



Conference of the States Parties to the United Nations Convention against Corruption

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International cooperation

International cooperation in civil and administrative proceedings for the detection of offences established in accordance with the United Nations Convention against Corruption

Note by the Secretariat

I. Introduction

1. At its sixth session, held in Saint Petersburg, Russian Federation, from 2 to 6 November 2015, the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 6/4, entitled “Enhancing the use of civil and administrative proceedings against corruption, including through international cooperation, in the framework of the United Nations Convention against Corruption”.
2. In that resolution, the Conference, inter alia, invited Member States to continue to provide to the Secretariat information on civil and administrative proceedings relating to corruption, when feasible and on a voluntary basis, in order to identify the scope of assistance that could be provided in relation to such proceedings, as well as to provide information about good practices and tools relevant to the implementation of article 53 of the Convention, and requested the Secretariat to continue collecting and disseminating such information by, inter alia, reporting to the Conference and its relevant subsidiary bodies, including by providing suggestions regarding technical assistance needs and mechanisms to provide such assistance, and developing a study to identify best practices and ways to facilitate cooperation on the matter, subject to the availability of resources.
3. In the same resolution, the Conference also called upon Member States to inform the Secretariat about designated officials or institutions appointed, where appropriate, as focal points in the matter of the use of civil and administrative proceedings against corruption, including for international cooperation, and requested the Secretariat to collect and make such information available to all States parties and to report on the matter to the Conference and its relevant subsidiary bodies.
4. The purpose of the present background paper is to inform the Conference about the actions that have been taken by the Secretariat to implement resolution 6/4.

* CAC/COSP/2017/1.



II. Update on the status of implementation of Conference resolution 6/4

A. Collection of information on civil and administrative proceedings relating to corruption and on focal points in the matter of the use of civil and administrative proceedings against corruption

Request for information

5. In order to facilitate the implementation of the above-mentioned mandates contained in resolution 6/4, the secretariat prepared a draft questionnaire requesting from States parties information on the practical issues they encounter when requesting and providing assistance in investigations of and proceedings in civil and administrative matters relating to corruption offences, with a view to using that information as a basis for a possible study to identify the best practices and ways to facilitate cooperation on the matter, as requested in resolution 6/4. The secretariat distributed the draft questionnaire to the attention of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption, held in Vienna on 17 and 18 November 2016. During the meeting, the experts provided suggestions for the further improvement of the questionnaire, which were taken into account by the secretariat in preparing the final version of the questionnaire.

6. The secretariat sent to Member States a note verbale dated 17 January 2017, as well as a reminder note verbale dated 8 May 2017, seeking information from States parties on the issues identified above. The notes verbales also contained the finalized version of the questionnaire on the practical issues States parties encounter when requesting and providing assistance in investigations of and proceedings in civil and administrative matters relating to corruption, as well as a form to be filled out by national focal points for international cooperation in the use of civil and administrative proceedings relating to corruption.

7. As of 7 August 2017, 37 Member States had provided responses.

8. The extent of information provided varied considerably. While a few States provided comprehensive information covering all the aspects as requested in the notes verbales, i.e., information on civil and administrative proceedings in the context of international cooperation, information on practices and tools relevant to the implementation of article 53 and information on focal points in the matter of the use of civil and administrative proceedings against corruption, some States provided limited information covering only certain parts of the requested information. Some States notified the secretariat that they did not have information available on civil and administrative measures relating to corruption.

9. All the responses received from Member States containing substantive information are summarized below.

Afghanistan

Focal point

10. Afghanistan reported that its High Office of Oversight and Anti-Corruption was designated as the focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Bahrain

Civil and administrative proceedings and good practices and tools relevant to the implementation of article 53 of the Convention

11. Bahrain reported that it was possible under its domestic legislation to file a civil action if the plaintiff had a personal and direct interest in the claim.

12. In civil cases, the law permitted other parties, whether natural or legal, to participate in proceedings if they considered themselves to hold a right to the disputed assets or deserving compensation.

13. The civil court could take measures aimed at preserving the disputed right, such as the seizure of the asset or preventing the defendant from travelling, when an illicit transfer of money for the purpose of obstructing or delaying the execution of the judgment was likely to occur.

14. Claims for compensation could be filed either before the criminal court, when judging the criminal offence, or by a submission before the civil court, after providing evidence regarding the damage sustained.

15. In criminal cases, the injured party could claim compensation before the prosecution or before the court. The law guaranteed the rights of bona fide third parties.

International cooperation, including best practices, and ways to facilitate it

16. Bahrain received several assistance requests related to investigations of misappropriation of public and private funds, abuse of power, laundering of proceeds of crime, and concealment. Types of assistance requested included the disclosure of banking accounts, tracing and seizure of funds, interrogating accused persons, hearing witnesses, requesting documents and executing confiscation orders. The Convention had been used as a legal basis for requests that Bahrain had been involved in.

17. Bahrain reported that challenges in international cooperation were rare and consisted mainly of delays in procedures and the absence of requested information.

18. Bahrain suggested that the adoption of a unified guiding instrument on the implementation of international cooperation requests at the level of law enforcement authorities and the judiciary could be a useful tool for States parties. The document should be binding in nature and should contain the necessary requirements and conditions to be observed in the requests and their implementation. Such a document could be annexed to the Convention in the form of a protocol.

Focal point

19. Bahrain designated its General Directorate of Anti-Corruption and Economic and Electronic Security as the focal point agency for the purposes of receiving requests on civil and administrative measures relating to corruption.

Bosnia and Herzegovina

International cooperation, including best practices, and ways to facilitate it

20. Bosnia and Herzegovina reported that it had not received or submitted assistance requests related to administrative proceedings in corruption cases.

Focal point

21. Bosnia and Herzegovina designated the Agency for the Prevention of Corruption and the Coordination of the Fight against Corruption (APIK), as well as bodies for the prevention of corruption at all levels of its government, such as its Ministry of Justice and the Judicial Commission in Brčko district, as focal agencies for international cooperation in the use of civil and administrative proceedings.

Brazil

International cooperation, including best practices, and ways to facilitate it

22. With regard to requests on both civil and administrative measures, Brazil indicated that it had experience in submitting requests pursuant to the provisions of the Convention. For some requests, other conventions were used as a legal basis, such as the United Nations Convention against Transnational Organized Crime and the

Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

23. Brazil's competent authorities could generally request many types of assistance in civil and administrative proceedings, ranging from obtaining documents such as bank records to obtaining evidence collected in foreign investigations. Another main type of assistance requested was the freezing of assets, followed by the request of recovery of those assets.

24. Brazil further reported that requested authorities had generally demonstrated the goodwill to execute Brazilian requests for assistance. Nevertheless, in the majority of cases, it was necessary to provide additional information about the Brazilian legal system, the competence of the requesting authority, its role in Brazil, and the nature and purposes of civil and administrative proceedings in Brazil. For example, Brazil's legal system included some specific proceedings such as "the improbity proceeding", compensation for damages caused by acts of corruption, disciplinary proceedings, and procedures for the application of fines applied by the Office of the Comptroller General of Brazil.

25. Many authorities were not used to dealing with requests originating in civil and administrative proceedings. In such cases, Brazilian authorities had to transmit civil and administrative cooperation requests through channels regularly used for cooperation on criminal matters and explain the links between those proceedings and corruption offences. However, some countries' central authorities demonstrated a willingness to understand how civil and administrative proceedings work and how to apply article 43 of the Convention.

26. Brazil communicated that the following measures could facilitate cooperation.

27. The central authority designated for the United Nations Convention against Corruption should be the same one as for other conventions in order to facilitate the transmission of mutual legal assistance requests.

28. Because of the sensitivity of many cases, States should observe the degree of confidentiality demanded by the requesting authorities in order to avoid a negative impact on the investigation of corruption cases.

29. Competent authorities of each State party should make efforts to fully implement article 43 of the Convention, in order to widen the possibilities of cooperation including in civil or administrative proceedings related to corruption. Such cooperation would also strengthen the fight against corruption.

30. Finally, States parties should make efforts to fully implement Conference resolution 6/4.

31. Brazil reported a good practice in requesting assistance relevant to administrative measures: to send a mutual legal assistance request to obtain evidence for a criminal proceeding. After receiving a response which fulfilled the requested requirements, an additional request could be sent asking for the extension or the sharing of the evidence produced in administrative proceedings related to corruption.

32. With regard to practical tools, Brazil referred to the Group of 20 (G-20) guide on requesting international cooperation in civil and administrative proceedings relating to corruption, the development of which Brazil had been leading under the auspices of the G-20 Anti-Corruption Working Group.

Focal point

33. Brazil had designated the Department of Asset Recovery and International Legal Cooperation of the Ministry of Justice and Public Security of Brazil as the focal agency for international cooperation in the use of civil and administrative proceedings relating to corruption. Brazil indicated that requests must be made in writing but could also be transmitted electronically.

Brunei Darussalam

International cooperation, including best practices, and ways to facilitate it

34. Brunei Darussalam reported that it had never requested or received a request from other States to provide international cooperation in civil or administrative proceedings relating to corruption.

35. To facilitate such cooperation, Brunei Darussalam suggested developing a legislative guide on the issue and promoting the sharing of experience with other States parties.

Focal point

36. Brunei Darussalam had designated its Attorney General's Chambers as the focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Colombia

International cooperation, including best practices, and ways to facilitate it

37. Colombia stated that neither the Office of the Comptroller General nor the Office of the Prosecutor General had ever received or submitted a request for international cooperation in civil proceedings involving corruption. The Office of the Comptroller General did not have a mandate for civil proceedings.

38. Regarding administrative proceedings, the National Directorate for Special Investigations of the Office of the Prosecutor General had made one request using the Convention as the legal basis. However, the request was temporarily denied by a requested State due to a confidentiality clause protecting defendants in the proceeding.

39. The Office of the Comptroller General had made requests in accordance with Chapter V of the Convention.

40. Additionally, Colombia indicated that the Prosecutor Delegate for Public Contracting of the Office of the Prosecutor General had received requests for international cooperation in administrative proceedings for the communication of procedural acts (e.g., service of process, subpoenas and legal notices), which were usually processed with the assistance of the Ministry of Foreign Affairs.

41. Colombia presented a list of good practices including the following: (a) the systematization and wider distribution of institutional information on civil proceedings; (b) the conclusion of specialized international instruments in that field, similar to the Council of Europe Civil Law Convention on Corruption of 1999; and (c) the coordination of requests from States parties through the network of focal points, such as the Global Focal Point Network on Asset Recovery of the Stolen Asset Recovery (StAR) Initiative and the International Criminal Police Organization (INTERPOL).

42. In addition, the suggestion was made to improve international cooperation in civil and administrative proceedings. For example, measures could be taken to raise awareness of the requirements of the Convention among States. Such measures could include the organization of tailored training sessions for the heads and directors of competent agencies on specific articles of the Convention. One of the outcomes of such training sessions could be the establishment of international standards for the production of evidence based on the requirements of the Convention and universally recognized human rights standards. Furthermore, the United Nations Office on Drugs and Crime (UNODC) legal library could be updated by adding the information on civil and administrative measures provided by States.

Côte d’Ivoire

International cooperation, including best practices, and ways to facilitate it

43. Côte d’Ivoire stated that it had never requested or received a request from other States to provide international cooperation in civil proceedings relating to corruption.

44. Côte d’Ivoire proposed creating platforms for information exchange, promoting dialogue among focal points, harmonizing or simplifying the procedures for cooperation requests, evaluating activities and strengthening the capacities of relevant authorities, and putting in place information and security systems in order to facilitate international cooperation in such matters.

Focal point

45. Côte d’Ivoire designated two authorities as its focal points: the National Unit for the Processing of Financial Information Treatment (CENTIF-CI) and the Directorate of Civil and Criminal Affairs of the Ministry of Justice.

Ecuador

International cooperation, including best practices, and ways to facilitate it

46. Ecuador informed that the National Court of Justice was the competent authority to process letters rogatory but that it had only received requests for international cooperation in criminal matters.

47. The Council of the Judiciary was the body responsible for management, oversight and discipline in the judiciary of Ecuador. The Council’s National Subdirectorates for Disciplinary Control reported that it had not made any requests for international cooperation in administrative proceedings involving corruption.

48. Ecuador proposed that States could consider the possibility of accepting requests made electronically as a measure to facilitate international cooperation.

49. The country also highlighted as a good practice the support of INTERPOL in the transmission of assistance requests.

France

International cooperation, including best practices, and ways to facilitate it

50. France explained that it had never requested or received requests from other States to provide international cooperation in civil or administrative proceedings relating to corruption. It noted that this type of procedure did not exist under French law, but requests for cooperation could be treated under the criminal law if they fulfilled certain conditions.

Germany

International cooperation, including best practices, and ways to facilitate it

51. Germany reported that it had not registered any cases referencing civil matters relevant to the Convention.

52. Germany also stated that there was cooperation in administrative measures aimed at investigating and prosecuting legal persons for regulatory offences and imposing related asset recovery measures. In such matters, cooperation was, in general, possible via criminal mutual legal assistance channels; and therefore this had not caused any specific practical problems for German authorities.

Focal point

53. Germany’s competent authorities depended on the State requesting assistance and the channels of communication foreseen in a treaty or German law. Such contact information could be obtained through the German Federal Office of Justice.

Guatemala

International cooperation, including best practices, and ways to facilitate it

54. Guatemala explained that its judiciary had had no experience of sending or receiving assistance requests related to corruption.

55. However, it highlighted that the Ministry of Government had instruments and mechanisms through which it could provide cooperation in civil and administrative proceedings relating to corruption if requested by other States parties to the Convention.

56. Guatemala referred to the use of information and communications technology tools to expedite the processing of requests, and the establishment of a permanent and continuous system for the sharing of information among judicial bodies. These measures were established to address any issues related to the lack of knowledge about procedures or formalities that could hinder the timely response to requests.

Focal point

57. The Presidential Commission for Transparency and Electronic Government, the Office of the Attorney General and the Superintendency of Tax Administration were indicated as the focal points of Guatemala for international cooperation in civil and administrative proceedings relating to corruption.

Lao People's Democratic Republic

Focal point

58. The Lao People's Democratic Republic designated the International Relations Department of the Ministry of Public Security as its focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Lebanon

Focal point

59. Lebanon designated the Ministry of Justice as its focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Malta

International cooperation, including best practices, and ways to facilitate it

60. Malta explained that while its Permanent Commission against Corruption had powers to investigate cases of corruption, it had no powers to recover the proceeds of crime. The Commission had never requested or received a request for assistance from other States for assistance.

Myanmar

Focal point

61. Myanmar designated the Investigation Department of the Anti-Corruption Commission as the focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Niger

International cooperation, including best practices, and ways to facilitate it

62. The Niger explained that it was in the process of adopting a new anti-corruption law. The Niger had never initiated or received a request related to civil or

administrative proceedings in corruption cases. However, it would use the Convention as a legal basis in such cases in future.

Focal point

63. The Niger indicated that the Office of Judicial Cooperation and International Mutual Legal Assistance of its Ministry of Justice had been designated a focal point for all international cooperation issues, including those relating to civil and administrative proceedings. The High Authority against Corruption and Similar Offences (HALCIA) could also be contacted as a focal point.

Norway

Civil and administrative proceedings and good practices and tools relevant to the implementation of article 53 of the Convention

64. Norway reported that civil and administrative proceedings relating to corruption were rare as most corruption cases were dealt with under the criminal law. However, Norway noted that cases concerning compensation for damages could be put forward as civil actions. Nothing prevented foreign States from initiating civil actions in Norwegian courts.

65. Norway explained that a draft bill concerning civil forfeiture was under consideration.

International cooperation, including best practices, and ways to facilitate it

66. Norway reported that it had had only limited experience with sending or receiving requests concerning civil and administrative proceedings.

Focal point

67. Norway designated the Police Department, International Section, of the Ministry of Justice and Public Security as its focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Panama

International cooperation, including best practices, and ways to facilitate it

68. Panama stated that it had never requested or received requests from other States parties to provide international cooperation in civil proceedings relating to corruption. However, Panama reported that it had received requests and requested cooperation in eight administrative proceedings relating to corruption.

69. The requests received so far by Panama were based on the Inter-American Convention against Corruption. The requests were related to different measures including taking statements from persons and producing copies of documents. Panama also requested similar measures in its eight requests. Three of those requests related to communicating procedural acts, and the other five related to taking statements. The requests made by Panama were based on reciprocity in most cases.

70. Panama suggested that complementary cooperation agreements should be considered as a way for the rapprochement of those authorities in charge of responding to requests for international cooperation in administrative proceedings related to corruption in the various States parties. Since diplomatic channels tended to be slower, agreements for direct international cooperation between counterparts could save time and improve the effectiveness of the procedures.

Focal point

71. Panama designated the Office for the Execution of Mutual Legal Assistance Treaties and International Cooperation (TALM) at its Ministry of Government (the central authority for the requests under the United Nations Convention against

Corruption), the Fourth Chamber for General Affairs of its Supreme Court of Justice, and the General Directorate of Legal Affairs and Treaties of its Ministry of Foreign Affairs as its focal point authorities for international cooperation in the use of civil and administrative proceedings relating to corruption.

Philippines

International cooperation, including best practices, and ways to facilitate it

72. The Philippines reported cases where assistance was provided to other States in civil measures and did not record any challenges in providing those types of assistance.

73. In one case, an ex parte application for bank documents was filed by its Anti-Money-Laundering Council on behalf of a requesting State.

74. In another case, bank documents were obtained and provided to the requesting State by the Council. Later, the Council spontaneously shared information with the requesting State on the withdrawal of funds from the accounts to purchase real estate. The requesting State further requested the identification of the real estate and its forfeiture. The Council was able to identify the real estate and was in the process of filing a civil forfeiture case on behalf of the requesting State.

Focal point

75. The Philippines indicated that it had designated the Anti-Money-Laundering Council as its focal point agency in charge of civil and administrative proceedings relating to corruption.

Qatar

International cooperation, including best practices, and ways to facilitate it

76. With regard to international cooperation in civil proceedings, Qatar reported that its civil courts were the competent authorities to deal with such assistance.

77. With regard to international cooperation in administrative proceedings, Qatar stated that it had previously requested and also received requests to provide such assistance, including for providing evidence, statements and bank records, taking precautionary measures, locating persons, serving documents, identifying, tracing, freezing and recovering assets and recognizing and enforcing judgments. In those cases, the Convention was used as a legal basis for the requests. Qatar explained that it had not experienced major challenges with regard to the execution of requests received or sent as those had been treated with good intention and reciprocity.

78. However, Qatar noted minor issues pertaining to the translation of documents and the time needed for the execution of the requests.

79. Qatar further encouraged countries to ensure that competent authorities dealing with corruption matters were independent to avoid any impediments and bureaucratic obstacles during the cooperation process.

80. Qatar highlighted cooperation among the Gulf Cooperation Council countries as a good example of efficient cooperation.

Focal point

81. Qatar designated the Qatar Public Prosecution as its focal point agency for international cooperation in the use of civil and administrative proceedings relating to corruption.

Russian Federation*International cooperation, including best practices, and ways to facilitate it*

82. With regard to civil proceedings, the Russian authorities reported that they had requested information on bank documents and records, information on suspects' real estate ownership in other States, and information on the verification of foreign citizenship of suspects.

83. The authorities indicated that the requests had been based on the Convention and reported a successful case of receiving information on the beneficial ownership of a number of companies from a requested State. As a result of that successful cooperation, a link between the relevant companies and a Russian public official had been established. The Russian official was subsequently removed from his office for violating Russia's legislation on conflict of interest.

84. At the same time, the authorities reported that such requests had often been rejected due to the lack of criminal cases against suspects.

Focal point

85. The Russian Federation designated its Prosecutor General's Office as the focal point agency for the purposes of the provision of assistance in the use of civil and administrative proceedings relating to corruption. The requests should be submitted in Russian via official channels. Urgent requests could also be submitted via fax or electronically.

Serbia*International cooperation, including best practices, and ways to facilitate it*

86. Serbia explained that its Anti-Corruption Agency had not yet requested assistance from other States in civil measures.

87. The Anti-Corruption Agency had received 10 requests concerning asset and income declarations and 1 request concerning conflict of interest. The requests pertained to the provision of evidence and statements, as well as bank records.

88. Serbia explained that in the proceedings related to determining whether a violation of the Law on the Anti-Corruption Agency had occurred in terms of conflict of interest and asset and income declaration, the Agency had used the Law on Ratification of the European Convention on Mutual Assistance in Criminal Matters and bilateral agreements on mutual legal assistance as a legal basis. The Convention had not yet been used as a legal basis.

89. Serbia proposed exploring the possibility of concluding memorandums of understanding between anti-corruption bodies and organizing training activities for national focal points to enhance cooperation.

Focal point

90. Serbia designated the Anti-Corruption Agency as its focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Slovakia*Civil and administrative proceedings and good practices and tools relevant to the implementation of article 53 of the Convention*

91. Slovakia reported that corruption matters were dealt with almost exclusively in criminal proceedings, with the only exception being the possibility of seeking compensation for damages in civil proceedings.

International cooperation, including best practices, and ways to facilitate it

92. Slovakia reported that it had never requested or received requests from other States to provide international cooperation in civil proceedings relating to corruption.

93. Slovakia noted that the Convention was a very useful tool for enabling cooperation between States that had not concluded a bilateral or multilateral treaty and highlighted the importance of sharing good practices between States and developing practical tools to enhance cooperation.

Focal point

94. Slovakia designated the Ministry of Justice as its focal point in the use of civil and administrative proceedings relating to corruption.

Slovenia*Civil and administrative proceedings and good practices and tools relevant to the implementation of article 53 of the Convention*

95. Slovenia reported that its Confiscation of Proceeds Crime Act of 2012 had introduced civil forfeiture in its jurisdiction. The Act regulated two main stages of the proceedings, namely the financial investigation and the forfeiture proceedings before the civil court. The proceedings could be initiated if there were grounds for suspicion that a person had committed a listed criminal offence, including a corruption offence.

International cooperation, including best practices, and ways to facilitate it

96. Since 2012, Slovenia had requested international cooperation in several cases covered by the Act, including requests for the identification of assets, bank records, and precautionary measures and presenting evidence.

97. Slovenia's Specialized State Prosecution Office did not use the Convention as a legal basis for requests to other States for cooperation in civil or administrative proceedings and had not received any requests to provide such assistance.

98. Slovenia also indicated that the police did not keep any specific records of requests related to the Convention.

99. The Commission for the Prevention of Corruption of Slovenia conducted administrative investigations of allegations of corruption, conflict of interest and illegal lobbying. However, the Commission did not have powers to request or receive requests for international cooperation in administrative proceedings relating to corruption.

Focal point

100. Slovenia designated the Commission for the Prevention of Corruption as the focal point agency in the matter of the use of civil and administrative proceedings against corruption.

Spain*Focal point*

101. Spain designated the Subdirectorate for International Judicial Cooperation in the Ministry of Justice as its focal point agency for international cooperation in civil and administrative proceedings.

Sri Lanka*International cooperation, including best practices, and ways to facilitate it*

102. Sri Lanka reported that it had never requested or received a request from other States to provide international cooperation in civil or administrative proceedings relating to corruption.

103. As for challenges related to international cooperation, Sri Lanka listed the unavailability of translations, inaccurate contact details and illegible handwriting, and suggested that the requests be provided in a more structured manner.

Focal point

104. Sri Lanka designated the Commission to Investigate Allegations of Bribery or Corruption as the focal point authority for international cooperation in the use of civil and administrative proceedings relating to corruption.

Swaziland

Focal point

105. Swaziland designated its Ministry of Justice and Constitutional Affairs and the Directorate of Public Prosecutions as its focal point authorities for international cooperation in the use of civil and administrative proceedings relating to corruption.

106. Swaziland indicated that the requests should contain the details of requesting institutions, proof of the authority making the request and names of implicated persons. The requests must be in an affidavit form and in writing and submitted via diplomatic channels.

107. In urgent cases, requests could be made via phone and directly to focal point authorities. In such cases, the relevant embassy shall also be informed and grounds for the urgency should be stated.

Thailand

International cooperation, including best practices, and ways to facilitate it

108. Thailand indicated that the Office of the National Anti-Corruption Commission had previously requested international cooperation in civil proceedings to receive evidence and statements, bank records and identification of assets, and that it had not experienced any particular obstacles in that regard.

109. The Commission had never requested cooperation in administrative proceedings and had never received a request to provide cooperation in civil or administrative proceedings.

Focal point

110. Thailand designated the Office of the National Anti-Corruption Commission as its focal point agency for international cooperation in the use of civil and administrative proceedings relating to corruption.

Ukraine

International cooperation, including best practices, and ways to facilitate it

111. Ukraine indicated that it had never requested or received requests from other States to provide international cooperation in civil or administrative proceedings relating to corruption.

Focal point

112. Ukraine designated the Ministry of Justice as its focal point with the responsibility for and authority with regard to the use of civil and administrative proceedings relating to corruption. Ukraine explained that any requests to the focal point should include information about the requesting authority, the case concerned, the person concerned and a precise description of the requested actions.

United States of America

International cooperation, including best practices, and ways to facilitate it

113. The United States of America noted that while article 43, paragraph 1, of the Convention enabled States parties to “consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption”, it did not require States parties to cooperate in this context, instead reserving such a directive obligation for criminal legal matters alone, in accordance with articles 44 to 50 of the Convention.

114. The United States further stated that it had received requests and assisted other States in civil and administrative proceedings relating to corruption where appropriate and consistent with its domestic law. While the Convention could sometimes be cited by another party as a basis for such cooperation, the United States did not require a bilateral or multilateral treaty to provide assistance in civil and administrative proceedings. International cooperation and assistance in civil and administrative proceedings was provided by various United States agencies on a case-by-case basis.

115. The nature and purpose of each request determined which United States agency would have primary responsibility for reviewing and, as appropriate, executing the request in accordance with the requisite legal authority. For example, allegations that a United States corporation had bribed a foreign official would fall under the Foreign Corrupt Practices Act. Enforcement of the Act was the responsibility of both the Securities and Exchange Commission and the Criminal Division of the Department of Justice, depending on the specific details of the allegations. Applicable international instruments, separately or in conjunction with Section 3512 of Title 18, United States Code, established the conditions upon which a United States federal judge could issue orders necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offences, or in proceedings related to the prosecution of criminal offences, including proceedings regarding forfeiture, sentencing, and restitution. Similarly, Title 15, Section 78u, authorized the Securities and Exchange Commission, on request from a foreign securities authority, to provide assistance if the requesting foreign authority was conducting an investigation.

Focal point

116. The United States was not in a position to identify a focal point for international cooperation in the use of civil and administrative proceedings relating to corruption, given the wide breadth of the United States federal agencies with authority to cooperate internationally on corruption matters outside of the criminal law context. The central authority for mutual legal assistance requests for criminal proceedings pursuant to article 43, paragraph 1, of the Convention was the Office of International Affairs of the Criminal Division at the Department of Justice.

117. Furthermore, the United States encouraged States parties seeking assistance under article 43, paragraph 1, of the Convention against Corruption to speak first with United States personnel stationed at the United States embassy in their country.

Yemen

Focal point

118. Yemen designated the Supreme National Authority for Combating Corruption as its focal point agency with the responsibility and authority with respect to the use of civil and administrative proceedings relating to corruption.

B. Preliminary observations

119. Less than half of the States parties requested provided the requested information. Thus, more information is needed to have a better understanding of the

use of civil and administrative measures related to the fight against corruption in the context of international cooperation. It is very likely that such information will be collected through the ongoing review of the implementation by States parties of the asset recovery chapter of the Convention.

120. According to the information available, it appears that most States that responded had limited experience in the use of civil and administrative measures in the context of international cooperation. Only a few States reported extensive experience in the use of such measures, especially for outgoing assistance requests.

121. Based on the responses analysed, more States had experience in dealing with administrative measures than with civil measures in the context of international cooperation.

122. Some of the States reporting experience with international cooperation in civil and administrative matters used the Convention as a legal basis for their requests.

123. It appears that the main challenge was the lack of familiarity with such types of assistance and the reluctance to accept and process such requests outside traditional channels of criminal law assistance. Several States reported that they had not experienced major challenges in the execution of such requests.

124. At the same time, it appears that despite the lack of corresponding experience, most of the States that provided information were willing to cooperate on such matters if the need arose. That was also evidenced by the willingness of the States to designate focal points for the purposes of international cooperation in civil and administrative measures relating to corruption, as well as the many useful suggestions that States made to enhance cooperation in those matters.

III. Conclusions and recommendations

125. The Conference may wish to consider instructing the secretariat to organize an ad hoc expert group meeting tasked with the preparation of a specific guide on the execution of mutual legal assistance requests related to corruption, including on the use of civil and administrative measures and the production of evidence.

126. The Conference may wish to provide additional guidance on the implementation of its resolution 6/4, specifically with regard to possible measures to protect confidentiality of the information provided in the context of assistance in civil and administrative measures.

127. The Conference may also wish to provide guidance to the secretariat with regard to the suggestion to include a specific section dedicated to the domestic civil and administrative proceeding of States parties related to the investigation of corruption offences in the legal library available through the UNODC Tools and Resources for Anti-Corruption Knowledge (TRACK) web portal.
