



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

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### **International cooperation**

## **Progress on the activities of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption**

### **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 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 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 to collect and disseminate 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

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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. In line with those mandates, the Secretariat continued to collect information on 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.

5. In its resolution 7/1, the Conference welcomed the recommendations of the sixth open-ended intergovernmental expert meeting to enhance international cooperation under the Convention and decided that the meeting should continue its work by exchanging information on best practices and challenges on, inter alia, international cooperation in civil and administrative proceedings related to cases of corruption and possible measures to protect the confidentiality of the information provided in the context of assistance in criminal, civil and administrative measures.

6. In the same resolution, the Conference requested the Secretariat to continue, within existing resources, to collect statistics or other relevant information on the use of the Convention as a legal basis for mutual legal assistance, unless a bilateral and regional arrangement applied, and, where appropriate and consistent with domestic legal systems, in relation to civil and administrative proceedings and asset recovery, and to make the information available to the Conference.

7. The purpose of the present note is to inform the Conference about the actions that have been taken by the Secretariat to implement the mandates contained in resolutions 6/4 and 7/1 with regard to the collection and analysis of information on international cooperation in civil and administrative proceedings related to cases of corruption.

8. In order to facilitate the implementation of the mandates contained in resolution 7/1, the Secretariat sent notes verbales to the States parties in February and December 2018, respectively, seeking relevant information.

9. The extent of the information provided varied. All responses received from States parties containing substantive information are summarized below.

## **II. International cooperation in civil and administrative proceedings related to cases of corruption and possible measures to protect the confidentiality of the information provided in the context of assistance in criminal, civil and administrative measures**

10. The present section contains a summary of the responses received from States parties in response to the request in the notes verbales mentioned above for information on best practices and challenges in the field of international cooperation in civil and administrative proceedings related to cases of corruption, and suggestions for possible measures to protect the confidentiality of the information requested for the purposes of civil and administrative proceedings related to cases of corruption in the requesting country, where the relevant matter was addressed under criminal proceedings in the requested country.

11. Algeria reported that there had been no processed cases of international judicial cooperation that included civil or administrative proceedings, as such cases had been handled under criminal proceedings.

12. Argentina highlighted that it had limited experience in international cooperation in civil and administrative proceedings related to cases of corruption; however, it could provide assistance in civil proceedings where the underlying act was subject to civil sanction and it was impossible to institute criminal proceedings.

13. Australia underscored that, in line with its approach to mutual legal assistance, assistance could be provided only in the context of criminal proceedings.

14. China recommended that the assurance to protect the confidentiality of information be included by the requesting party in its request for assistance.
15. Colombia reported that the Office of the Attorney General had limited or no experience in international cooperation in civil and administrative proceedings related to corruption. Nonetheless, it suggested that States provide assistance in administrative and civil matters, even when the underlying act was subject to criminal proceedings. The importance of requested States adhering to the confidentiality rules established under the Convention was highlighted.
16. Denmark reported that it had limited or no experience in international cooperation in civil and administrative proceedings related to cases of corruption.
17. Egypt reported that general provisions in the Civil Code and the Civil and Commercial Procedures Code allowed a foreign State or any natural or legal person to bring a civil action to claim for damages. Egyptian courts accept all civil lawsuits filed by any affected foreign entity, in accordance with its jurisdictional rules. It also reported that foreign judgments passed by civil courts might be recognized and executed in Egypt. If the act committed abroad constituted a criminal offence, it was possible to file a report to investigate the incident in Egypt, on the basis of the money-laundering legislation.
18. Greece noted that it had had experience as both a requesting and a requested State in civil proceedings related to cases of corruption, for which the types of assistance had included taking evidence and statements, requesting information on bank records and the communication of procedural acts. However, the Convention had not been used as a legal basis for those requests.
19. Iraq indicated that international cooperation in relation to civil and administrative proceedings linked to corruption and measures to protect the confidentiality of information were implemented through the applicable legal and diplomatic channels. In addition, the relevant authorities treated information within the scope of international cooperation with complete confidentiality.
20. Kenya reported that, in the past six years, it had made one mutual legal assistance request through international cooperation in civil proceedings relating to corruption. In the same period, it had not made or received any requests in relation to administrative proceedings in corruption cases. Should such a request be received, the matter would be dealt with under the mechanism for enforcement of foreign judgments. The confidentiality of requests and material supplied had always been and must be maintained, except for disclosure in criminal matters specified in the request and where otherwise authorized by the requesting State. Kenya included confidentiality clauses in all its requests and suggested that mutual legal assistance requests include such clauses, unless otherwise requested, to ensure the inviolability of criminal investigations and civil proceedings. To protect confidentiality, States should also have in place processes to ensure that the staff of relevant authorities maintain high professional standards.
21. The Republic of Korea suggested making confidentiality an explicit requirement when submitting a request, as a measure to protect confidentiality of the information provided in the context of assistance in criminal, civil and administrative measures.
22. Kuwait reported that it could reciprocate mutual legal assistance in accordance with the provisions of the Convention. In addition, it could implement the provisions of the Convention that were relevant to international cooperation in civil and administrative procedures, as they were in conformity with its national legislation. In relation to the confidentiality of information provided, Kuwait indicated that it would be suitable for all parties to exercise full coordination and consultation. In addition, a model guidebook could be produced on rules and measures that States could apply to ensure the confidentiality of information relevant to civil and administrative proceedings, in accordance with the Convention.

23. Lithuania reported that it could provide assistance in administrative matters when the underlying act was subject to administrative punishment only and where it was impossible to institute criminal proceedings.
24. Norway reported that it had had limited experience in international cooperation in civil and administrative proceedings related to corruption.
25. Pakistan reported that all corruption-related cases were based on criminal proceedings and that subsequent civil proceedings were treated as criminal proceedings. Pakistan had not sent or received any requests related to civil or administrative proceedings in corruption cases. However, in some requests for criminal proceedings, some portions had subsequently been converted to civil and administrative proceedings. The confidentiality of information requested for the purposes of civil and administrative proceedings should be maintained in the requesting country mainly when the relevant matters were addressed under criminal proceedings in the requested country.
26. Portugal reported that it was not aware of any cases of international cooperation in civil and administrative proceedings related to cases involving the application of the Convention.
27. Romania noted that, in its practice, mutual legal assistance was provided only in the context of criminal proceedings.
28. Saudi Arabia reported that it recognized civil and administrative measures to enhance international cooperation and asset recovery. Foreign administrative decisions could be enforced domestically if supported by a relevant judicial order.
29. Thailand reported that the Attorney General, as the central authority, could provide assistance only with regard to criminal matters. However, if other assistance requests were linked to criminal proceedings, the central authority would consider providing assistance wherever possible, subject to national legislation. Hence, it suggested that requesting authorities consult with the receiving central authority, if possible, before submitting requests through the proper channels.
30. The United States of America noted that the Convention did not impose a binding requirement on States parties to provide assistance in administrative and civil proceedings. While certain illicit activities could be effectively addressed through certain civil or administrative proceedings, most States addressed corruption primarily through criminal justice processes or ancillary proceedings. Nonetheless, the United States provided assistance in civil and administrative proceedings in situations where there were related criminal investigations or proceedings or when the administrative agency involved sought assistance to determine whether to make a criminal referral. When possible, the United States could provide assistance that did not require compulsory action. In addition, even when its central authority could not provide assistance because there was no criminal proceeding, it frequently referred foreign authorities to other authorities that could assist. With respect to the confidentiality of requests in the context of criminal and civil investigations, most bilateral treaties and the Convention allowed requesting parties to demand confidentiality (except where necessary to execute the request), and requested States had to comply with such requests or inform the requesting State that it could not comply.

### **III. Focal points for international cooperation in the use of civil and administrative proceedings and use of the United Nations Convention against Corruption as a legal basis in relation to civil and administrative proceedings**

31. In line with established practice, the Secretariat continued to update the online directory of competent national authorities. As at 10 September 2019, the directory

contained information on focal points for international cooperation in the use of civil and administrative proceedings in 32 States parties.

32. As at 10 September 2019, the Secretariat had not been provided with comprehensive information on the use of the Convention as a legal basis, where appropriate and consistent with domestic legal systems, in relation to civil and administrative proceedings. However, given that 32 States parties had notified the Secretariat of their focal points for international cooperation in the use of civil and administrative proceedings, it is likely that those States were also able to undertake such cooperation using the Convention as a legal basis.

#### **IV. Preliminary observations**

33. It should be noted that less than half of the States parties provided the requested information. Therefore, more information would be needed in order 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 chapter V (asset recovery) of the Convention.

34. 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 reported extensive experience in the use of such measures.

35. Few of the States that reported experience with international cooperation in civil and administrative matters used the Convention as a legal basis for their requests.

36. It appears that the main challenge is the lack of familiarity with such types of assistance and the reluctance to accept and process such requests outside the traditional criminal law assistance channels.

37. With regard to the issue of the protection of the confidentiality of information requested for the purposes of civil and administrative proceedings in corruption cases in the requesting country when the relevant matter was addressed under criminal proceedings in the requested country, States parties noted that an expressed guarantee or assurance provided by the requesting State to the requested State to protect the confidentiality of such information could offer a solution. That approach also appears to be in line with the Convention and established international practices.

#### **V. Conclusions and recommendations**

38. The Conference may wish to provide guidance to the Secretariat on the implementation of its resolutions 6/4 and 7/1 concerning civil and administrative proceedings related to the investigation of corruption offences.

39. The Conference may also wish to consider requesting that the Secretariat 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.

40. With regard to possible measures to protect the confidentiality of information requested and provided in the context of assistance in civil and administrative measures, the Conference may wish to encourage States parties to provide specific assurances to guarantee the confidentiality of such information.