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Review of the implementation of the United Nations Convention against Corruption

Follow-up actions taken by States parties to implement chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption

Note by the Secretariat

Summary

In line with previous notes by the Secretariat focused on good practices, experiences and measures taken by States parties after the completion of their reviews, the present note provides an account of such measures taken by States parties after the completion of their reviews under the first cycle. It was prepared mainly on the basis of information reported by 25 States parties in response to a note verbale sent by the secretariat and contains a summary of the measures taken by States parties with regard to chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption.

* CAC/COSP/2023/1.

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I. Introduction

1. In its decision 5/1, entitled “Mechanism for the Review of Implementation of the United Nations Convention against Corruption”, the Conference decided that the Implementation Review Group should begin promptly to collect, with the support of the Secretariat, and discuss relevant information in order to facilitate the assessment of performance of the Mechanism. The Conference also decided that the Group should include in its future sessions an agenda item allowing for discussion of such information.

2. In its resolution 6/1, entitled “Continuation of the review of implementation of the United Nations Convention against Corruption”, the Conference encouraged States parties to continue voluntarily sharing information on good practices, experiences and relevant measures taken after the completion of their country review reports, including information related to technical assistance, and to consider providing such information to the Secretariat for publication on its website.

3. The present note provides a summary of measures taken by States parties after the completion of the first review cycle with regard to chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the Convention and was prepared on the basis of information reported by States parties in response to the note verbale of 19 July 2023 in which the secretariat requested information on actions taken by States parties after the completion of their reviews or in addressing the gaps or needs identified during the review. With the agreement of the countries concerned, the full text of the submissions is available on the website of the tenth session of the Conference. As at 27 September 2023, a total of 25 States parties had provided information.[1]

4. Noting frequent statements made by States parties at the thirteenth and fourteenth sessions of the Implementation Review Group providing updates on the follow-up actions that they had taken, the secretariat gathered additional information, which has been included in the analysis for the present note. In the same vein, information on anti-corruption measures taken by other States parties as a direct result of the reviews was gathered either in the context of the ongoing reviews or through the delivery of technical assistance. The present note should also be read in conjunction with the previous documents prepared by the secretariat on good practices and experiences of, and relevant measures taken by, States parties after the completion of the country reviews, including information related to technical assistance,[2] which were presented to the Conference at its previous sessions.

5. A comprehensive study was conducted on the outcome of the first review cycle, identifying trends and patterns in the implementation of chapters III and IV by 156 States parties. The study, entitled *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*, has been published and is available on the website of the United Nations Office on Drugs and Crime. More information about these measures can be found on the country profile website, where updates submitted by the States parties are posted.[3]

II. General overview of recommendations and good practices issued under the first cycle

[1] Argentina, Australia, Austria, Belarus, Burkina Faso, Congo, Costa Rica, Italy, Malaysia, Mexico, Niger, Panama, Poland, Qatar, Republic of Moldova, Russian Federation, Saudi Arabia, Singapore, Slovakia, State of Palestine, Sweden, Thailand, Türkiye, United States of America and Viet Nam.

[2] CAC/COSP/2017/12, CAC/COSP/2019/11 and CAC/COSP/2021/9.

[3] In accordance with paragraph 12 of Conference resolution 6/1, the secretariat publishes the reports from States on follow-up, as applicable, on the Implementation Review Group’s dedicated country profile pages, available at www.unodc.org/unodc/en/corruption/country-profile/index.html.

6. In the first review cycle, 185 States parties have submitted their responses to the self-assessment checklist, 177 direct dialogues have been held, and 176 executive summaries and 164 country reports have been finalized. At the time of drafting of the present note, 176 States had completed their executive summaries, of which 25 States, or 14 per cent, had provided relevant information on good practices, experiences and measures taken after the completion of their reviews in response to the secretariat's note verbale.

7. In general, States parties underscored the positive impact that the Implementation Review Mechanism had on advancing the implementation of the Convention, including through the identification and exchange of good practices, challenges and technical assistance needs. States praised the Mechanism as a tool for the identification of gaps in their legal and institutional framework and as a catalyst for the implementation of anti-corruption measures.

8. Since the launch of the Mechanism, more than one sixth of the States have sought assistance from the United Nations Office on Drugs and Crime in drafting new legislation. States parties have asked for comments on draft laws to implement the Convention in the context of the implementation review process. Both formal training sessions and in situ assistance have contributed to building the capacities of national authorities to assess their own legislative and institutional framework.

9. More than 4,000 recommendations were issued by reviewers with regard to the implementation of chapter III of the Convention, including 136 general recommendations. While these recommendations were focused mostly on the need to implement legislative reforms, especially with regard to articles 15 to 25 on criminalization, other recommendations were aimed at reinforcing the existing institutional framework. Clear links exist between certain provisions of chapters II and III;[4] therefore, recommendations issued under the first review cycle would also address certain potential gaps in the implementation of the provisions under review during the second cycle. This was the case, for instance, with recommendations issued with regard to the independence of specialized authorities (art. 36) which might also have preventive functions (art. 6). In addition, more than 600 good practices were identified for chapter III of the Convention, including 58 general good practices.

10. With regard to chapter IV, more than 2,400 recommendations on international cooperation were issued during the first cycle. More than 320 of those recommendations were focused on legislative amendments, including recommendations to consider adopting stand-alone legislative frameworks and broaden the scope of the existing legislation. In addition, 62 general recommendations were issued and 56 general good practices were identified for chapter IV.

III. Measures taken with regard to criminalization and measures supporting criminalization (arts. 15–29)

11. Figures I and II present the number of recommendations issued and good practices identified with regard to articles 15 to 29 of the Convention on criminalization and measures supporting criminalization during the first review cycle.

[4] See CAC/COSP/2023/6, sect. IV.

Figure I
Number of recommendations issued with regard to criminalization and measures supporting criminalization per article

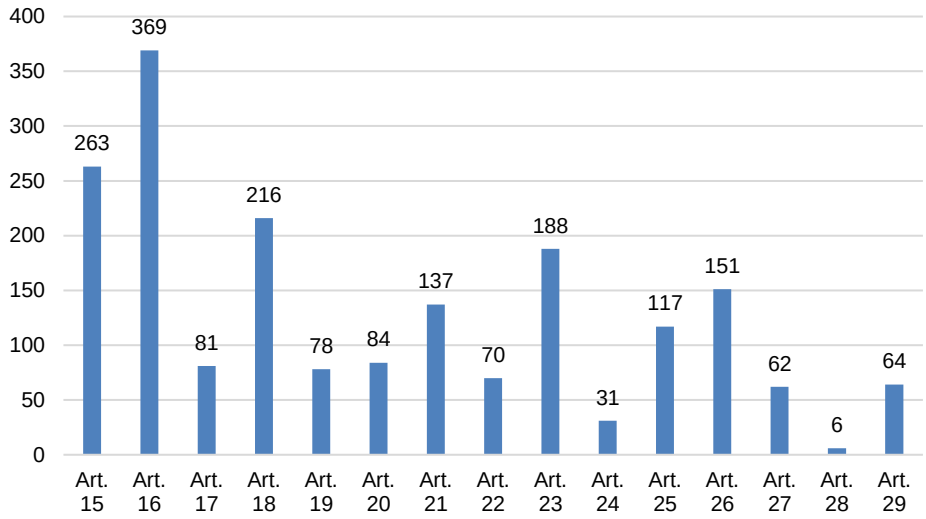
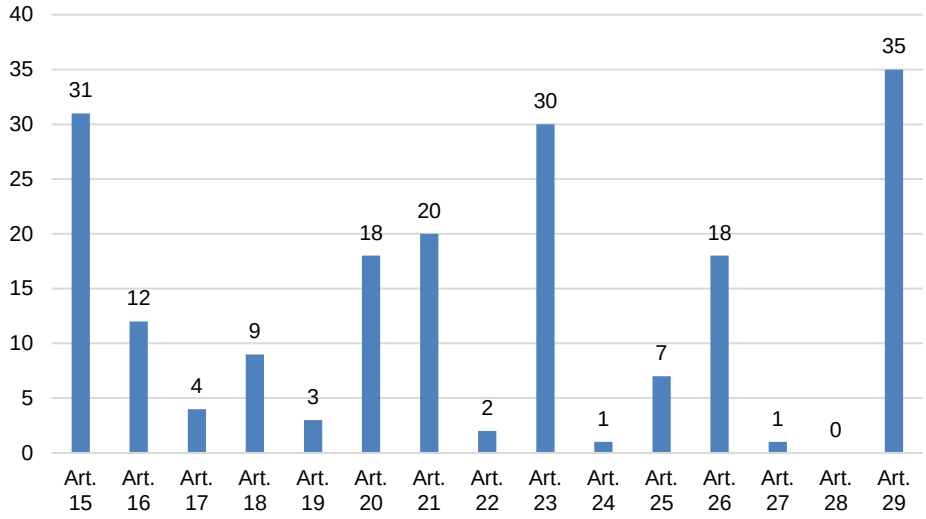


Figure II
Number of good practices identified with regard to criminalization and measures supporting criminalization per article



A. Bribery and trading in influence (arts. 15, 16, 18 and 21)

12. Measures to address recommendations issued with regard to article 15 (Bribery of national public officials), article 16 (Bribery of foreign public officials and officials of public international organizations), article 18 (Trading in influence) and article 21 (Bribery in the private sector) related mainly to the amendment or enactment of legislation. However, other measures were focused on considering the harmonization of sanctions, monitoring the effective implementation of the offences and raising awareness of the interpretation of certain related legal concepts.

13. Almost all States that replied to the note verbale had criminalized the bribery-related offences established in articles 15, 16 and 21 of the Convention. Certain elements of the offences as established in the Convention were missing, however, and recommendations were issued in that regard. To tackle such recommendations to broaden the scope of the offences, several States amended their legislation. For instance, Slovakia amended the definition of “public official” to

comply with that contained in article 2 (a) of the Convention, and it included in its legislation the possibility of committing bribery through intermediaries. Moreover, two States parties removed certain legislative requirements that did not allow for the full implementation of the offences as contained in the Convention: Italy removed the requirement by which the prosecution of bribery in the private sector could be started only by complaint of a victim, allowing for ex officio prosecution; and Saudi Arabia amended its legislation to remove the requirement of accepting the promise of a bribe.

14. States have also implemented a range of non-legislative measures to comply with the recommendations. In one instance, to address the recommendation to draw a clear distinction between the offer and the promise of a bribe, the Russian Federation issued an information letter to relevant officers on how to apply the two terms. Institutional measures were also implemented by other States. For instance, Saudi Arabia, while criminalizing bribery of foreign public officials and officials of public international organizations, also established a new department within the anti-corruption body to deal with such cases and conducted workshops to raise awareness of the offence. In this regard, another State maintained a number of publications that educate individuals and businesses on the risks of foreign bribery and discourage them from making facilitation payments and established a network that gathered public institutions, private companies, civil society, academia and the Government to raise awareness and prevent bribery.

15. In addition, although not yet finalized, some States were in the process of adapting their legislation to the requirements of the Convention. For instance, Sweden reported its intent to appoint an inquiry to review its current legislation on bribery, which would take into account international commitments and obligations such as the Convention.

16. With regard to article 18 of the Convention, the measures taken by the States that responded to the note verbale were all legislative, including its criminalization for the first time. Costa Rica criminalized the indirect trading of influence, and Saudi Arabia included the conduct of promising a bribe. Thailand also reported the existence of a bill that included the criminalization of active trading in influence.

17. Finally, while the Convention does not prescribe sanctions for each of the offences, Poland also reported the increase of penalties and establishment of new aggravated typologies.

B. Money-laundering and concealment (arts. 23 and 24)

18. Information on developments related to money-laundering did not always refer to criminalization. In this regard, some States, including Thailand and the United States of America, did report on the criminalization of, inter alia, the possession or use of property, knowing at the time of receipt that such property was the proceeds of crime or the activity of a person who knowingly conceals, falsifies or misrepresents material facts concerning the ownership or control of assets, or the source of funds in certain monetary transactions. As a result of a recommendation, one State also criminalized self-laundering.

19. States also adopted measures with regard to the predicate offences of money-laundering. According to article 23, paragraph 2 (a), of the Convention, each State party shall seek to apply paragraph 1 of the article to the widest range of predicate offences. Where the predicate offences were not sufficient, reviewers issued recommendations. In this regard, the State of Palestine indicated that it had amended its laws so that all offences could be considered predicate offences. In Costa Rica, reviewers issued a recommendation to include as predicate offences a comprehensive range of criminal offences established in accordance with the Convention, including where such offences cannot be punished by imprisonment for a term of four years or more. In this case, the State party decided to increase the punishment of some offences instead of lowering or removing the four-year threshold, leading to those offences being considered predicate offences. This is particularly important for compliance

with the dual criminality requirement on the implementation of international cooperation provisions (art. 44, para. 2) of the Convention.

20. Besides legislative reforms and measures, States also reported other measures implemented to enhance the anti-money-laundering framework. Measures to enhance the inter-institutional cooperation between the financial intelligence unit and the prosecution services to more effectively fight money-laundering were reported by Burkina Faso. For its part, Panama developed a guide for the investigation of money-laundering offences, which is available online.

21. No information was submitted on concealment. However, this can be explained by the relatively low number of recommendations issued for this article of the Convention (see figure I).

C. Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

22. Following recommendations made under the first review cycle, four of the States parties that submitted their response to the note verbale [5] amended their legislation to criminalize embezzlement, abuse of functions or illicit enrichment (arts. 17, 19 and 20 of the Convention). In particular, Saudi Arabia indicated that it had reversed the burden of proof for cases where there is a disproportionate increase of the income or patrimony of the public official.

23. The rest of the States parties that provided information reported measures not related to criminalization. Among the respondents to the note verbale, three States parties [6] reported the establishment of or intent to establish asset or financial declaration systems as a tool to detect or deter embezzlement and illicit enrichment, as well as the development of a guideline for public officials to understand their reporting obligations. Italy also opted to enhance its detection system through the establishment of a beneficial ownership register.

D. Obstruction of justice (art. 25)

24. Only the State of Palestine and Thailand reported on the measures taken on this provision of the Convention. Both had criminalized the obstruction of justice, although further analysis was not possible owing to a lack of additional information.

E. Liability of legal persons (art. 26)

25. Seven States parties provided new information on measures taken to establish the liability of legal persons in accordance with article 26 of the Convention. The majority of the recommendations among those States related to the extent to which the liability of legal persons applied. While those States had established that liability, it did not apply to all offences established in accordance with the Convention; in the case of one State, the liability did not cover public institutions and entities. Another State included a number of additional offences for which legal entities could be held liable, such as transnational bribery or illicit enrichment. For its part, Malaysia provided examples of legal persons that had been prosecuted for those offences. Yet another State party amended its legislation to remove the phrase “of a private law legal person”, thereby also including public entities.

26. In accordance with article 26 of the Convention, liability of legal persons can be criminal, civil or administrative. Not all responses were related to criminal

[5] Italy, Qatar, Saudi Arabia and State of Palestine.

[6] Burkina Faso, Panama and Poland.

liability. For instance, Belarus enacted a new Code of Administrative Offences, pursuant to which legal persons could be held accountable.

27. Another frequent element among responses to the note verbale was the existence of benefits for legal persons in case of cooperation with law enforcement authorities. In this regard, new legislation implemented in two States allowed for an exception to liability or the possibility of suspending the prosecution of legal persons in case of cooperation. These measures are closely linked to article 37, paragraph 2, of the Convention, on cooperation with law enforcement authorities.

28. In addition, Sweden emphasized the importance of penalties in the case of legal persons as a tool to counter profit motives that might be behind crimes in the business sector, and decided to multiply by 50 the maximum amount of corporate fines that could be imposed on legal entities.

F. Participation and attempt (art. 27)

29. No information was provided on measures taken after the first review cycle with regard to the establishment of participation and attempt as a criminal offence. However, this is one of the provisions with the lowest number of recommendations and good practices (see figures I and II).

IV. Measures taken with regard to the enhancement of criminal justice and law enforcement (arts. 30–42)

30. Figures III and IV present the number of recommendations issued and good practices identified with regard to articles 30 to 42 of the Convention on measures to enhance criminal justice and law enforcement during the first review cycle.

Figure III
Number of recommendations issued with regard to measures to enhance criminal justice and law enforcement per article

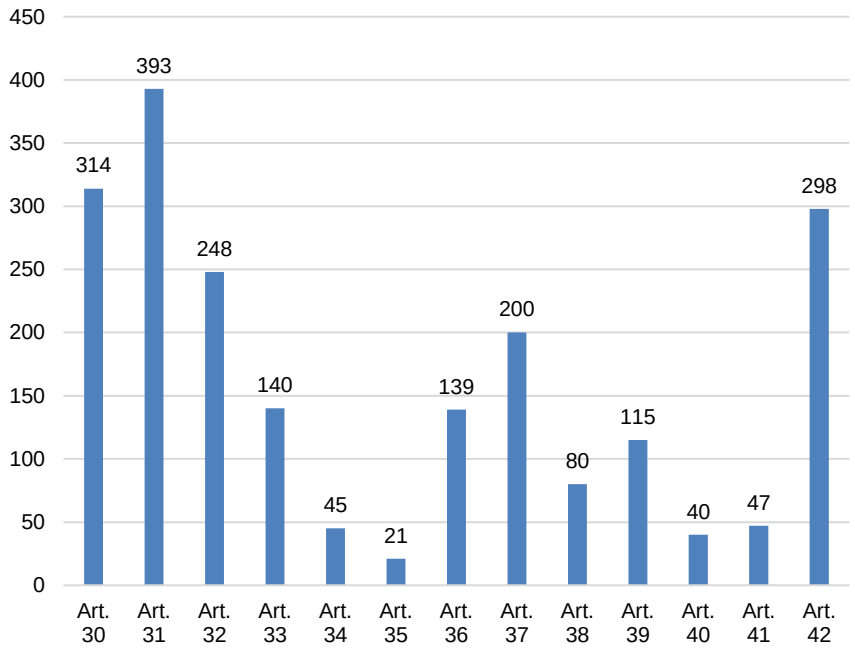
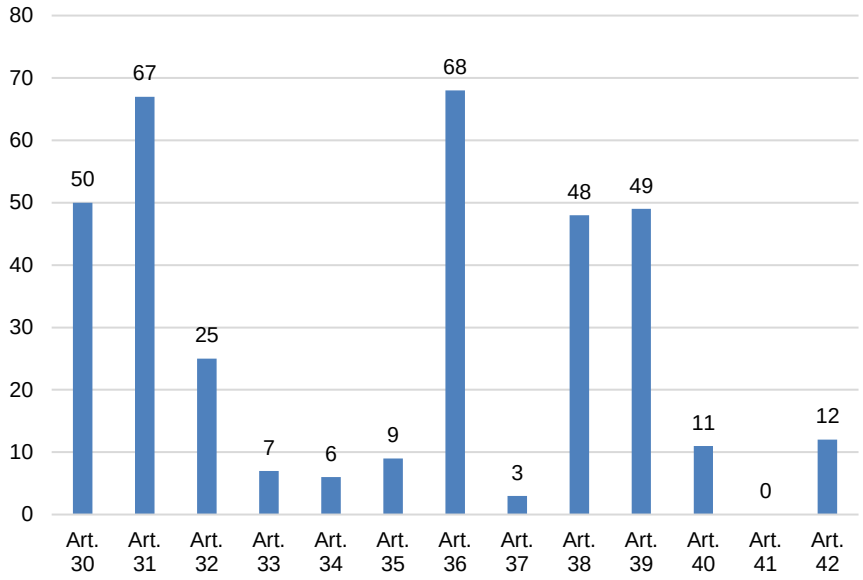


Figure IV
Number of good practices identified with regard to measures to enhance criminal justice and law enforcement per article



A. Prosecution, adjudication and sanctions, and cooperation with law enforcement authorities (arts. 30 and 37)

31. Articles 30 and 37 of the Convention cover a wide range of topics. Consequently, States reported on a variety of measures taken as a result of recommendations or observations made during the first review cycle.

32. One of the measures related to a recommendation to consider adopting a written policy on parole that sets forth the factors for consideration. In this regard, one State noted that its federal system of government did not allow legislating on a national level. However, each territory had its own guidelines and guidance material online and within prisons.

33. In Burkina Faso, reviewers issued a recommendation to ensure the independence of the prosecution services. In response to this recommendation, the State amended its legislation and prohibited the Ministry of Justice from issuing orders to prosecutors.

34. States also reported on measures taken with regard to the sanctions foreseen for offences established in accordance with the Convention. As was the case with a number of offences reviewed during the first cycle, some States reported having raised the penalties through legislative amendments. Following a recommendation, Thailand amended its legislation to ensure that the penalties took into account the criminal behaviour and the severity of the case, among other circumstances. It also received a recommendation related to the reintegration of offenders and, as a consequence, established a centre for assistance to reintegration and employment. This centre launched rehabilitation and pre-release programmes with the collaborative effort of experts and therapists to provide social reintegration services including psychological support, money management, career guidance, family reintegration and after-release support.

35. Finally, Thailand made reference to the cooperation between offenders and law enforcement authorities that might result in the exclusion of the liability of the accused person in case that person provides substantive assistance to the investigation. While States also provided information on the possibility of excluding the liability or reducing the punishment of the accused in case of cooperation with

law enforcement authorities under article 26 of the Convention (see sect. III.E above), the measures reported under article 37 went beyond legal persons.

B. Protection of witnesses and reporting persons (arts. 32 and 33)

36. In line with previous reports on this topic, the most common legislative and institutional reform related to the protection of witnesses and/or reporting persons.

37. The majority of States[7] that provided information on whistle-blower protection had adopted or were in the process of adopting new legislation in that regard, including public sector disclosure acts and legislation protecting persons who report acts of corruption. For Slovakia, the obligation to adopt such legislation also emanated from the European Union directive on the topic. Poland, which already had whistle-blower protection legislation in place, was in the process of developing a single and coherent whistle-blower protection system.

38. Legislative amendments were also undertaken for the purposes of updating and enhancing existing legislation. Reported amendments included extending the protection to anonymous reporters, expanding the range of persons who receive reports and expanding the definition of "whistle-blower" to include both current and former employees, officers and contractors.

39. Moreover, some States did not rely exclusively on specific whistle-blower or witness protection legislation. Rather, these States enacted legislation that included certain measures for the protection of such actors, including the protection of anonymous reporting persons and the possibility for witnesses to testify using technology.

40. Finally, Panama and Slovakia had established specialized institutions in charge of providing protection to whistle-blowers and persons intervening in criminal proceedings, including though the development of guidelines and policies to that end. Both reported additional measures for the correct functioning of the new institutions: Panama had established standard operating procedures for the institution; and Slovakia reported on campaigns to raise awareness about the existence and functioning of the institution.

C. Freezing, seizure and confiscation, and bank secrecy (arts. 31 and 40)

41. While most States parties provide in principle for the freezing, seizure and confiscation of proceeds of crime, a number of practical implementation challenges were observed during the first review cycle. From the responses received, most of the obstacles reported referred to the scope of property subject to freezing, seizure and confiscation. Through legislative reforms, States have regulated the implementation of those measures to transformed, converted and intermingled proceeds of crime, as well as income and other benefits derived from it. This was achieved by Burkina Faso and Saudi Arabia through the establishment of value-based confiscation. Thailand amended the definition of assets in its anti-money-laundering legislation in order to facilitate seizure and freezing of the proceeds of corruption.

42. Thailand and Slovakia also reported on the establishment of institutions, and corresponding legislation, entrusted with the management of seized and confiscated assets.

43. Only the United States reported on a measure taken with regard to bank secrecy: bank secrecy was limited by broadening the powers of the financial authority to request financial records from foreign banks.

[7] Argentina, Panama, Poland and Slovakia.

D. Statute of limitations and criminal record (arts. 29 and 41)

44. In the majority of States that replied to the note verbale with regard to the implementation of article 29, a recommendation was issued to amend their legislation and extend the statute of limitations, in general or with regard to specific offences established in the Convention. While some States [8] opted to simply make the amendments and extend the statute of limitations, others opted to adopt other measures to ensure that offenders can be prosecuted.

45. Burkina Faso opted to amend its legislation so that the statute of limitations would not commence until the offence was identified by the anti-corruption authority. Similarly, Thailand would suspend the statute of limitations in cases where the alleged offender had absconded. For Italy, reviewers were concerned about the length of judicial proceedings and its impact on the statute of limitations. In that case, a legislative reform covering both the criminal and civil jurisdictions entered into force with the aim of reducing the time between the start of proceedings and the rendering of a judgment.

46. No information was provided in response to the note verbale with regard to article 41 of the Convention on criminal record.

E. Jurisdiction (art. 42)

47. Only three States parties[9] referred to measures taken with regard to jurisdiction. In follow-up to a recommendation, Burkina Faso extended its jurisdiction to include offences committed on board a vessel that is flying its flag or an aircraft that is registered under its laws. In the same vein, Sweden extended its jurisdiction to cover bribery offences committed abroad if they were committed during the exercise of a national company's business activity, regardless of the citizenship of the person who committed the offence. Finally, the United States noted the extraterritorial jurisdiction that its legislation granted for certain offences, such as money-laundering.

F. Consequences of acts of corruption, and compensation for damage (arts. 34 and 35)

48. With regard to the measures implemented to address the consequences of corruption and to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation, only the State of Palestine and Thailand provided information. Both regulated mechanisms to ensure that acts and contracts that have resulted from or privileged by corruption could be annulled.

G. Specialized authorities and inter-agency cooperation (arts. 36, 38 and 39)

49. Another set of recommendations shared by the States parties that provided information in response to the note verbale were focused on the independence of the specialized authorities or authorities involved in the fight against corruption. In this regard, Austria tackled this concern by adopting a human resources plan in its anti-corruption institution and enacting provisions on recruitment. The process for the appointment of the head of the anti-corruption bodies was a concern in two States parties: Malaysia had not regulated the process for such appointments at the time of the review, and it reported an amendment in the national anti-corruption plan that included the establishment of a committee in Parliament to oversee the appointment

[8] Niger, Sweden and United States.
[9] Burkina Faso, Sweden and United States.

of the institution's chief. Poland also established a new procedure to appoint the head of the institution and limited the head's tenure and reappointments.

50. Lastly, in response to a recommendation addressing the lack of specialization of the investigators in a specialized agency, the Russian Federation reported having developed education and training courses for public officials and assistance personnel, among others.

51. Consistent with the findings of previous reports prepared by the secretariat, States highlighted the importance of sharing information in a secure and timely manner. Austria and Burkina Faso had developed cooperation frameworks that gather all institutions involved in the fight against corruption. Among other measures, the institutions hold regular coordination meetings. Burkina Faso had also established the National Committee for the Coordination of Activities against Money-Laundering and Terrorist Financing. Thailand reported different measures that it had implemented with the aim of increasing coordination among agencies in its jurisdiction, including capacity-building exercises, training and the exchange of intelligence.

V. Measures taken with regard to international cooperation (arts. 43–50)

52. A number of States parties[10] have adopted or are in the process of adopting regulations in the area of international cooperation in criminal matters as a consequence of the recommendations issued under the first cycle. One State party undertook a comprehensive review of the international crime cooperation law, which helped to streamline processes, allowed the enforcement of foreign non-conviction-based proceeds of crime orders from any jurisdiction and increased the range of law enforcement tools available to assist other countries.

53. In response to the note verbale with regard to measures taken after the completion of the implementation reviews, several States[11] referred to legislative amendments relating to the implementation of chapter IV on international cooperation. Several participants in the Implementation Review Group also reported on domestic reforms and measures taken to address the outcomes of reviews, including through legislative amendments, institutional reforms, training and capacity-building. Slovakia reported that the Ministry of Justice had prepared a draft code on judicial cooperation in criminal affairs, which reflects new trends and practical experiences. The proposed legislative amendment would be subject to public legislative consultation before the end of 2023.

54. The legislative amendments to the framework of international cooperation with a view to combating corruption highlight the high priority given by many national Governments to eliminating barriers to international cooperation and reinforcing the existing frameworks for extradition, mutual legal assistance and law enforcement cooperation. The recommendations issued during the first review cycle played a significant role in triggering change not only in terms of legislative amendments but also in terms of the accompanying institutional reform. Several States parties highlighted how task forces, national committees and working groups had been established or continued to operate after the completion of the review process. Panama reported the creation of a technical inter-institutional committee of central authorities and authorities in charge of managing requests for international cooperation in criminal matters, which had an impact on the evaluation of policies and facilitated the issuance of indicators and exchange of statistics. The State of Palestine was in the process of preparing draft legislation on international cooperation

[10] Burkina Faso, Costa Rica, Italy, Mexico, Panama, Slovakia, Thailand and Viet Nam, among others.

[11] Burkina Faso, Costa Rica, Italy, Mexico, Panama, Republic of Moldova, Russian Federation, Slovakia and Thailand, among others.

in criminal matters, which provides for the creation of a specialized committee that will address, inter alia, implementation gaps with regard to extradition.

55. Legislative reforms were also positively affected or influenced by legislative trends at the regional level. For instance, in Slovakia the Act on the Execution of Orders Freezing Property or Evidence in the European Union was also reflected in the country's international cooperation reform but in a limited way. A comprehensive reform of the European Union legislation allowed for more flexibility in the legal framework.

56. Some States parties [12] reported having taken measures to enhance internal inter-agency dialogue, cooperation and coordination Through the establishment of dedicated units. Burkina Faso indicated that the recommendations issued during the outcome of the first cycle had a positive impact on its domestic inter-agency cooperation on the fight against corruption through a biannual gathering of all relevant stakeholders and an expansion of exchanges with counterparts from the same region. The Russian Federation reported the signature in 2022–2023 of six multilateral inter-agency cooperation agreements which cover, inter alia, issues related to combating acts of corruption. Under these agreements, it is possible to exchange experiences in combating corruption offences and discuss the main areas of activity of prosecutor's offices in the anti-corruption sphere. A significant step was the signature of a regional cooperation agreement. This inter-agency development was interlinked with a set of concerted measures taken to improve the effectiveness of efforts to recover assets obtained as a result of corruption offences and the work of an interdepartmental working group on the recovery of assets established under the auspices of the Office of the General Prosecutor, whose meetings systematically consider the introduction of amendments to domestic legislation aimed at improving the effectiveness of asset recovery activities. In addition, the Office of the General Prosecutor developed interdepartmental methodological recommendations on the tracing, detection, seizure and return of assets (including those transferred to third parties) in the investigation of corruption offences, which had been coordinated with other institutions.

57. Some States reported concluding or being in the process of negotiating treaties to facilitate extradition and mutual legal assistance. From this group, the Russian Federation reported that the Office of the General Prosecutor had concluded more than 100 bilateral cooperation agreements, which cover, inter alia, anti-corruption matters. Argentina reported the conclusion of more than 20 international cooperation agreements, more than a quarter of them focused on extradition. Viet Nam reported that it had renegotiated treaties to provide for a legal basis that would allow the recovery of assets and extensive cooperation with counterparts.

58. A common recommendation on chapter IV was to consider the allocation of adequate resources to further strengthen the efficiency and capacity of international cooperation mechanisms; the responses to the questionnaire were focused on the provision of training to practitioners, active participation in international and regional networks, platforms and forums aimed at promoting international cooperation, and the use of technology. States also referred to the use of electronic databases to track, monitor and follow up on international cooperation requests.

59. The Russian Federation found it very useful to provide and receive ad hoc targeted technical assistance in the form of training or advisory services throughout the Mechanism cycle, that is, not only in response to the findings of the review but also during the initial preparatory stages of the second cycle, allowing the relevant stakeholders to strengthen their expertise.

60. Figures V and VI present the number of recommendations issued and good practices identified with regard to chapter IV (International cooperation) during the first review cycle.

[12] Argentina, Burkina Faso, Panama and Russian Federation.

Figure V
Number of recommendations issued with regard to international cooperation per article

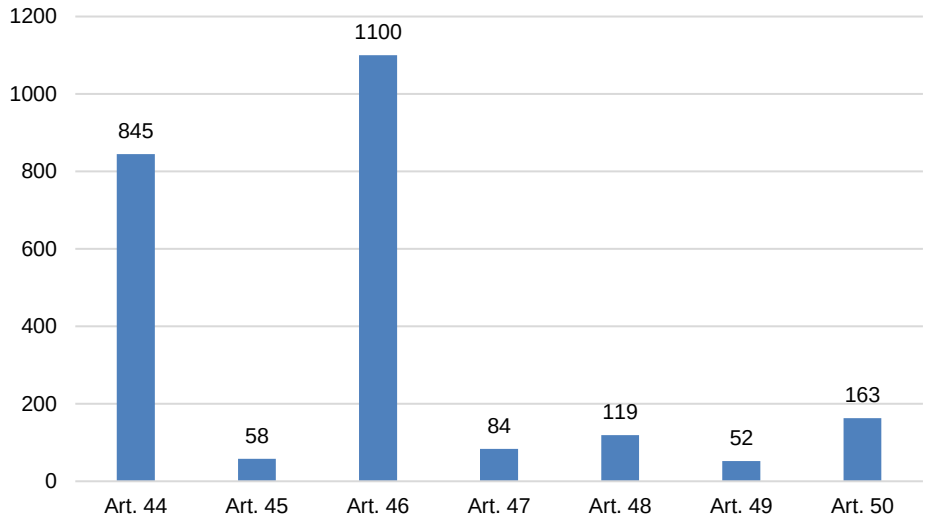
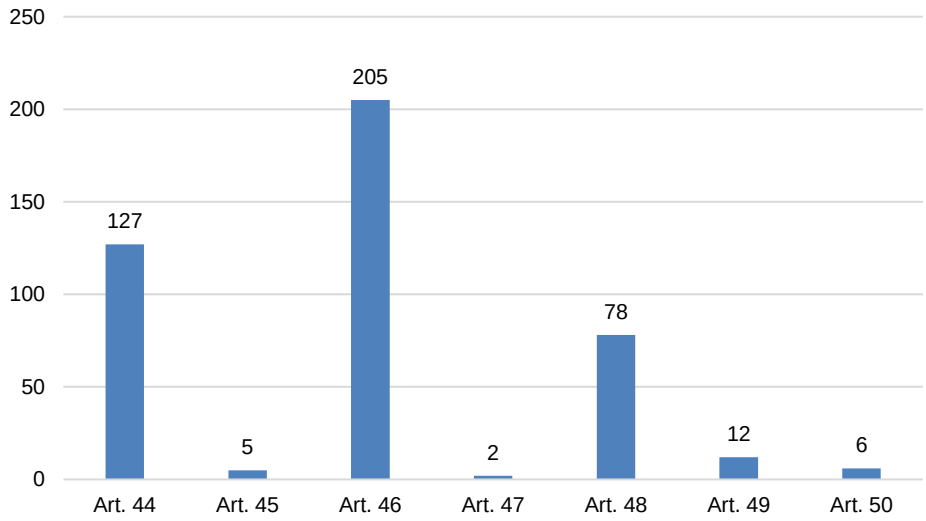


Figure VI
Number of good practices identified with regard to international cooperation per article



A. Extradition, transfer of sentenced persons, and transfer of criminal proceedings (arts. 44, 45 and 47)

61. Regarding extradition proceedings, two States parties introduced the procedure of consent-based extradition through new laws on international cooperation in criminal matters, covering all types of cooperation. Three States[13] explicitly set out the dual criminality principle in their domestic legislation. Panama coupled this reform with other procedural and substantive legislative amendments. Burkina Faso and the Niger reported on reforms in their domestic legal systems, through a modification of extradition provisions in their criminal codes or codes of criminal procedure, allowing for flexibility in extradition with regard to the legal basis for receiving or sending extradition requests, where a treaty basis would not be deemed necessary. States are seizing this opportunity of legislative reform to analyse the gaps,

[13] Costa Rica, Panama and Qatar.

strengths and weaknesses of their legal systems and institutional arrangements needed to conclude a successful legislative amendment.

62. A common recommendation on article 44 (Extradition) was to ensure that all offences established in accordance with the Convention are extraditable, such as by: (a) using the Convention as a legal basis for cooperation on extradition; (b) 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; and (c) relaxing the strict application of the dual criminality requirement and granting extradition even for those offences that are not punishable under domestic laws. While the majority of the respondents of the questionnaire did not refer in particular to the flexible interpretation of the dual criminality requirement in extradition cases, some referred to efforts made on the criminalization side. Furthermore, some States referred to the expedition of extradition proceedings through channels such as the International Criminal Police Organization (INTERPOL) and electronic communication.

63. States were required to ensure that extradition proceedings are carried out in the shortest possible time and to simplify and streamline procedures and evidentiary requirements relating thereto. Similarly, they were required to expedite the execution of mutual legal assistance requests (art. 44, para. 9, and art. 46, para. 24). Expeditious processing of requests was also reported as a consequence of reforms. In Argentina, for instance, it was allowed to accept electronic signatures and scanned documents in requests processed in the framework of a treaty. Another State conducted monitoring of legislative reforms that had taken place five years before. The outcome of this stocktaking exercise was the streamlined procedures for the processing of extradition requests. One State explained how its administrative procedures had been simplified through the use of information technology to facilitate citizens' access to the relevant decision-making procedures of public authorities.

64. For extradition proceedings and mutual legal assistance, a common challenge was to put in place and render fully operational information systems that systematically compiled information on requests for various forms of international cooperation, with a view to facilitating the monitoring of such requests, assessing the effectiveness of the implementation of international cooperation arrangements, and gathering comprehensive statistics. More than 50 recommendations were issued in this regard under the first review cycle. Several States [14] reported adopting information systems that systematically compiled statistical data and information on extradition and mutual legal assistance cases, with a view to similarly facilitating the monitoring and tracking of such cases and assessing the effectiveness of implementation with regard to, among others, the duration of mutual legal assistance provision and extradition proceedings. In Costa Rica and Panama, the compilation of statistical data was linked to the creation or existence of bodies in charge of international criminal matters.

65. Information technology was also noted to be of increased importance in the context of training activities. These measures underscored the cross-cutting nature of the use of information technology, as such tools could be leveraged in many different areas to better implement the Convention. Several States highlighted the importance of sharing information in a secure and timely manner. In this context, an increased use of measures harnessing information technology and e-systems to more effectively and efficiently address issues raised in the context of the review was reported by those States.

66. Other recommendations, such as the need to engage in informal consultations with requesting States before refusing extradition and mutual legal assistance requests (art. 44, para. 17, and art. 46, para. 26), could be deemed to have been addressed from responses that referred to the close communication and consultations between central authorities for mutual legal assistance, including the possibility of accepting and reviewing requests informally before submission of a formal request.

[14] Argentina, Costa Rica, Panama, Russian Federation and United States.

67. A number of international cooperation recommendations were not reported as addressed, including the introduction of lower standards of proof in extradition proceedings in order to make it easier for requesting States to formulate an extradition request with better chances of success, and the need to consider engaging in consultations with the requesting party before refusing an extradition, and allowing or expanding the practice of spontaneous transmission without a prior request.

68. Another common recommendation was to 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. In response to the note verbale, Burkina Faso reported that no measures had been taken with regard to article 45 of the Convention on the transfer of sentenced persons. Regarding the transfer of criminal proceedings, Thailand addressed it in its Anti-Corruption Act of 2018, providing a procedural framework as required in the recommendation issued. The State of Palestine is in the process of addressing the transfer of criminal proceedings in its bill on international cooperation.

B. Mutual legal assistance (art. 46)

69. The lack of enabling legislation to fully implement the provisions of article 46 was noted, and in numerous cases recommendations were issued for States parties. Similar to extradition, in their accounts of measures taken after the completion of the implementation reviews, several States[15] also referred to legislative amendments relating to the implementation of chapter IV on international cooperation, in particular in the field of mutual legal assistance. The Congo is considering the review of costs of mutual legal assistance requests, bearing in mind the exigencies of articles 46 and 57 of the Convention.

70. More than 45 recommendations were issued under the first cycle on the need to enhance the treaty framework and to consider entering into (further) bilateral or multilateral cooperation agreements or arrangements, including with countries from other geographical regions. Some States that replied to the note verbale[16] reported concluding or being in the process of negotiating treaties to facilitate extradition and mutual legal assistance and continuing to sign and ratify agreements and memorandums of understanding on mutual legal assistance in criminal matters. Panama reported that, in response to a recommendation encouraging the expansion of its network of mutual legal assistance treaties, further bilateral agreements and memorandums of understanding were signed, with several more in various stages of negotiation. One State party had included provisions contained in the Convention in its bilateral mutual legal assistance agreements. Another State reported that it had encouraged the inclusion of asset recovery measures in all new agreements and treaties on mutual legal assistance in criminal matters.

71. In Panama, the inter-institutional technical committee issued a guidance note on good practices of central authorities and entities in charge of processing international cooperation requests on criminal matters, with a view to facilitating the successful processing of requests as well as strengthening communication among central authorities. The Niger referred to the acceptance of oral requests, subject to further confirmation in the following 24 hours, accepting different means of communication.

72. Information technology tools were mentioned by several respondents to the questionnaire[17] in the context of easily rendering information available for operational purposes in relation to international cooperation. Examples included the establishment of a case management system to monitor extradition and mutual legal assistance cases and the introduction of new legislation on telecommunications, providing the possibility of entering into agreements to allow domestic authorities to

[15] Burkina Faso, Costa Rica, Italy, Mexico, Panama, Republic of Moldova, Russian Federation, Slovakia, Thailand and Viet Nam, among others.

[16] Argentina, Belarus, Burkina Faso, Panama and Russian Federation.

[17] Argentina, Panama and Slovakia, among others.

obtain electronic information from service providers in other jurisdictions without the need for a formal request. By allowing law enforcement authorities to easily access information electronically without a court order, mutual legal assistance could be provided more efficiently. Argentina reported that information technology proved instrumental in facilitating mutual legal assistance, reporting on the website developed by the central authority, an electronic document processing system that allowed better monitoring of requests and the use of electronic signatures, and an internal communication system. Slovakia reported that digitalization was an important part of the modernization of the judicial system, allowing exchange with regional partners, with a direct impact on the availability of statistics for judiciary and prosecution services. The current challenge for this State party is the interoperability of systems. Another State reported that timelines for processing and executing requests were set in the internal workflow processes of the central authority and documented under this institution's internal database.

73. The enhanced and active use of information technology solutions had already been reported in a previous note by the Secretariat (CAC/COSP/EG.1/2023/CRP.1), and this trend continued to be reflected by an increasing number of States.

C. Law enforcement cooperation, joint investigations, and special investigative techniques (arts. 48–50)

74. It was recommended that States parties take steps to enhance law enforcement cooperation and conclude agreements or arrangements to allow the competent authorities responsible for the investigation of corruption offences to establish joint investigative teams with law enforcement agencies in other jurisdictions. In their responses to the note verbale, some States parties[18] reported having taken measures to enhance internal inter-agency dialogue, cooperation and coordination through the establishment of legislative and institutional reforms. Regarding the measures taken on law enforcement cooperation, Belarus specifically referred to the active development of cooperation with law enforcement agencies of other States parties to the Convention and its active participation in regional organizations. Viet Nam referred to the issuance of legislation with a positive impact on special investigative techniques. Poland reported organizing an international conference on law enforcement cooperation in 2022.

75. In law enforcement cooperation, informal channels of communication among States have been highlighted as key factors for international cooperation, including direct contacts between central authorities, law enforcement agencies and financial intelligence units. States parties reported that participation in the first cycle and working with counterparts in the framework of the Mechanism facilitated such informal contacts.

76. Three States[19] highlighted the importance and positive impact of participation in regional and international forums and asset recovery networks for information exchange and coordination, which would help to overcome the obstacles encountered in law enforcement cooperation. The Russian Federation reported that three national authorities were members of the Global Operational Network of Anti-Corruption Law Enforcement Authorities, and Saudi Arabia referred to the positive impact of the Network. Poland referred to extended cooperation with 54 countries and 13 international organizations, as well as working meetings held with liaison officers of the same regional group.

77. States parties reported on the organization of joint anti-corruption training workshops and capacity-building exchange programmes with a view to strengthening cross-border law enforcement cooperation (art. 48). Information-sharing among authorities has contributed to a frank and constructive global dialogue on corruption

[18] Belarus, Burkina Faso, Mexico, Panama, Russian Federation and Viet Nam.
[19] Niger, Russian Federation and Saudi Arabia.

across regions and legal systems. Several States emphasized the value in the exchange of best practices and the day-to-day exchange of information relating to operational and investigative activities conducted by the services of other countries.

78. While several States reported that they had experience with extradition and mutual legal assistance prior to the reviews, many States had limited experience in the area of international law enforcement cooperation, aside from the INTERPOL information-sharing system. Some States reported on the strengthening of regional initiatives to implement the requirement for law enforcement cooperation under the Convention.

79. Some of the legislative amendments had been made to enable authorities to access information held on and communicated between electronic devices to better assist international law enforcement partners with the aim of further ensuring rapid access to information in corruption cases.

80. The responses to the note verbale did not address the use of joint investigation teams in transnational corruption cases (art. 49).

81. On special investigative techniques (art. 50), it was recommended that States take measures to allow competent authorities to use special investigative techniques and to make evidence derived therefrom admissible in courts. In general, States reported the wide use and application of special investigative techniques in corruption cases, both domestically and internationally, during their country reviews. The issue was not addressed in the responses to the note verbale.

VI. Outlook

82. The responses to the note verbale, coupled with the additional information from statements and interim submissions, have allowed for a deeper and extensive analysis that demonstrates the impact of the Mechanism not only during the first cycle but also for the second cycle.

83. Reports on follow-up actions taken by States parties to implement chapters II and V of the Convention confirm the impact and benefits of participation in the review of implementation of chapters III and IV of the Convention. The reviews helped to identify challenges, led to recommendations from peer reviewers, and facilitated the exchange of information and best practices from other countries that served as a basis for drafting particular solutions in specific areas.

84. While the findings of the implementation review generally resulted in individual measures at the national level, the proper implementation of the Convention, including its provisions on international corruption, has an impact beyond national borders.

85. Furthermore, as States take action on recommendations that emerged from the first review cycle while they undergo their second cycle reviews, the interlinkages among the four substantive chapters of the Convention become ever more evident.

86. As more data become available from completed country reviews for both cycles, and while the secretariat will strive to provide more comprehensive analysis of trends and additional nuances, the reports detailing follow-up actions taken by the States parties will offer valuable insights into the Mechanism’s impact and demonstrate the progress made in implementing the Convention.