of provisions concerning the non-mandatory offence of passive bribery of foreign public officials and officials of public international organizations.
	3. Application of the offence to benefits extended to third persons and entities.
	4. The scope of foreign public officials and officials of public international organizations covered by the offence.
Protection of witnesses, experts and victims (art. 32)	1. Establishing comprehensive legislation on the protection of witnesses, experts and victims and ensuring effective implementation of relevant measures.
	2. Establishing evidentiary rules that ensure adequate protection.
	3. Considering entering into relocation arrangements with foreign authorities.

[a] The term “facilitation payment” is not included in the Convention and the concept to which the term refers is not recognized by it.

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

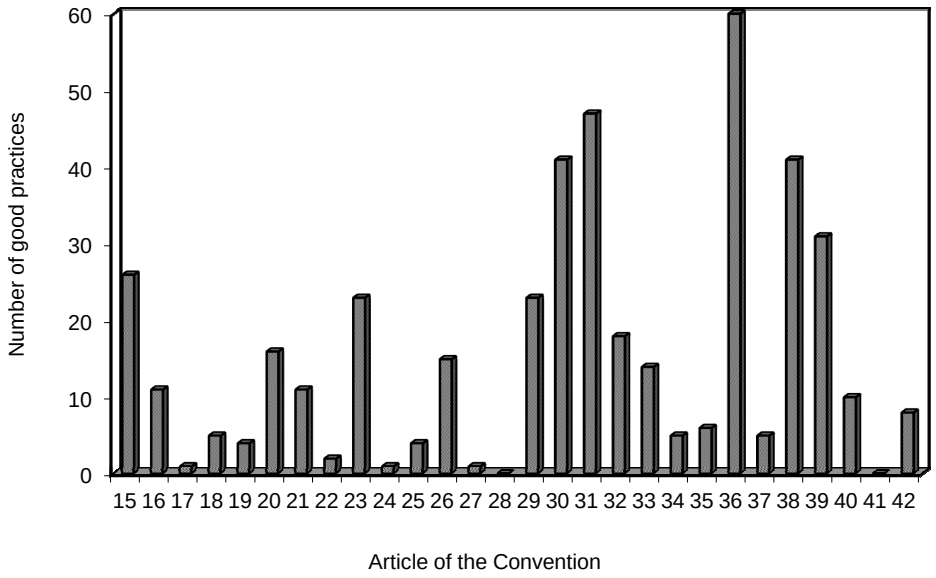


Table 2
Most prevalent good practices in the implementation of chapter III of the Convention

Article of the Convention	*Most prevalent good practices in implementation (in order of prevalence of identified good practice, organized by article of the Convention)*
Specialized authorities (art. 36)	1. Specialization of relevant authorities and their staff, also for complex cases of economic fraud and corruption. 2. Specific mandate, oversight mechanisms and operational measures, including the use of strategy documents and statistical indicators. 3. Adequate capacity and resources for the specialized authority. 4. Measures to ensure independence. 5. Existence of specialized anti-corruption courts. 6. Measures related to other bodies, in particular financial intelligence units.
Prosecution, adjudication and sanctions (art. 30)	
Sanctions for offences under the Convention (para. 1)	Determination of sanctions taking into account the gravity of offences and measures to pursue penal law revisions in line with the Convention.
Discretionary legal powers (para. 3)	Effective exercise of discretion to prosecute offences and appropriate operational oversight of institutions subject to prosecutorial discretion.

Article of the Convention	*Most prevalent good practices in implementation (in order of prevalence of identified good practice, organized by article of the Convention)*
Removal, suspension or reassignment of accused public officials (para. 6)	Consequences for public officials who engage in corruption, including the possibility of their suspension, removal or reassignment.
Reintegration of convicted persons (para. 10)	Measures to strengthen the reintegration of offenders into society.
Cooperation between national authorities (art. 38)	1. Specific examples of effective inter-agency coordination, including Government partnerships, operational synergies, training and staff secondments. 2. Establishment of a centralized agency or mechanisms to facilitate coordination; inter-agency agreements and arrangements.
Freezing, seizure and confiscation (art. 31)	1. Comprehensive conviction-based and non-conviction-based forfeiture mechanisms. 2. Evidentiary standards facilitating the freezing, seizure, confiscation of assets and the lifting of bank secrecy. 3. Institutional arrangements conducive to the effective confiscation and administration of frozen, seized or confiscated assets.
Cooperation with the private sector (art. 39)	1. Extent and quality of overall cooperation between public authorities and the private sector. 2. Operational measures, including outreach, awareness-raising and oversight, coupled with relevant enabling regulations. 3. Institutional arrangements (e.g. working groups or independent organizations) to bring together Government and the private sector. 4. Other forms of participation by civil society and the private sector.
Protection of witnesses, experts and victims (art. 32)	1. Comprehensive legislation to protect witnesses, experts and victims. 2. Witness protection programmes and institutional arrangements.
Laundering of proceeds of crime (art. 23)	1. Comprehensive legal framework and “all crimes approach”; anti-money-laundering regulations in place and enforced. 2. Mens rea of the offence goes beyond the minimum standards in article 23 (e.g., gross negligence).
Liability of legal persons (art. 26)	1. Criminal liability of legal persons for corruption-related offences regardless of whether criminal action was taken against the natural persons involved. 2. Dissuasive penalties for legal persons engaging in corruption. 3. Strict liability for failure to prevent corruption in relevant entities.

III. Implementation of the criminalization provisions of chapter III of the Convention

A. General observations

Definition of "public official"

5. Previous thematic reports identified the scope of coverage of the term "public official" as a cross-cutting issue related to the implementation of chapter III. In several jurisdictions the relevant laws did not cover all categories of persons listed in the Convention, or used inconsistent terms to define the class of officials covered. For example, in some States parties unpaid persons performing a public function or providing a public service were not explicitly covered, or government ministers were excluded. One country's legislation contained an exception for "service-type work", which excluded persons without discretionary powers or powers to dispose of public funds and who performed tasks that were not linked with acts of authority; similarly, in another State party, persons without managerial responsibilities were not clearly covered. Judicial officers were also not always fully covered. Recommendations were made for several States parties to consider adopting a more consolidated or simplified terminology.

Box 1
Examples of implementation

One State party had adopted an extended definition of "public official and public servant" that included persons who had been elected, appointed, hired or designated to become public officials, although not yet occupying that position.

The law in one State party did not contain a definition of "public official" but broadly covered persons providing public services or vested with public mandates. For agents of public companies and foreign public officials the same concepts and definitions applied as for national officials.

In several States parties foreign public officials and officials of public international organizations were covered by the concept of public officials.

B. Bribery offences

Bribery of national and foreign public officials and officials of public international organizations

6. Consistent with the trends identified in previous thematic reports, all States parties had adopted measures to criminalize both the active and passive bribery of domestic public officials. However, a number of common issues were observed concerning the scope of those offences. In several States parties, the promise of an undue advantage was not explicitly covered, or was only indirectly covered by related concepts, such as in provisions criminalizing attempts, or there was a requirement of acceptance. Conversely, in other States, offers of bribery, and, in a few cases, the actual payment or giving of bribes, were not specifically addressed. For example, national legislation did not always clearly distinguish the offer from the promise of an undue advantage. In some States parties the absence of a clear

provision covering the solicitation of bribes was noted. Recommendations were issued by the reviewing States parties to address this. In a number of jurisdictions there were gaps with respect to third parties, such as the coverage of indirect bribery involving intermediaries, or the accrual of benefits to third parties. In a few cases legislation contained specific exemptions or limitations, which were noted as a concern by reviewers. For example, concern was raised in several cases regarding the nearly automatic immunity from prosecution for persons who reported acts of bribery (known as active regret provisions), as described further under paragraphs 19 and 20 below, which discuss issues related to article 39 of the Convention. The legislation of some States parties was based on a relationship between a principal and an agent, meaning that bribery was limited to acts committed by agents on behalf of their principals, and recommendations to broaden the scope of the offence were issued accordingly. In some States parties, to constitute bribery, acts had to be committed "without reasonable justification", not under "lawful authority or with reasonable excuse" or without prior request. The legislation of some States parties did not cover the bribing of public officials to incite them to act in ways not contrary to their duty, or exempted advantages to expedite or facilitate lawful administrative procedures (so-called facilitation payments). Issues concerning the object of the bribe or the undue advantage were also noted, such as de minimis provisions that criminalized only advantages that were "not merely minor" and that varied according to the national legislation.

Box 2
Examples of how article 15 is implemented

In some States parties, the law established a rebuttable presumption that a gratification had been corruptly given or received, unless the contrary was proved.

A presumption of fact was developed in the case law of one State party: if a public official was given a benefit by a person with whom he or she was in a professional relationship or to whom that official had an official connection, the benefit would be considered to have been given for an act related to their function as a public official. Specifically in relation to bribery offences the legislature had further introduced the option of imposing fines based not only on the benefit obtained, but also on the intended benefit, as an effective deterrent against bribes in high-value transactions.

One State party had criminalized the bribery of electors and various other persons in order to induce such persons to procure or endeavour to procure a favourable vote.

One State party had specifically criminalized the bribing of members of the legislature and the executive and of officials of local government bodies aimed at influencing them to exercise their powers in a particular manner or to fail to exercise them.

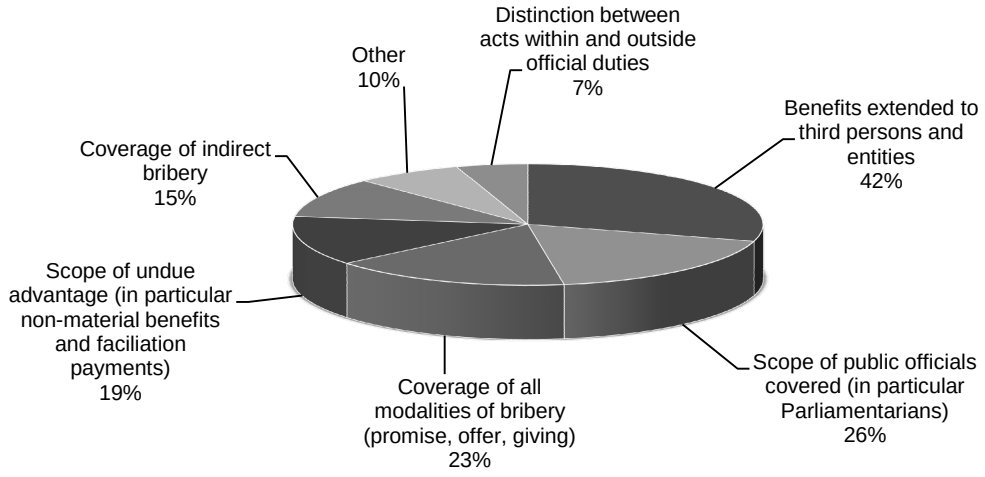
As an additional punishment for bribery offences, the fines in one State party were calculated as multiples of the amount of the bribe.

Challenges related to article 15

7. The most common challenges in the implementation of article 15 related to the application of the bribery offence to benefits extended to third persons and entities (42 per cent of cases); the scope of public officials covered by the bribery offence,

in particular the application to members of Parliament (26 per cent of cases); the coverage of all modalities of bribery (promise, offer and giving of an undue advantage) (23 per cent of cases); the scope of the undue advantage, in particular as regards non-material benefits and facilitation payments (19 per cent of cases); the coverage of indirect bribery in accordance with article 15 (15 per cent of cases); and applicable distinctions between acts within and outside the scope of official duties of public officials (7 per cent of cases) (see figure III).

Figure III
Challenges related to article 15 (Bribery of national public officials)

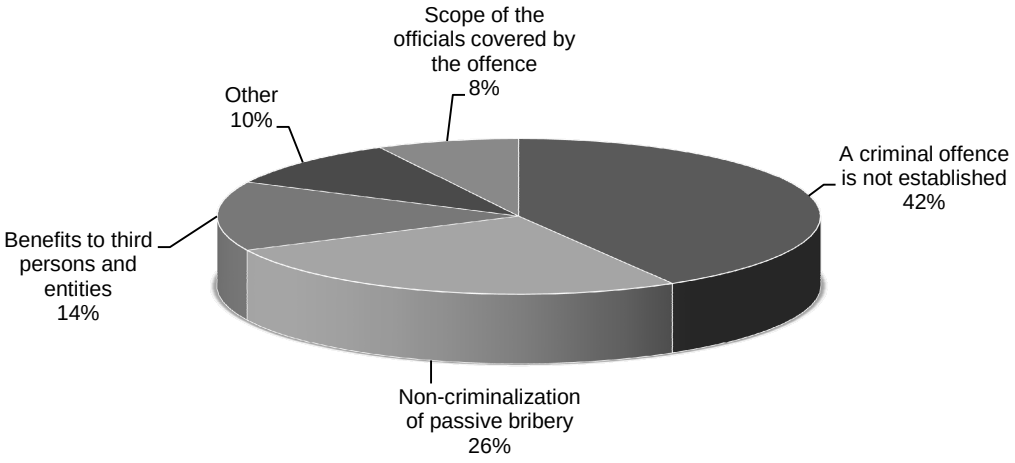


8. Consistent with the information presented in previous thematic reports, a number of States parties had not adopted specific measures to criminalize both the active and passive bribery of foreign public officials and officials of public international organizations, although legislation was pending in a few. Recommendations were issued as required to adopt measures explicitly covering the active and passive bribery of foreign public officials and officials of public international organizations as self-standing offences or including such officials under the general definition of public officials. In some cases, the foreign bribery statute contained an exception for facilitation payments made to expedite or secure the performance of routine government action by foreign officials, political parties or party officials. Gaps were also identified with respect to the scope of officials covered by the offence. For example, in a few cases the law covered only foreign officials but not officials of public international organizations. Some countries required acceptance of the bribe. In several jurisdictions benefits to third-party entities were not covered. In States parties that had relevant legislation in place the authorities reported few cases, in particular cases that ended in final decisions and convictions. In a few States parties foreign bribery was not restricted to the conduct of international business.

Challenges related to article 16

9. The most common challenges in the implementation of article 16 related to the absence of criminal offences addressing the bribery of foreign public officials and officials of public international organizations (42 per cent of cases), insufficient or no provisions concerning the non-mandatory offence of passive bribery of foreign public officials and officials of public international organizations (26 per cent of cases), the application of the offence to benefits extended to third persons and entities (14 per cent of cases), and the scope of foreign public officials and officials of public international organizations covered by the offence (8 per cent of cases) (see figure IV).

Figure IV
Challenges related to article 16 (Bribery of foreign public officials and officials of public international organizations)



C. Abuse of power or office and related conduct

Embezzlement, trading in influence, abuse of functions and illicit enrichment

10. Consistent with the information presented in previous thematic reports, all States parties had established measures to criminalize the embezzlement of public funds. However, in several cases, immovable or non-tangible assets and private funds were outside the scope of the offence and recommendations were issued to consolidate and extend the law to cover assets of every kind. In a number of cases there were limitations or discrepancies concerning the accrual of benefits to third parties. In some cases the offence covered embezzlement, but not misappropriation or diversion of property, and in a few cases individuals could be prosecuted for embezzling property only above a specified minimum amount. While in some cases the embezzlement of public funds could constitute an aggravating circumstance, the legislation did not always apply to all public officials.

Box 3
Examples of how article 17 is implemented

One State party had adopted provisions on theft, criminal mischief and unauthorized possession or removal of property. The legislation also prohibited the making of unauthorized expenditures or incurring unauthorized obligations.

11. The findings regarding trading in influence, a non-mandatory provision, were consistent with those identified in previous thematic reports. The conduct had been established as a criminal offence in the majority of States parties, and in a few jurisdictions legislation had been drafted or introduced to criminalize trading in influence. Where relevant legislation was in place, there were certain deviations from the scope of the Convention. In some cases, only the passive version of the offence had been established, and in a few cases only the acceptance and not the solicitation of bribes was covered. In other cases, the abuse of "supposed" influence was not covered. In one State party, the provisions did not cover trading in influence where the bribe was rejected, and in some States parties indirect acts and third-party beneficiaries were not clearly covered. Some States parties required that the person who exercised influence be a public official, while others criminalized the exercise of influence only between two individuals, as opposed to three. Issues concerning the object of the undue advantage were also noted.

Box 4
Examples of how article 18 is implemented

One State party had adopted not only specific provisions on trading in influence, but had also criminalized the peddling of influence in sports and had prohibited match-fixing by persons with influence in a domestic sports association or related entity.

In one jurisdiction the trading in influence in international business transactions had been established as a separate offence.

12. The majority of States parties had adopted measures to criminalize the abuse of functions by public officials, a non-mandatory provision, although it was not always explicitly recognized as a separate offence and there were some deviations. The omission to act was not covered in all States parties, and in some cases States had restricted the offence to acts causing "considerable damage" to public interests or to the legally protected interests of persons. Third-party beneficiaries were not always covered. In some cases there were gaps concerning the public officials covered and the applicable penalties.

13. As identified in previous thematic reports, illicit enrichment had not been established as a criminal offence in the majority of States parties, although legislation was pending in some jurisdictions. Objections to enacting relevant legislation commonly related to constitutionality and compatibility with the fundamental principles of the national legal system. Where illicit enrichment had not been criminalized, a similar effect was achieved by way of asset and income declaration requirements, although the absence of a consistent approach to verifying disclosures was sometimes noted. Some countries required a prior investigation into another offence to be undertaken to inquire into disproportionate wealth. For

example, in one State illicit enrichment was criminalized only in connection with another corruption offence and only if the public official in question had previously submitted a declaration of assets and liabilities based on which the wealth could be verified, while in another State the offence was limited to gains arising from public sector employment. In some States parties, provisions on extended confiscation were in place to pursue the same objective. A more detailed analysis of how article 20 of the Convention is implemented is contained in a report on the regional implementation of chapter III of the Convention (CAC/COSP/IRG/2013/10).

Box 5
Examples of how article 20 is implemented

The law on illicit enrichment in one State party took into consideration unexplained wealth held by persons having a close relationship to a public officer. In the absence of evidence to the contrary, the law established a presumption that such wealth would be under the control of the public officer. The law also applied to former public officials.

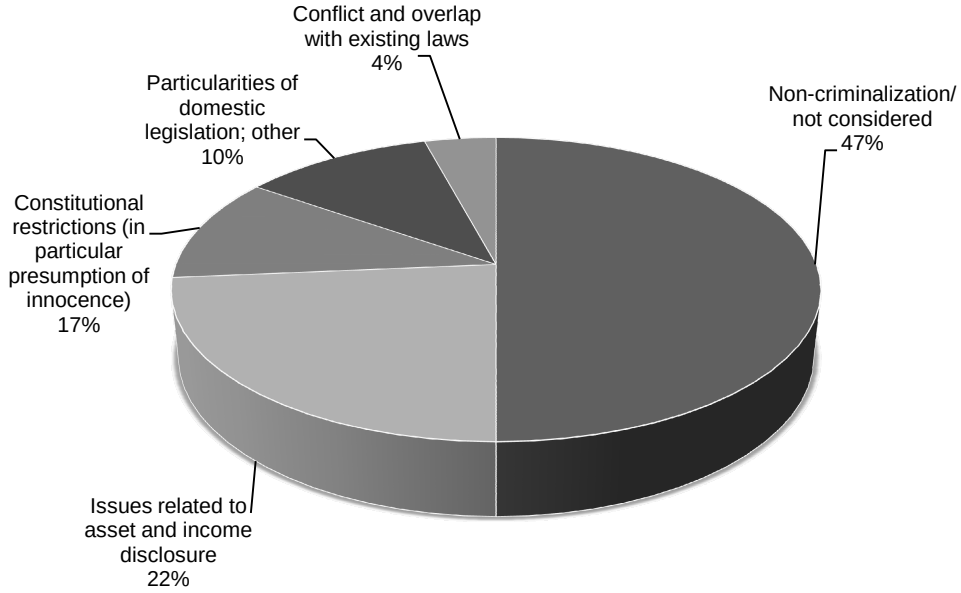
In one State party, the proceeds of corrupt conduct could be recovered from an official through a "corrupt enrichment order", a civil remedy that was considered to constitute an effective alternative to the criminalization of illicit enrichment.

In one State party comprehensive illicit enrichment provisions covered family members of implicated public officials and provided for a system of asset declarations for public officials. In another State party illicit enrichment also applied to former public officials and to conduct for the benefit of other persons.

Challenges related to article 20

14. The most common challenges in the implementation of article 20 related to the non-criminalization of illicit enrichment at the national level (47 per cent of cases), identified issues relating to asset and income disclosure systems (22 per cent of cases), constitutional restrictions, in particular concerning the principle of the presumption of innocence (17 per cent of cases), particularities of the domestic legislation not provided for by article 20 (10 per cent of cases), and the application of existing laws, such as tax laws and laws to counter money-laundering, to illicit enrichment cases and the potential overlap between those laws (4 per cent of cases) (see figure V).

Figure V
Challenges related to article 20 (Illicit enrichment)



D. Private sector offences

Bribery and embezzlement in the private sector

15. Consistent with the trend identified in previous thematic reports, the majority of States parties had not adopted measures to fully criminalize bribery in the private sector (a non-mandatory provision), although legislation was pending in a few cases. For example, in several States parties the offence was limited to relationships between a principal and an agent or other specified categories of persons. In a few States prosecution could be initiated only in cases involving contracts, benefits or a distortion in competition, and in others only upon the complaint of a victim or if committed without the knowledge of the perpetrator's employer. Indirect bribery and third-party beneficiaries were not covered in several States parties. In a few States parties either the passive or the active version of the offence was covered, but not both. The absence of prosecuted cases and the need to focus on enforcement and awareness-raising were noted in some jurisdictions.

16. Among the newly completed country reviews, all except two States parties had adopted measures to criminalize conduct constituting embezzlement in the private sector, a non-mandatory provision. However, in several cases the provisions only indirectly addressed various elements of such criminal conduct or were limited to certain types of property or categories of persons, and recommendations were issued to more precisely incorporate the offence established in the Convention. For example, in one State party prosecution was possible only upon the complaint of a victim when aggravating circumstances were absent. In some cases, immovable assets were excluded from the scope of the law. The law of one State party criminalized the relevant conduct in a broad manner in that it also covered cases

where a perpetrator exceeded powers granted or failed to perform duties in connection with the management of property or business interests. In one case the offence was classified as a misdemeanour.

E. Other offences

Money-laundering, concealment and obstruction of justice

17. There was some variation among the States parties with regard to the criminalization of money-laundering, consistent with the information presented in previous thematic reports. While all States parties had taken measures to establish money-laundering as a criminal offence, in several cases there were significant gaps in the implementing law. For example, in some States parties, only acts which "considerably" hindered the detection of the proceeds of crime were covered, or the offence applied only to persons who "rendered assistance" to money-laundering. In a few States parties the "concealment and disguise" of proceeds were not clearly addressed. Moreover, in some jurisdictions the participation in acts of money-laundering was not fully criminalized. Recommendations were issued, as appropriate. Although a number of States parties had adopted an "all crimes" approach that did not restrict application of the money-laundering offence to specific categories of predicate offences, others applied the law to "serious" or enumerated offences, and the applicable thresholds differed. The limited scope of the money-laundering offence was noted in several jurisdictions, because not all offences established under the Convention had been criminalized or constituted predicate offences. In some countries issues were encountered with respect to the coverage of predicate offences committed outside the State party, and in a number of cases dual criminality was required for prosecutions involving foreign predicate offences. Issues regarding self-laundering and sanctions were sometimes observed. For example, in one jurisdiction the penalty for money-laundering was limited to that imposed for the commission of the predicate offence, except in respect of bribery offences or cases where the perpetrator was involved in money-laundering activities on a professional scale, was a recidivist, or was part of a criminal organization. For another State party it was recommended that it establish mechanisms to facilitate cooperation between the private and public sectors so as to expedite investigations of money-laundering. A lack of relevant statistics, awareness-raising and coordination in the enforcement of money-laundering cases was also noted in some cases.

Box 6
Examples of how article 23 is implemented

One State party assumed jurisdiction over money-laundering offences in other countries even when the predicate offence had been committed on its territory, irrespective of dual criminality.

The possibility of prosecuting money-laundering not only with respect to the proceeds of crime but in relation to any property whose origin had no economic or licit justification existed in one State party.

18. In some States parties that had established concealment as a criminal offence, a non-mandatory provision, there were issues with respect to the continued retention of property as provided for in article 24 of the Convention. In some States parties concealment was limited to specifically enumerated offences, to "serious" offences or to certain conduct. Legislation had been drafted or introduced in a few jurisdictions to fully implement the article.

19. Obstruction of justice had been established as a criminal offence in the majority of States parties. However, in several jurisdictions there were issues related to the coverage of conduct intended to interfere not just with the giving of testimony but with the production of non-oral evidence in relevant proceedings. In a number of States parties, the specific means to induce false testimony or the production of evidence (use of physical force, threats or intimidation and the offering or giving of an undue advantage) were not fully covered, or there were limitations in respect of the criminalization of acts that fell short of fulfilling their intended objective. In one State party, obstruction of justice offences were misdemeanours.

Box 7
Examples of how article 25 is implemented

In one State party, provisions in the criminal code prohibited the wilful attempt "to obstruct, pervert, or defeat the course of justice", which included any acts that dissuaded or attempted to dissuade persons, though threats, bribes or by other means, from giving evidence. The law further prohibited acts that interfered with the administration of justice by a "justice system participant", which was broadly defined to include attorneys, judges, jurors, peace officers, public employees such as law enforcement staff and judicial staff.

The anti-corruption law of one State party criminalized the use of physical force, threats or intimidation to interfere with the course of investigations into corruption offences and was applicable to any person involved in the investigation, not only justice officials.

F. Substantive and procedural provisions supporting criminalization

Liability of legal persons, participation and attempt, and statute of limitations

20. Continuing previous trends, a majority of the States parties had established some form of criminal liability of legal persons for corruption offences, with certain exceptions or limitations. For example, in several States parties liability was limited to certain offences or conduct, such as money-laundering and bribery. In several States parties, the legal system did not provide for, or prohibited establishing, the criminal liability of legal persons. In some of those jurisdictions only administrative liability was established that did not cover all offences under the Convention, and recommendations were issued to address this. Sanctions generally varied, ranging from administrative penalties, including debarment or the suspension or cancellation of business licences, via monetary penalties to a combination of sanctions, including confiscation and dissolution. Issues regarding penalties for legal persons were observed in a number of jurisdictions, and specific recommendations were issued to consider increasing, clarifying or adding non-monetary sanctions to the list of possible penalties. The requirement of criminal charges being instituted against a

natural person was also noted as a gap in several jurisdictions. Multiple forms of liability were possible in most jurisdictions, including civil liability where legal persons participated in criminal acts; however, there were few reported cases and a need for effective enforcement was noted in several cases.

Box 8
Examples of how article 26 is implemented

In one jurisdiction, comprehensive measures were taken in relation to the liability of legal persons, including legal provisions encompassing different forms of liability and a broad range of sanctions. Liability could be waived or mitigated where the legal person was found to have an organizational model in place to prevent offences. The main aim of that defence was to provide incentives for companies to establish self-regulatory models for preventing and fighting corruption, such as corporate ethical codes. It was still possible to confiscate the proceeds of the offences, even in cases where the defence was successfully pleaded.

In one State party, in addition to the imposition of fines, a sentencing court could hand down a probation order against an organization that could include conditions provided for by statute such as making restitution to a person for any loss or damage suffered from the offence; establishing policies, standards and procedures to prevent the organization from committing a subsequent offence, and reporting to the court on their implementation; identifying the senior officers responsible for compliance with such measures; providing information to the public on the offence for which the organization was convicted, the sentence imposed, and any measures the organization was taking to reduce the likelihood of committing a subsequent offence; and complying with any other reasonable conditions the court considered desirable to prevent subsequent offences or to remedy the harm caused by the offence.

In one State party legal persons who participated in bribery offences were subject to a fine of up to 10 times the value of the bribe and barred from entering into public contracts. Legal persons who participated in money-laundering offences were punished by a minimum fine, which was capped at the value of the laundered funds. In one State party the confiscation of the proceeds of crime was mandatory in the case of offences committed by legal persons.

21. Consistent with the information presented in previous thematic reports, all States parties had adopted measures to criminalize the participation in and attempt to commit the offences enumerated in the Convention, although the scope and coverage of the provisions varied. For example, in some States parties preparatory acts were covered only in relation to acts of bribery or to serious offences, and therefore did not encompass all offences under the Convention. In a number of States parties, the preparation of an offence (art. 27, para. 3) was not specifically criminalized, although certain preparatory acts could constitute offences in themselves. In one State party attempts were not mandatorily prosecuted, while in another the acceptance of the attempt was a necessary precondition.

22. There continued to be considerable variation among the States parties with regard to the length and application of the statute of limitations for offences established under the Convention, continuing the trends identified in previous thematic reports regarding the length and interruption of the applicable limitation

period. For example, concern was raised in one State party about the relatively short statute of limitations for corruption offences (1 to 6 years). Suggestions to commence the statute of limitations at the time of discovery of the offence, not its commission, and to provide for the suspension or interruption of the statute of limitations in appropriate cases had been issued in a few countries. Concern was raised in one State party about a special statute of limitations protecting government ministers, whereby prosecution was no longer possible after two legislative sessions. For another State party it was recommended that it consider clarifying, as part of future legislative reforms, whether the statute of limitations would be suspended during proceedings to determine the immunity of public officials. In some cases it was recommended to consider providing for an interruption or suspension of the period of limitation when criminal proceedings were filed or the offender had evaded the administration of justice. It was also recommended to monitor the application of the prescription period to ensure the timely prosecution of offences. Several jurisdictions had adopted a statute of limitations of 20 years, or from 2 to 30 years, in one case, depending on the severity of the prescribed sentence.

Box 9
Examples of how article 29 is implemented

In several States parties the period of prescription was determined by the maximum penalty that could be imposed for the offence in question, and was prolonged in case criminal proceedings were instituted against the offender. While this approach was found to take into account the gravity of offences, it presented challenges where prescribed sentences were at the lower end of the sentencing range.

In one State party, in the case of public officials, the period of prescription was twice the term of the sentence prescribed for the offence. Similarly, in another State, the statute of limitations for public officials was double the maximum sentence for the offence in question, starting from the time the official left office.

In one State party the prescription period was interrupted if the offender committed an equally grave or more severe crime before the prescription period elapsed.

In some States parties the statute of limitations was suspended during a period of immunity.

A number of States parties had no statute of limitations in place for corruption offences, either because the statute of limitations did not apply to corruption offences or because there was no general statute of limitations. Moreover, in two jurisdictions offences committed by public officials that were directed against State assets and caused serious economic damage, as well as other corruption offences where the proceeds of crime had been moved abroad, were exempt from the prescription period.

In one State there was no statute of limitations for offences prosecuted pursuant to the international instruments ratified by the country.