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United Nations Office on Drugs and Crime

## Set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption



UNITED NATIONS



UNITED NATIONS OFFICE ON DRUGS AND CRIME  
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Convention against Corruption**



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## **Executive summary**

The Mechanism for the Review of Implementation of the United Nations Convention against Corruption is a powerful tool to assist States in effectively implementing the Convention. The Implementation Review Mechanism helps States to identify challenges and good practices in implementation, as well as technical assistance needs, and can serve as a catalyst for legislative, institutional and policy reform.

The present document summarizes the results of 169 completed country reviews under the first cycle of the Implementation Review Mechanism. It consists of a compilation and an analysis of over 6,200 individual recommendations and nearly 1,100 good practices identified in the country reviews of the first cycle, as well as comments provided by interested States parties. The document was prepared by the Corruption and Economic Crime Branch of the United Nations Office on Drugs and Crime (UNODC) in its function as secretariat of the Conference of the States Parties to the Convention and of the Implementation Review Mechanism.

The set of non-binding recommendations and conclusions is based on a mandate in resolution 6/1, in which the Conference requested the Implementation Review Group to analyse the information on successes, good practices, challenges, observations and technical assistance needs emanating from the country reviews of the first review cycle, and to submit a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention to the Conference for its consideration and approval.

At its eighth session, held in December 2019, the Conference endorsed the set of non-binding recommendations and conclusions, as reviewed by the Implementation Review Group. Furthermore, in its resolution 8/2, the Conference approved the set of non-binding recommendations and conclusions as a potentially useful guide for practitioners, which had been prepared in accordance with resolution 6/1 and the terms of reference of the Implementation Review Mechanism and acknowledged by the Conference in decision 7/1. The Conference acknowledged that, while the non-binding

recommendations and conclusions may be used to ensure consistency in the Implementation Review Mechanism, nothing in them was to be regarded as the sole option for the implementation of the relevant articles of the Convention.

The set of non-binding recommendations and conclusions is being made available to States parties and practitioners pursuant to the aforementioned mandates.

The secretariat extends its thanks to the authors, Tanja Santucci and Vladimir Kozin, staff members of the secretariat.

## Introduction

1. In paragraph 11 of its resolution 6/1, the Conference of the States Parties to the United Nations Convention against Corruption requested the Implementation Review Group to analyse the information on successes, good practices, challenges, observations and technical assistance needs emanating from the country reviews of the first review cycle, considering the thematic implementation report prepared in accordance with paragraph 35 of the terms of reference of the Mechanism for the Review of Implementation of the Convention, and to submit a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention to the Conference for consideration and approval.

2. At its eighth session, held in December 2019, the Conference endorsed the set of non-binding recommendations and conclusions, as reviewed by the Implementation Review Group previously. Furthermore, in its resolution 8/2 the Conference approved the set of non-binding recommendations and conclusions as a potentially useful guide for practitioners, which had been prepared in accordance with resolution 6/1 and the terms of reference of the Implementation Review Mechanism and acknowledged by the Conference in decision 7/1. The Conference acknowledged that, while the non-binding recommendations and conclusions may be used to ensure consistency in the Implementation Review Mechanism, nothing in them was to be regarded as the sole option for the implementation of the relevant articles of the Convention.

3. The set of non-binding recommendations and conclusions, as so approved, is based on an analysis of more than 6,200 individual recommendations and nearly 1,100 good practices identified in 169 completed country reviews under the first review cycle and reflects comments provided by 27 States parties in response to notes verbales sent by the secretariat on 29 June 2017 and 7 January 2019.<sup>1</sup>

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<sup>1</sup>Algeria, Bolivia (Plurinational State of), Brunei Darussalam, Chile, China, Czechia, Ecuador, Germany, Guatemala, Hungary, Iran (Islamic Republic of), Israel, Mauritius, Mexico, Myanmar, Pakistan, Panama, Paraguay, Peru, Poland, Romania, Russian Federation, Serbia, Slovakia, Switzerland, Trinidad and Tobago and United States of America.

4. The set of non-binding recommendations and conclusions is being made available to States parties and practitioners pursuant to the aforementioned mandates.

5. Section I below provides a summary of the comments provided by States parties, while section II presents the set of non-binding recommendations issued and good practices identified regarding the implementation of chapters III and IV of the Convention.

6. While the recommendations and conclusions take into account the levels of legal obligation of the relevant provisions of the Convention, it must be understood that the measures described are non-binding in nature and provide a mere summary of the main observations, recommendations, conclusions and good practices identified in the country reviews under the first cycle. As such, the measures do not present additional obligations for States parties, but may provide useful information on common challenges and good practices in the implementation of chapters III and IV of the Convention.

7. The set of non-binding recommendations and conclusions may be read in conjunction with the explanatory note on good practices in relation to the set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption (CAC/COSP/IRG/2019/6). The explanatory note contains additional information on the good practices identified in the country reviews of the first cycle, as summarized in the set of non-binding recommendations and conclusions. The explanatory note was prepared pursuant to a request made to the secretariat during the second resumed ninth session of the Implementation Review Group to elaborate on the conclusions reached and, in particular, the good practices identified in the country reviews under the first cycle, which would assist States parties in further clarifying the information, in line with the corresponding provisions of the Convention.

### *I. Summary of comments received*

8. Overall, in their written submissions and during the deliberations of the Conference and previous sessions of the Implementation Review Group, States parties welcomed the set of non-binding recommendations and conclusions and noted the value of the measures presented, which were supported by the findings of the country reviews and presented practical options



that could be useful for States to implement in the context of national anti-corruption efforts, in line with the Convention and consistent with national legal systems.

9. States parties welcomed the set of non-binding recommendations and conclusions as an important result of the collective work of the Implementation Review Mechanism. Several States highlighted the usefulness of specific recommendations and conclusions while emphasizing their non-binding nature and reiterated that the recommendations did not impose additional obligations on States parties beyond the provisions of the Convention. It was emphasized that States would benefit from putting the non-binding recommendations and conclusions into practice in furtherance of national reforms and priorities, as they reflected common good practices and opportunities to enhance the implementation of the Convention and demonstrated the positive impact of the Implementation Review Mechanism.

*II. Recommendations issued and good practices identified regarding the implementation of chapters III and IV of the Convention*

10. The selection of articles in the tables below is based on a quantitative analysis of observations made and good practices identified regarding the implementation of chapter III (see table 1) and chapter IV (see table 2) of the Convention. The observations and good practices have in part been reformulated in order to make them more broadly applicable and to capture the essence of a wider range of country-specific observations, without changing their overall content and meaning. Table 3 contains observations relating to the overall effectiveness of the Implementation Review Mechanism.

**Table 1. Most prevalent observations and good practices regarding chapter III (Criminalization and law enforcement)**

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
All articles: general and cross-cutting recommendations	<p>Strengthen, where feasible and in line with national processes, the collection and availability of statistical data on the implementation of anti-corruption measures across institutions, in particular statistical data on investigations, prosecutions and adjudications, for example through the creation of a national crime register or other mechanisms, which could also be made accessible to other States parties.</p> <p>Ensure that all categories of persons set out in article 2 (a) of the Convention are covered as public officials in the legislation.</p> <p>Consider consolidating or simplifying the legal framework to criminalize corruption offences, and consider clarifying interpretative principles.</p> <p>Continue to devote adequate resources and attention to capacity-building for authorities responsible for combating corruption, guaranteeing the independence and autonomy of the agencies concerned, and conducting financial investigations, including by undertaking a comprehensive assessment of technical assistance needs, where necessary. Sufficient resources should be made available to address capacity constraints in the areas of investigation, prosecution, and adjudication of cases.</p>	

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Bribery offences and trading in influence (arts. 15, 16, 18 and 21)	<p>More clearly delineate all elements of the articles of the Convention, to ensure in particular that all modalities of the commission of an offence (promise, offer, giving, solicitation, acceptance), as well as third-party beneficiaries and indirect acts, are covered, in accordance with the fundamental principles of the domestic law.</p> <p>Ensure that the subjects of the offence include all categories of persons listed in article 2 of the Convention (see also above).</p> <p>With respect to the bribery offences (arts. 15 and 16), expand the objects of the offence, in particular as regards non-material benefits and payments or gratuities to expedite or facilitate an otherwise lawful administrative act or procedure.<sup>4</sup></p> <p>Where national legislation contains exceptions or defences concerning, e.g., immunities for spontaneous confessions, the attempted commission of the offence, and acts committed with lawful authority or reasonable justification, align such exceptions with the requirements of the Convention, consistent with article 30, paragraph 9, of the Convention.</p> <p>With respect to bribery of foreign public officials and officials of public international organizations (art. 16), criminalize the active version and consider criminalizing the passive version of the offence and devote adequate attention to enforcement.</p>	Wide scope of application of anti-bribery legislation to national and foreign public officials and officials of public international organizations, as well as to the private sector.

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
	<p>With respect to trading in influence (art. 18), a non-mandatory offence, consider adopting a specific offence, separate from bribery, covering all elements of article 18, in particular the abuse of real or supposed influence, and strengthening the elements foreseen by article 18 of the Convention in the different corruption crimes.</p> <p>With respect to bribery in the private sector (art. 21), a non-mandatory offence, consider adopting a relevant offence that applies to any person who directs or works in any capacity for a private sector entity.</p>	
<p>Laundering of proceeds of crime (art. 23)</p>	<p>Include as predicate offences at least a comprehensive range of offences established in accordance with the Convention, whether committed within or outside the jurisdiction of the State party in question.</p> <p>Ensure that all modalities of the commission of the offence in paragraph 1 are covered.</p> <p>Strengthen enforcement and address issues of overlapping mandates and challenges in coordination among the competent authorities responsible for money-laundering cases related to the proceeds of offences under the Convention.</p>	<p>Comprehensive legal framework and “all crimes approach”, despite not being specified by the Convention; anti-money-laundering regulations in place and enforced.</p>
<p>Statute of limitations (art. 29)</p>	<p>Establish a limitations period that gives adequate time for the completion of the full judicial process, including investigation, prosecution and adjudication, and establish a longer period or suspend its application where the offender has evaded the administration of justice.</p>	<p>Sufficiently long limitations period to allow for investigations and prosecutions of offences under the Convention; interruption or suspension mechanisms.</p>

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Prosecution, adjudication and sanctions (art. 30)	<p>Ensure the efficiency and dissuasive effect of sanctions for offences under the Convention, including by considering a more coherent approach in the sanctioning of offences (e.g. the harmonization of penalties according to the gravity of offences and across different anti-corruption laws); also consider adopting sentencing principles and monitoring the imposition of punishment, including, where applicable, plea bargains and out-of-court settlements (art. 30, para. 1), bearing in mind the independence of the judiciary.</p> <p>Establish a greater balance between immunities or jurisdictional privileges accorded to public officials and the possibility of effectively investigating, prosecuting and adjudicating offences under the Convention; in particular review the procedures for lifting immunities to avoid potential delays, the loss of evidence and any unnecessary obstacles preventing investigative steps from being taken before immunities are lifted (art. 30, para. 2).</p>	<p>Innovative mechanisms to calculate fines and sentences (such as calculating fines based on the benefits obtained and intended), and the existence of guidelines or practice directives for prosecutors and judges providing instructions on the application of penalties, depending, <i>inter alia</i>, on the gravity of the offence, with due respect for the independence of the judiciary.</p> <p>Appropriate balance concerning criminal immunities for offences under the Convention and the successful investigation or prosecution of public officials.</p>
Freezing, seizure and confiscation (art. 31)	<p>Consider adopting measures for the disqualification of persons convicted of offences under the Convention from holding public office for a period of time determined by domestic law (art. 30, para. 7).</p> <p>Take measures to enable confiscation of proceeds of crime derived from all offences under the Convention, including value-based confiscation.</p>	<p>Comprehensive legislation for the confiscation of proceeds of crime, including value-based and non-conviction-based confiscation, and effective application of the legal framework in practice.</p>

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Freezing, seizure and confiscation (art. 31)	<p>Expand the definition of proceeds of crime to ensure that all proceeds, property, equipment and instrumentalities as defined in the Convention are subject to the measures in article 31.</p> <p>Strengthen the capacity of competent authorities and adopt mechanisms to swiftly trace, seize and freeze property and ensure that interim measures leading to confiscation apply to all offences under the Convention.</p> <p>Strengthen the administration of frozen, seized and confiscated property, in particular in the case of complex assets, and consider the establishment of a dedicated asset management office.</p>	<p>Institutional arrangements, including coordination and the exchange of information among authorities, leading to successful confiscation cases, and the existence of specialized authorities dedicated to the administration of seized and confiscated assets.</p> <p>Confiscation may be ordered even if the offender cannot be convicted; shifting evidentiary standards or presumptions facilitating confiscation.</p>
Protection of witnesses, experts and victims (art. 32)	<p>Strengthen the effective protection of witnesses, experts and victims, as well as their relatives or associates, as appropriate, in particular by adopting a legal and institutional framework on witness protection and by means of adequate enforcement and funding. The framework for such protection should offer all necessary forms of protection, including physical protection and evidentiary rules (such as concealment of identities) to permit witnesses and experts to give testimony in a manner that ensures their safety. Consider adopting a witness protection programme and entering into relocation agreements or arrangements with other States.</p>	

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Protection of witnesses, experts and victims (art. 32)	Extend the scope of witness protection measures to all offences under the Convention.	
Specialized authorities (art. 36)	Strengthen the participation of victims in criminal proceedings (art. 32, para. 5).	<p>The establishment, where feasible and consistent with national priorities, of a specialized anti-corruption authority, a specialized anti-corruption unit within the police force and the prosecution service, and/or a specialized anti-corruption court.</p> <p>Specific mandate and independence mechanisms, as well as adequate capacity and resources for the specialized authorities, including through practical training programmes.</p> <p>Operational measures to enhance effectiveness (e.g., information-sharing, inter-agency coordination and access to information, collection and use of relevant data, clear policy guidance, inter-agency task forces to address corruption in certain sectors) leading to increased investigations and prosecutions.</p>

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Cooperation with law enforcement authorities (art. 37)	Adopt measures to encourage the cooperation of offenders in investigations and prosecutions, including by offering the possibility of mitigated punishment, plea bargaining or immunity from prosecution, and ensure that such persons are subject to the protections in article 32 of the Convention; consider entering into relevant agreements or arrangements with other States parties.	
Cooperation between national authorities (art. 38)		Effective cooperation mechanisms among the investigating and prosecuting institutions and public authorities, including through the exchange of personnel and information, where feasible and consistent with national practices.
Cooperation between national authorities and the private sector (art. 39)		Establishment of centralized bodies or mechanisms to facilitate coordination; inter-agency agreements and arrangements.  Active engagement of public authorities with the private sector, in particular through efficient information transfer mechanisms between investigative authorities and financial institutions, and through training of private sector entities on prevention measures and awareness-raising.



<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Cooperation between national authorities and the private sector (art. 39)		<p>Mechanisms to facilitate access to information by law enforcement authorities and to encourage the reporting of corruption.</p> <p>Establishment of bodies or mechanisms to facilitate cooperation, including integrity pacts and agreements or arrangements.</p>

<sup>a</sup>See A/58/422/Add.1, paras. 24–25.

## **Table 2. Most prevalent observations and good practices regarding chapter IV (International cooperation)**

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
All articles: general and cross-cutting recommendations	Consider the allocation of adequate resources to further strengthen the efficiency and capacity of international cooperation mechanisms.	<p>Provision of training to practitioners, in particular law enforcement, prosecutors, judges and judicial officers, as well as public officials abroad, regarding applicable laws, procedures and time frames to be followed in international cooperation cases, including the determination of dual criminality.</p>

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
All articles: general and cross-cutting recommendations		Active participation in international and regional networks, platforms and forums aimed at promoting international cooperation.
Extradition (art. 44)	<p>Ensure that all offences established in accordance with the Convention are extraditable, such as by:</p> <ul style="list-style-type: none"> <li data-bbox="433 600 529 800"><i>(a)</i> Using the Convention as a legal basis for cooperation on extradition;</li> <li data-bbox="541 600 638 800"><i>(b)</i> Revising the minimum penalty thresholds for extradition or the lists of extraditable offences in domestic legislation in case of the strict application of dual-criminality requirements;</li> <li data-bbox="650 600 746 800"><i>(c)</i> Interpretation of the dual-criminality requirement, focused on the underlying conduct rather than the strict terminology of offences;</li> <li data-bbox="758 600 854 800"><i>(d)</i> Reviewing or concluding bilateral or multilateral extradition agreements and arrangements to cover all offences under the Convention.</li> </ul>	Efficient use of technology and electronic databases to track, monitor and follow up on international cooperation requests.
		No minimum penalty requirements for extradition involving Convention offences.
		Interpretation of the dual criminality requirement in extradition cases, focusing on the underlying conduct and not the legal denomination of the offence; the dual criminality requirement may be waived on the basis of reciprocity.
		Expedition of extradition proceedings, consistent with treaty requirements and domestic law, through direct contacts between central and competent authorities and use of electronic or other communication channels and networks.

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Extradition and mutual legal assistance (arts. 44 and 46)	<p>Ensure the quality, efficiency and effectiveness of national frameworks on international cooperation, including by putting in place and rendering fully operational information systems that allow for managing requests for extradition and mutual legal assistance, with a view to facilitating the monitoring of such requests, assessing the effectiveness of the implementation of international cooperation arrangements and gathering comprehensive statistics.</p> <p>Make or update the requisite notifications to the United Nations as to:</p> <ul style="list-style-type: none"> <li>(a) Whether the State party takes the Convention as the legal basis for cooperation on extradition (art. 44, para. 6);</li> <li>(b) The designation of a central authority for mutual legal assistance (art. 46, para. 13);</li> <li>(c) The languages acceptable for mutual legal assistance requests (art. 46, para. 14).</li> </ul> <p>Specify the conditions and grounds for refusing extradition more clearly in the national legislation.</p>	<p>Development or effective use of manuals, guidelines, checklists, dedicated communication platforms and mechanisms such as email boxes or model requests for extradition and mutual legal assistance, with a view to providing administrative and legal certainty for making, processing and executing requests.</p> <p>Use of the Convention either as a legal basis for extradition and mutual legal assistance or as a tool to facilitate extradition and mutual legal assistance.</p> <p>The designation of competent or central authorities for extradition and the identification of focal points for specialized areas of cooperation, such as money-laundering or asset recovery, and notification of whether the State party takes the Convention as the legal basis for cooperation on mutual legal assistance.</p>
Grounds for refusing extradition (art. 44, para. 8)		

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
<p>Procedure for extradition and mutual legal assistance (art. 44, para. 9 and art. 46, para. 24)</p>	<p>Ensure that extradition proceedings are carried out efficiently and, subject to domestic law, endeavour to simplify and streamline procedures and evidentiary requirements relating thereto. Similarly, execute mutual legal assistance requests efficiently.</p>	<p>Consultations and communication with requesting States on a continuing basis, throughout the mutual legal assistance and extradition process, and involving central and competent authorities, as applicable, including the possibility of the requested authority accepting and reviewing requests before submission of a formal request.</p>
<p>Consultations with requesting States parties (art. 44, para. 17 and art. 46, para. 26)</p>	<p>Engage in consultations with requesting States before refusing extradition and mutual legal assistance requests.</p>	<p>Provision of mutual legal assistance in the absence of dual criminality, consistent with treaty requirements and domestic law.</p>
<p>Mutual legal assistance (art. 46)</p>		<p>Application of requirements for the execution of mutual legal assistance requests (such as applying seals on translated documents, translation, etc.) in such a manner as to afford the widest measure of assistance.</p>
<p>Spontaneous sharing of information (art. 46, paras. 4 and 5)</p>	<p>Allow for or expand the practice of spontaneous transmission, i.e. without a prior request, of information that could assist in undertaking or successfully concluding investigations and criminal proceedings in other States parties</p>	

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Spontaneous sharing of information (art. 46, paras. 4 and 5)	or could result in formal mutual legal assistance requests being made by other States parties, including through the adoption of relevant laws or regulations, as appropriate.	
Non-coercive mutual legal assistance in the absence of dual criminality (art. 46, para. 9)	Ensure that mutual legal assistance that does not involve coercive action can be provided even in the absence of dual criminality, where consistent with the basic concepts of the legal system.	
Transfer of sentenced persons and transfer of criminal proceedings (arts. 45 and 47)	Establish a legal and procedural framework for the transfer of sentenced persons and the transfer of criminal proceedings, and consider entering into relevant bilateral or multilateral agreements.	
Law enforcement cooperation, joint investigations (arts. 48 and 49)	Take steps to enhance law enforcement cooperation, including where possible through the use of modern technology, and conclude agreements or arrangements to allow the competent authorities responsible for the investigation of corruption offences (including prosecutors and judicial authorities, if appropriate) to establish joint investigative teams with law enforcement agencies in other jurisdictions.	Specialized capacities for cross-border law enforcement cooperation, in particular through the organization of joint anti-corruption training workshops and capacity-building exchange programmes and participation in international anti-corruption law enforcement networks (art. 48).  Active use of joint investigation teams in transnational corruption cases, where feasible and consistent with national priorities (art. 49).

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
Special investigative techniques (art. 50)	Take measures to allow competent authorities to use special investigative techniques, to regulate their use and to ensure the protection and admissibility in court of evidence derived therefrom.	Wide use and application of special investigative techniques in corruption cases both domestically and internationally, in accordance with the protection of fundamental rights.

### **Table 3. General observations and recommendations regarding the Implementation Review Mechanism**

<i>Articles of the Convention</i>	<i>Observations</i>
General and cross-cutting recommendations	<p>The Conference should continue to consider addressing unexpected challenges pertaining to the funding shortfall and delays in country reviews arising during future phases of the Implementation Review Mechanism.</p> <p>With a view to conserving resources and ensuring the timely completion of country reviews, the Conference should consider streamlining, in future phases of the Mechanism, the amount of information solicited from States parties, for example by focusing on updating information provided during the first review cycle or limiting the length of responses or supporting documents to the self-assessment checklist.</p> <p>The Conference should continue to work to improve the transparency and availability of information gathered during future phases of the Implementation Review Mechanism, building on the thematic reports produced by the secretariat, to provide more detailed information in areas such as individual country experiences and technical assistance needs.</p>





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