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Agenda item 4

Technical assistance

Analysis of technical assistance needs emerging from the country reviews

Note by the Secretariat

Summary

The present note contains information on the technical assistance needs identified by States parties in the context of country review processes relating to the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the United Nations Convention against Corruption.¹

* Second reissue for technical reasons (20 October 2016).

¹ The information contained in the present note provides a general overview and analysis of the country reviews for which the executive summary had been completed by 1 August 2016 and, to this end, may at times repeat information that was submitted as part of the oral updates during the seventh session of the Implementation Review Group. Reference is also made to document CAC/COSP/2016/11, on technical assistance delivered in support of the implementation of the United Nations Convention against Corruption.



I. Introduction

1. In its resolution 3/1, the Conference of the States Parties to the United Nations Convention against Corruption adopted the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. The Conference decided that the Implementation Review Group would be in charge of following up and continuing the work of the Open-ended Intergovernmental Working Group on Technical Assistance. Pursuant to paragraph 11 of the terms of reference, one of the goals of the Implementation Review Mechanism is to help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance. In accordance with paragraph 44 of the terms of reference, the Review Group is tasked with considering technical assistance requirements in order to ensure effective implementation of the Convention.

2. In its resolution 4/1, the Conference recommended that all States parties, where applicable, in their responses to the comprehensive self-assessment checklists and in the country reports, should identify technical assistance requirements, preferably prioritized and related to the implementation of the provisions of the Convention examined during a given review cycle, and decided that the Review Group should consider, on the basis of the outcome of the review process and consistent with the terms of reference of the Implementation Review Mechanism, priority areas for the provision of technical assistance, as well as consolidated information on trends in requirements for and provision of technical assistance.

3. The present note contains updated information on technical assistance needs identified in the country reviews for the implementation of chapters III and IV of the Convention by States parties under review in the first cycle of the Implementation Review Mechanism. It is based on information included in the country review reports and the executive summaries of the reviews of 137 States parties that had been completed at the time of drafting, 87 of which identified technical assistance needs.

4. The comprehensive self-assessment checklist contains several predetermined categories of technical assistance needs: legislative drafting and legal advice; model legislation; development of an implementation action plan; a summary of good practices or lessons learned; model treaties or agreements; capacity-building programmes; assistance by an on-site expert; technological assistance; and a catch-all category for other assistance. Many of the needs identified during the country review processes fall within these broad categories, but other needs are also reflected in the country review reports and executive summaries. In some cases, States parties have preferred to remain unspecified in relation to their technical assistance needs, and instead have outlined a general wish for technical assistance in broader terms, e.g. support for the implementation of a certain chapter, capacity-building for the prosecutorial and investigative services, or simply stating a needs-assessment request deemed too far-reaching to fit the predetermined categories. In such cases, the secretariat has sought to fit the needs to the categories at hand as far as possible in order to enable the analysis and counting for the sake of the present report.

II. Overall assessment

5. Of the 137 States parties that concluded the review process and are included in the present note, 87 identified technical assistance needs. An additional 36 States completed their executive summaries, 29 of which identified technical assistance needs for the implementation of chapter III of the Convention against Corruption since the last written update presented at the Conference in November 2015 (see CAC/COSP/2015/4). Those additional States included 12 from the Group of African States, 10 from the Group of Asia-Pacific States, 7 from the Group of Latin American and Caribbean States and 1 from the Group of Eastern European States. A total of 22 States parties identified 881 technical assistance needs for the implementation of chapter IV of the Convention: 11 from the Group of African States, six from the Group of Asia-Pacific States, four from the Group of Latin American and Caribbean States and one from the Group of Eastern European States (see figures I and II).

Figure I

Number of additional States parties with need, by regional group and chapter

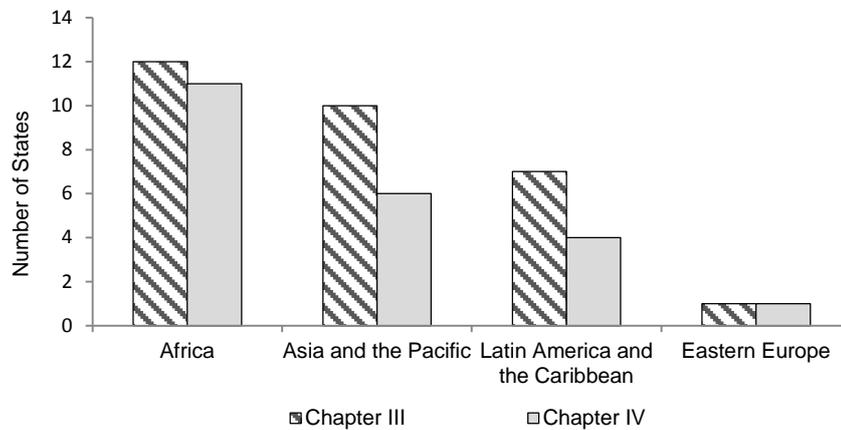
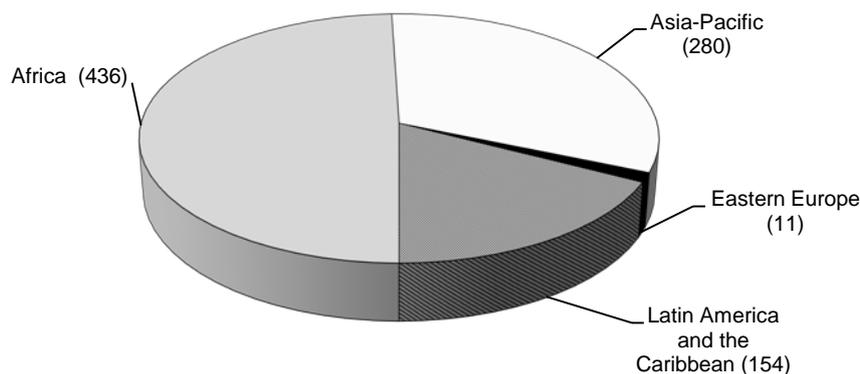


Figure II

Number of additional technical assistance needs identified, by region



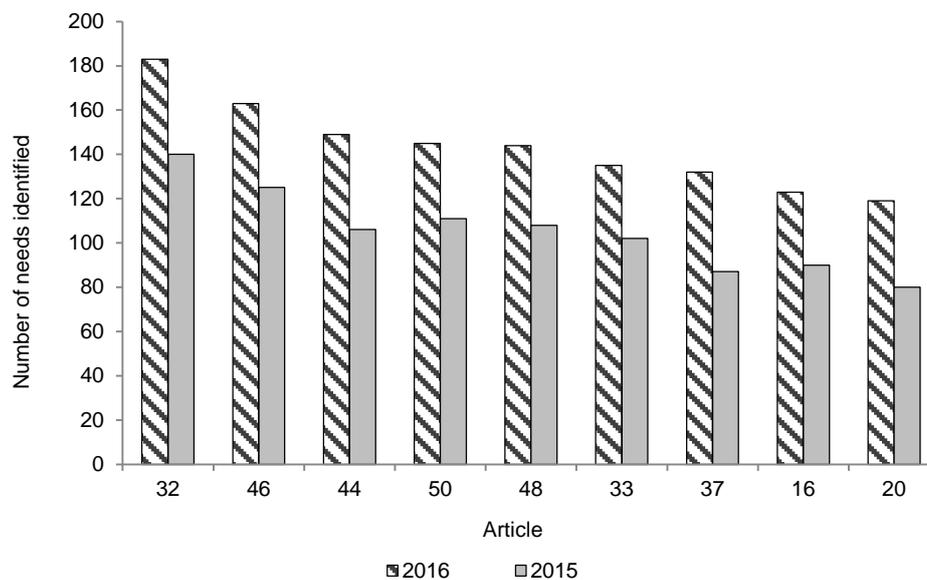
Note: Total equals 881.

Overall analytical trends

6. Figure III illustrates the nine articles of the Convention with the greatest overall number of needs identified by the 87 States that had identified technical assistance needs. Those nine articles are as follows: article 32 (Protection of witnesses, experts and victims), article 46 (Mutual legal assistance), article 44 (Extradition), article 50 (Special investigative techniques), article 48 (Law enforcement cooperation), article 33 (Protection of reporting persons), article 37 (Cooperation with law enforcement authorities), article 16 (Bribery of foreign public officials and officials of public international organizations) and article 20 (Illicit enrichment). By way of comparison, the previous assessment of needs for the same articles (CAC/COSP/2015/4) is included in figure III. While the overall trend remains the same, it is interesting to note that needs related to article 37 increased dramatically, by 52 per cent, followed by those related to article 20, which saw a 48 per cent increase. The remaining articles featured in the chart saw an increase of between 30 and 40 per cent. The common feature among the articles appears to be their very practical requirements for effective implementation, such as witness protection and the protection of reporting persons, encouraging cooperation with law enforcement authorities, and special investigative techniques, as well as both mutual legal assistance and extradition. It is interesting to note that foreign public bribery remains among the top articles for which technical assistance needs have been identified, which, like illicit enrichment, is more technical in nature than many other provisions.

Figure III

Articles for which the largest number of needs were identified

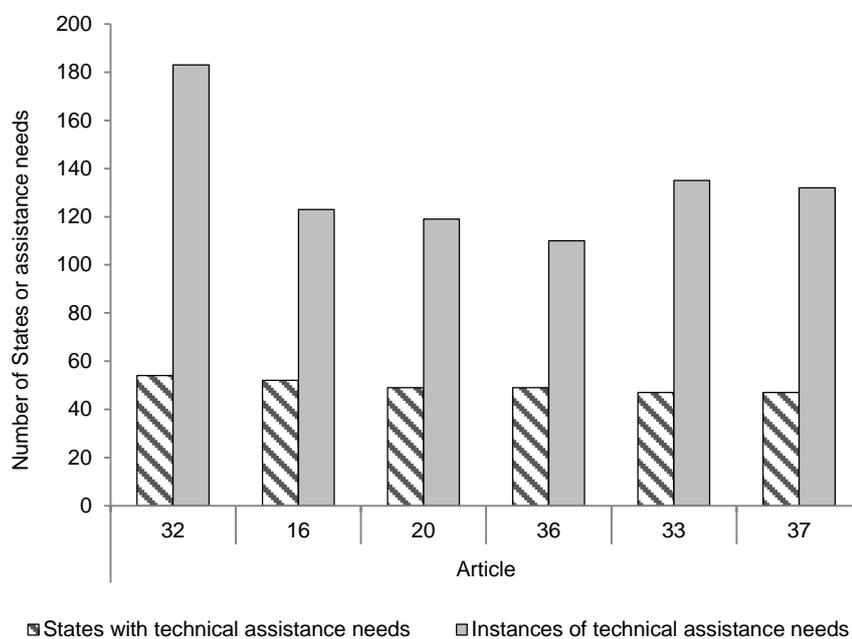


7. Figure IV sets out the number of technical assistance needs identified and the binary count of States having identified such needs (a State is counted once regardless of how many needs it has identified for that article). When comparing both chapters, article 46 resulted in the largest overall number of States (a total of 58)

with technical assistance needs (examined later in figure XIV). The following six articles are all from chapter III (arts. 16, 20, 32, 33, 36 and 37).

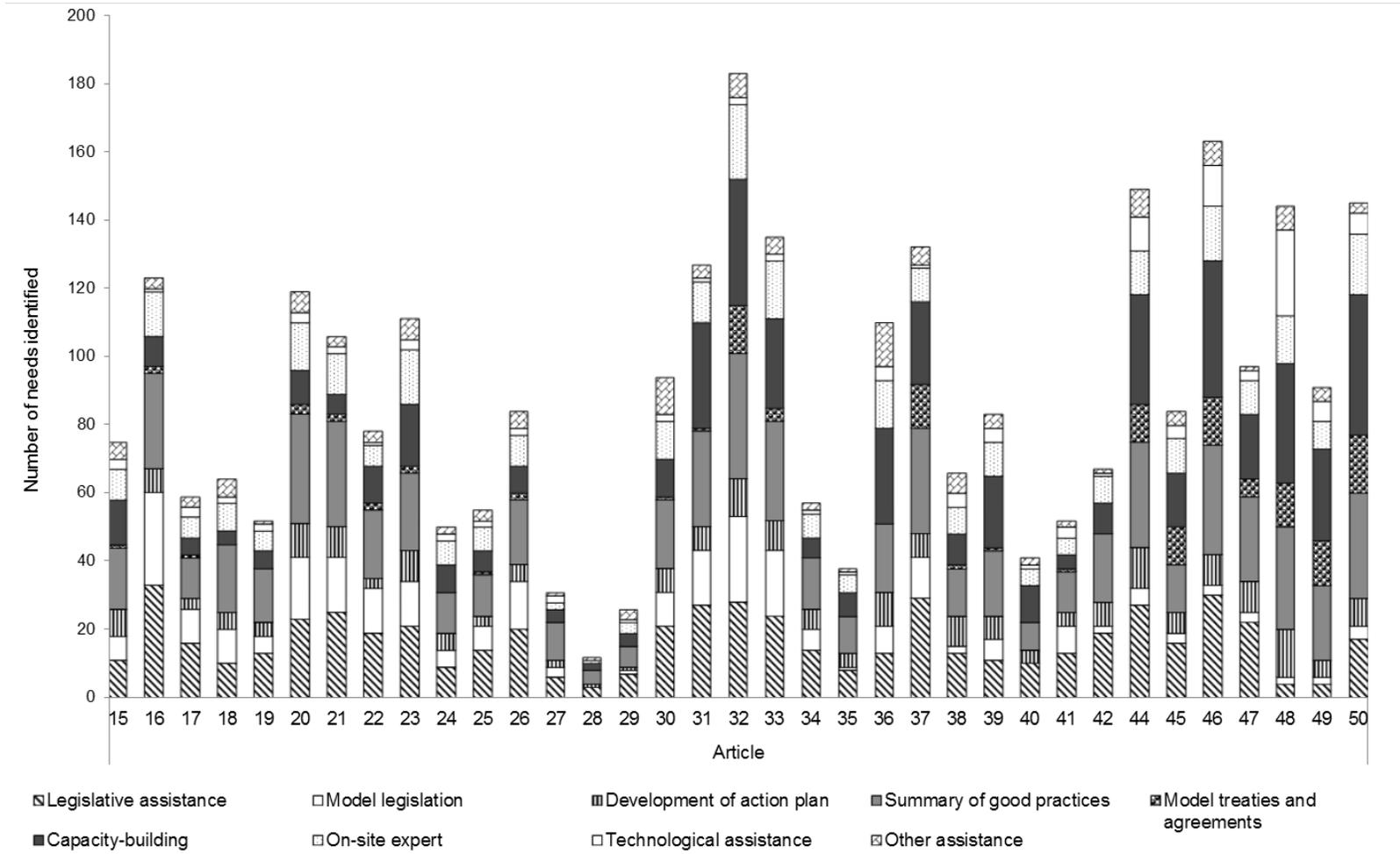
Figure IV

Comparison of number of technical assistance needs and number of States identifying needs under chapter III



8. Figure V provides an overview of the different types of needs identified by States parties for all articles of the chapters under review. It should be noted that eleven States did not specify needs relating to the articles under review, but instead indicated a general need for capacity-building and legislative assistance, a comprehensive technical assistance needs assessment or assistance in addressing the outcome of the review. As much as possible, those needs have been attributed to the appropriate articles in line with the information contained in the full country report.

Figure V
Technical assistance needs identified by States parties, by article number



Note: Total equals 3,103.

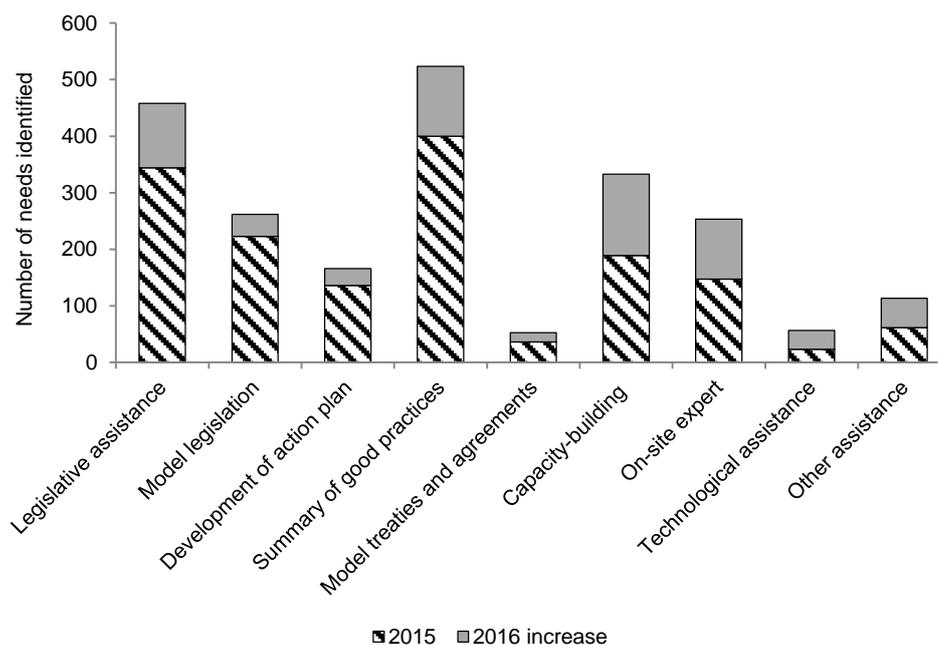
III. Technical assistance needs identified for the implementation of chapter III

9. Of the 87 States that identified technical assistance needs overall, 86 of those identified 2,217 such instances for the implementation of chapter III.

10. In the previous analysis (CAC/COSP/2015/4), it was highlighted that the most frequently identified need for technical assistance had shifted from legislative assistance to summaries of good practices and lessons learned. Legislative assistance remained the second most commonly identified need overall. The analysis then indicated that the original requirement for technical assistance through the provision of legislative assistance could be seen as a natural consequence of the implementation of chapter III of the Convention, which includes a large number of provisions calling upon States to ensure the criminalization of corruption offences. As seen in figure VI, the present analysis indicated that the need for good practices and lessons learned not only continued to be the most frequently identified need, but also had increased more than the need for legislative assistance. Capacity-building showed the largest increase (61 per cent) and outlined a new trend.

Figure VI

Comparison of types of needs identified in chapter III, increase from 2015 to 2016

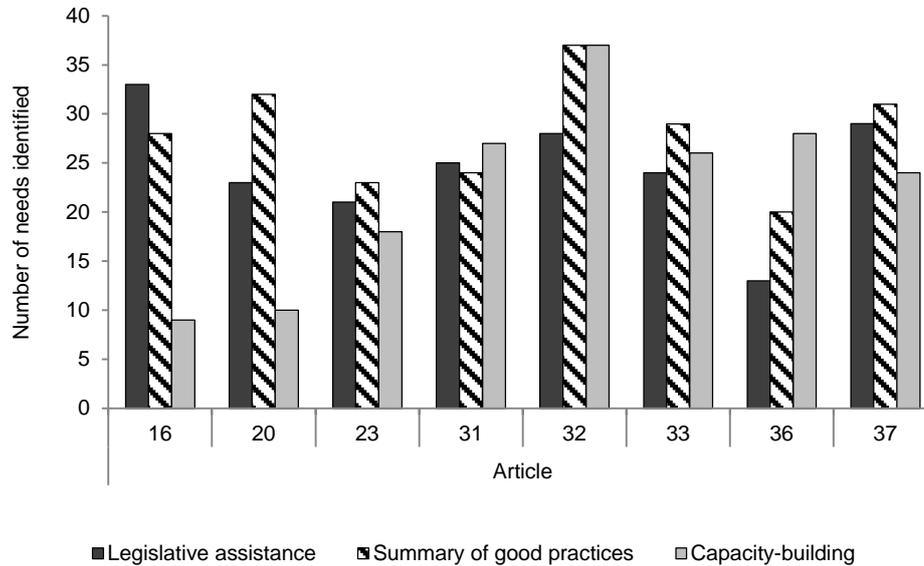


11. The number of legislative assistance needs exceeds that for summaries of good practices and lessons learned in articles 16, 17 and 25, all of which include mandatory provisions. It is noteworthy that, overall, the implementation of article 16 also saw the majority of recommendations issued by the reviewing experts.

12. Figure VII presents all articles with more than 100 identified technical assistance needs in chapter III, together with the top categories of technical assistance needs: legislative assistance, summary of good practices and lessons learned and capacity-building programmes.

Figure VII

Articles in chapter III with an excess of 100 technical assistance needs, showing top three types of needs



13. An analysis of the articles with the largest number of needs, identified by States during the country reviews and in the executive summaries, is provided below, broken down by region.

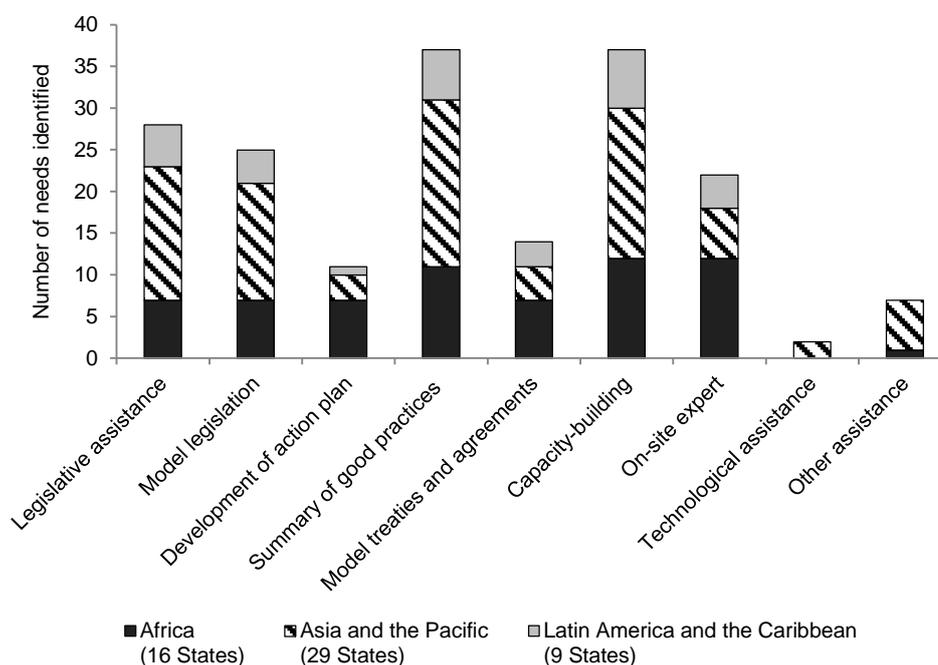
Protection of witnesses, experts and victims

Technical assistance needs relating to article 32

14. A total of 54 States parties identified 183 needs for technical assistance to support the implementation of article 32. Of all the articles under review in chapter III, article 32 continued to have the largest number of States parties identifying technical assistance needs for its implementation, in a wide variety of types and across three regional groups.

15. Details of the main types of needs identified for article 32 are depicted in figure VIII. The regional breakdown shows that the Group of Asia-Pacific States identified nearly half of these needs (48 per cent). The Group of African States identified 35 per cent of the overall needs under this article, which included the largest number of needs relating to the on-site visit of an expert (12 needs of 22 globally).

Figure VIII
Technical assistance needs for article 32, by regional group and type



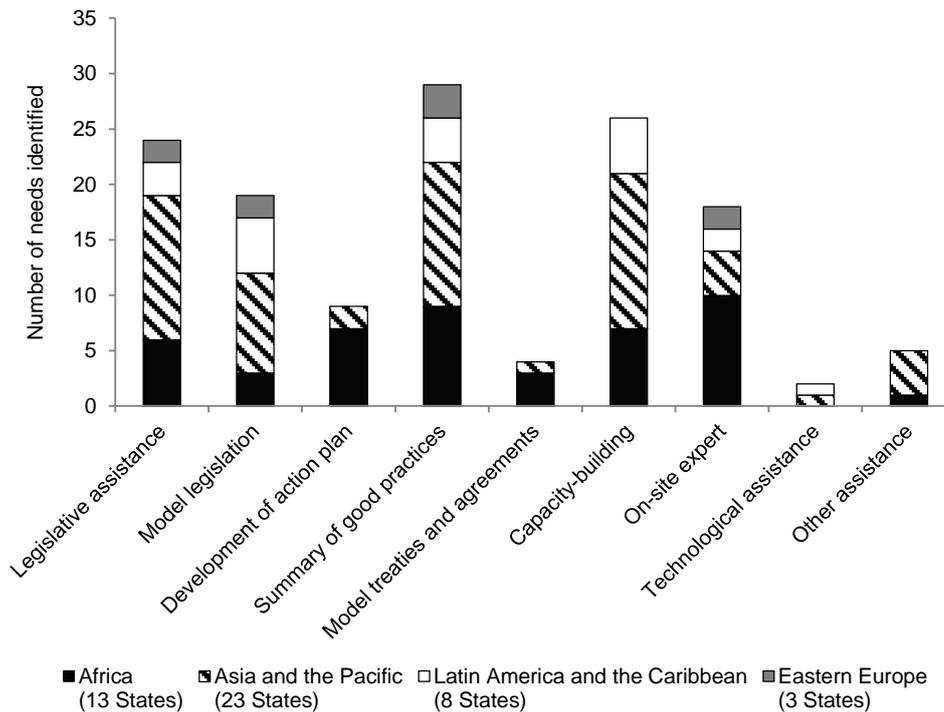
16. Despite article 32 having the largest number of technical assistance needs (183 overall), those needs were identified by a relatively small number of States (54 out of 87). States identified assistance with establishing and enhancing the functioning of witness protection programmes as a priority. In the previous assessment, the technical assistance needs most commonly identified were the sharing of summaries of good practices; however, this was now surpassed by capacity-building, with legislative advice as the second largest category of needs.

Protection of reporting persons

Technical assistance needs relating to article 33

17. A total of 47 States parties identified 136 needs for technical assistance to support the implementation of article 33 as depicted in figure IX.

Figure IX
Technical assistance needs relating to article 33, by regional group and type



18. Article 33 has consistently been one of the most challenging for States to implement and has retained its place as the article in chapter III with the second largest number of instances of technical assistance needs, with a 32 per cent increase in the current analysis.

19. Articles 32 and 33, relating to witness and whistle-blower protection, respectively, were the two articles that had the largest number of needs identified for the visit of an on-site expert. The present analysis also shows that article 33 carried the largest number of needs for capacity-building in chapter III.

Cooperation with law enforcement authorities

Technical assistance needs relating to article 37

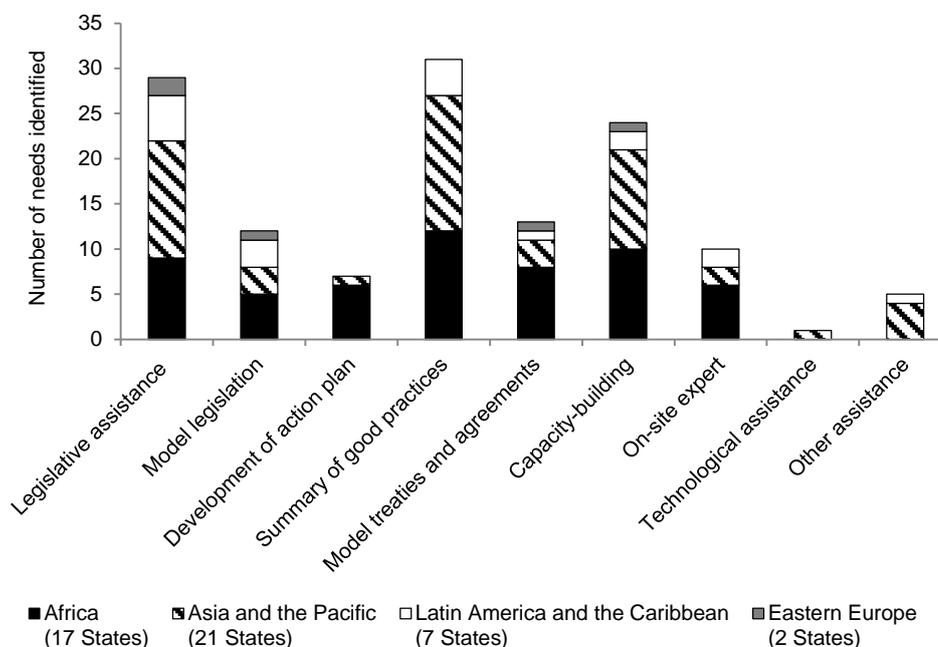
20. Despite being one of the articles with the largest number of technical assistance needs identified by States for chapter III (132 needs in total), such needs were identified by only 47 States. When analysing the geographical distribution of States with needs, it is noteworthy that the regional groups of Africa and Asia and the Pacific identified 83 per cent of the needs for article 37. However, the regional group of Latin America and the Caribbean represented proportionately the same percentage of needs when divided by countries, i.e. roughly 39 per cent, as the Asia and Pacific group.

21. When analysing the technical assistance needs by type, as depicted in figure X below, the need for legislative assistance remained relatively high in relation to article 37, which would seem a natural consequence of the article's requirement for

States to consider mitigating circumstances and even immunity from prosecution for those who provide substantial cooperation. Here, too, the need for summary of good practices and lessons learned remained the most identified need, at 31 instances. None of the States from the Group of Eastern European States identified needs in this area.

Figure X

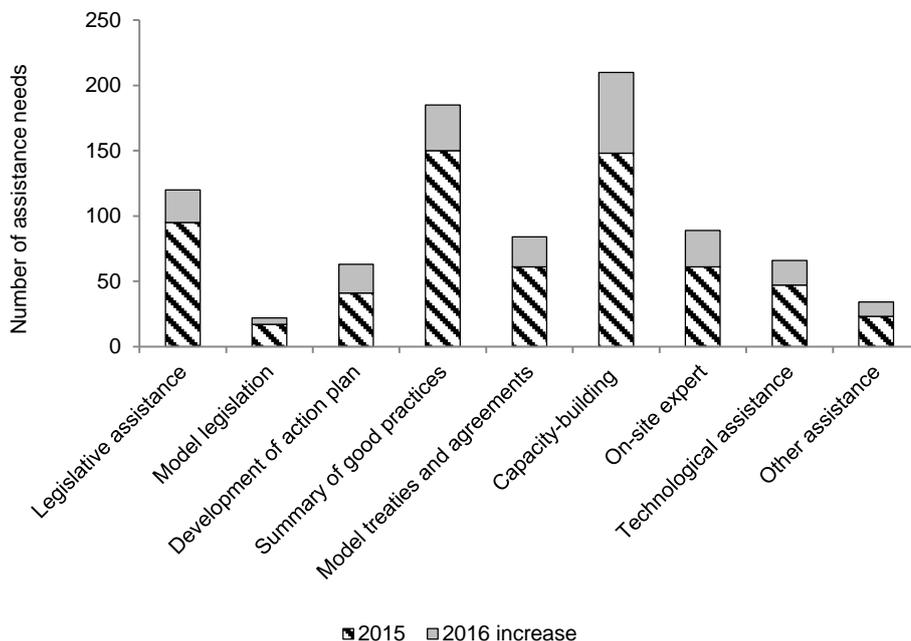
Technical assistance needs relating to article 37, by regional group and type



IV. Technical assistance needs identified for the implementation of chapter IV

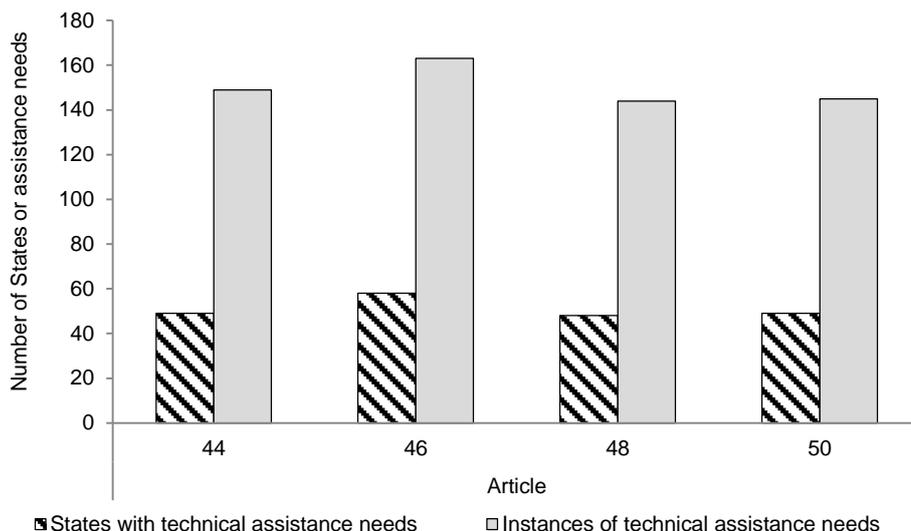
22. Seventy-one States parties identified technical assistance needs in relation to the implementation of chapter IV (International cooperation) of the Convention. Figure XI provides a breakdown, by type and number of needs identified, for chapter IV. As with chapter III, the need for capacity-building in relation to chapter IV has seen the largest increase. The article with most needs remained article 32.

Figure XI
Number and type of technical assistance needs in chapter IV: increase, by type



23. Figure XII sets out the number of technical assistance needs identified and the binary count of States having identified such needs (a State is counted once regardless of how many needs it has identified). In an overall comparison, more States (58) identified a technical assistance need pertaining to article 46 than to any other article in chapters III and IV (see below figure XIII).

Figure XII
Comparison of top four articles with regard to number of technical assistance needs and number of States identifying needs under chapter IV

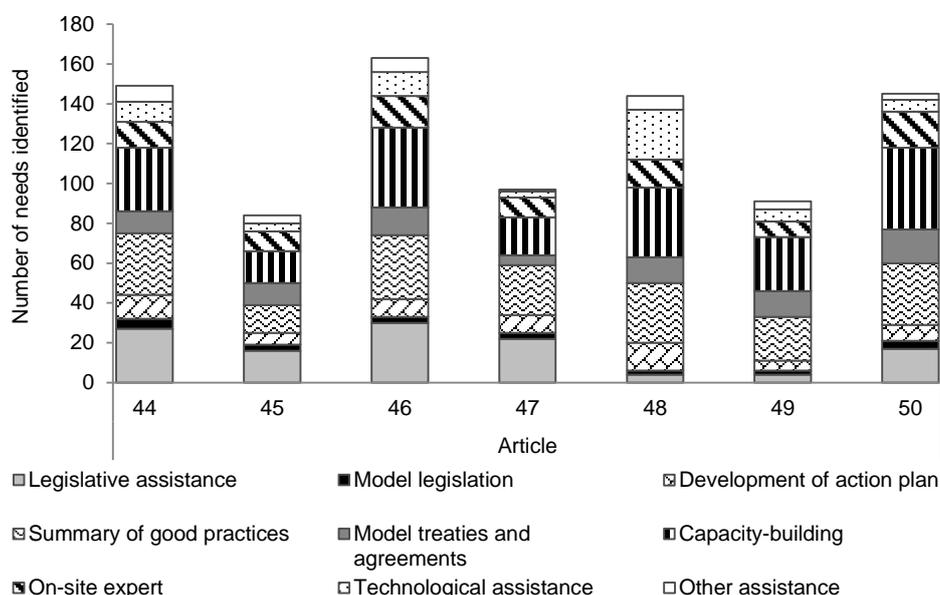


24. In total, 873 technical assistance needs were identified with regard to chapter IV. The three categories of needs that were most commonly identified related to technical assistance in the form of capacity-building (210 needs), followed by the summary of good practices and lessons learned (185 needs) and legislative assistance (120 needs). That is a shift from previous analyses in which capacity-building had remained a close second. In the present sample, it saw a 42 per cent increase, whereas good practices increased by 23 per cent. The need for legislative drafting increased by 36 per cent since the previous written assessment.

25. Figure XIII captures the total of 873 needs identified for chapter IV by article and type of need. Article 46 retained its first place as the article for which the largest number of needs was identified (163 needs), while the three following articles (44, 50 and 48) had similar numbers (149, 145 and 144 needs respectively).

Figure XIII

Number and type of technical assistance needs in chapter IV, by article



Extradition and mutual legal assistance

Technical assistance needs relating to articles 44 and 46

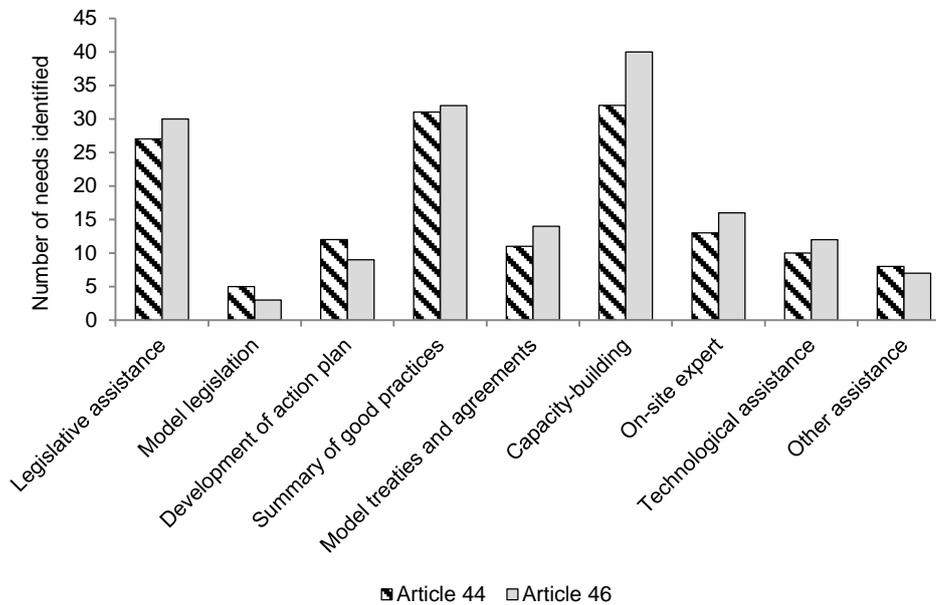
26. A total of 149 technical assistance needs were identified by 49 States with regard to the implementation of article 44, which is now the article with the second largest number of needs, having overtaken articles 48 and 50 in the present analysis. Article 46 remained the article with most technical assistance needs in chapter IV, with a total of 163 technical assistance needs identified by 58 States (see figure XII). Furthermore, article 44 has seen a larger percentage increase in needs (40 per cent) than article 46 (30 per cent) in the present analysis.

27. As noted in the previous assessment, while the legislative requirements for the implementation of the two articles differ, there are some commonalities in the frameworks that govern the processing of extradition and mutual legal assistance

requests and in the challenges that countries face in achieving successful international cooperation in practice. The complexity of fully implementing article 46 is also reflected in it being the article for which the most challenges have been identified within chapter IV (see CAC/COSP/IRG/2016/8).

Figure XIV

Technical assistance needs relating to article 44 and article 46

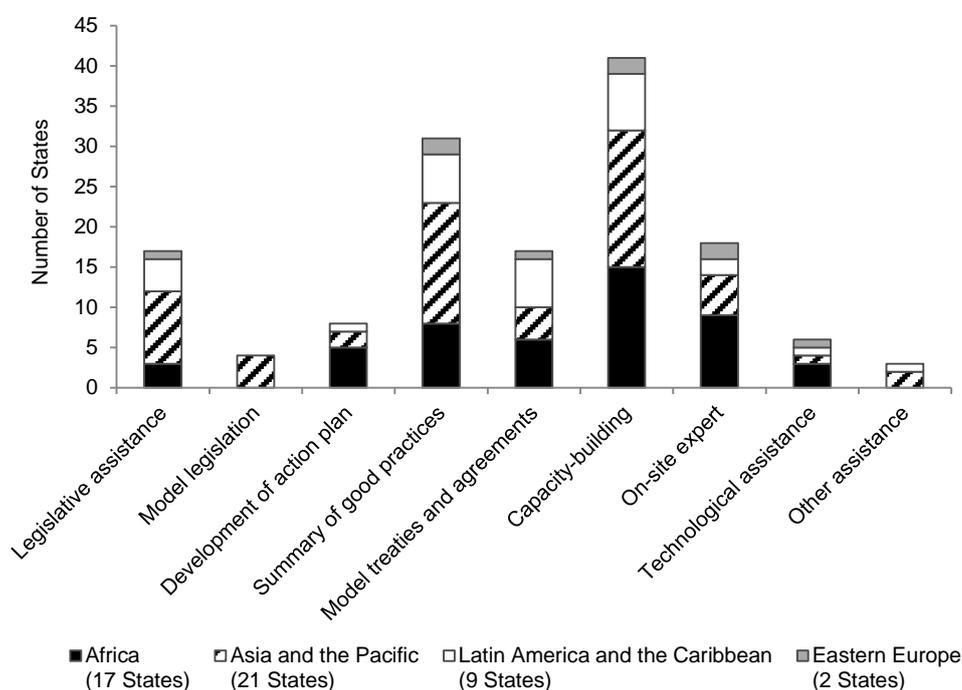


Special investigative techniques

Technical assistance needs relating to article 50

28. A total of 145 technical assistance needs were identified by 49 States for article 50, which is the article with the third largest number of needs in chapter IV, and the fourth largest number of needs overall. The needs were identified by all regional groups, with a comparatively similar level of prevalence among the Group of African States and the Group of Asia-Pacific States, and were most prominent among the Group of Eastern European States, with two States identifying nine needs between them (see figure XV).

Figure XV
Number of States identifying needs pertaining to article 50, by type and regional group



29. The category of capacity-building programmes contained the most frequently identified needs across the regions (identified by 41 States out of a total of 49 States having identified some form of technical assistance need with regard to article 50), which would appear to be a natural consequence of the types of measures envisaged in article 50. The second-largest category of needs was for a summary of good practices (32 States). While it was proportionately sought after more in the Group of Latin American and Caribbean States in the previous analysis, the Group of Asia-Pacific States has overtaken that region, with 15 out of 21 States having identified this type of need for article 50. In analysing the regional breakdown further, it was noted that the Group of African States had identified a relatively large number of needs in relation to the need for the development of an action plan (6 States out of 17) compared with the other regions (one out of nine States in the Group of Latin American and Caribbean States and two in the Group of Asia-Pacific States). Asia and the Pacific was the only region to have identified the need for model legislation (four States).

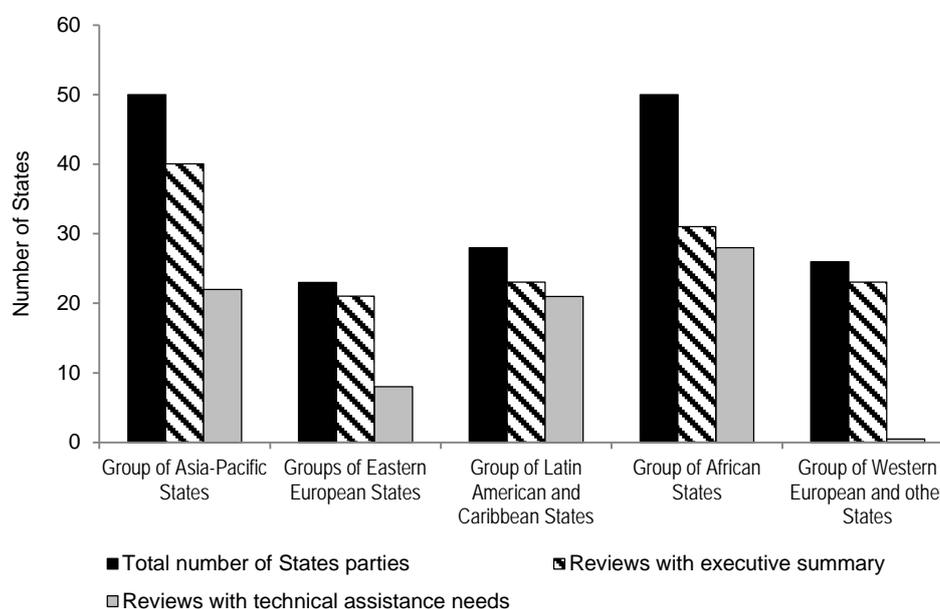
IV. Trends relating to the types of needs identified and technical assistance needs in the Group of Eastern European States and the Group of Latin American and Caribbean States

Trends in the types of technical assistance needs identified and other needs emerging from the country reviews

30. Overall, the number of countries identifying technical assistance needs in the reviews analysed in the present report has increased proportionately to that in the previous analysis conducted, i.e. 87 of 137 States (63 per cent), compared with 59 of 101 States (58 per cent) in the first analysis. As seen in figure XVI, nearly all the States parties of the two regional groups of Eastern Europe and Latin America and the Caribbean had completed at least the executive summaries of their reviews. The present note used this opportunity to analyse the technical assistance needs of these two regional groups in greater detail.

Figure XVI

Number of States with technical assistance needs, by region



Note: total equals 87.

Group of Eastern European States

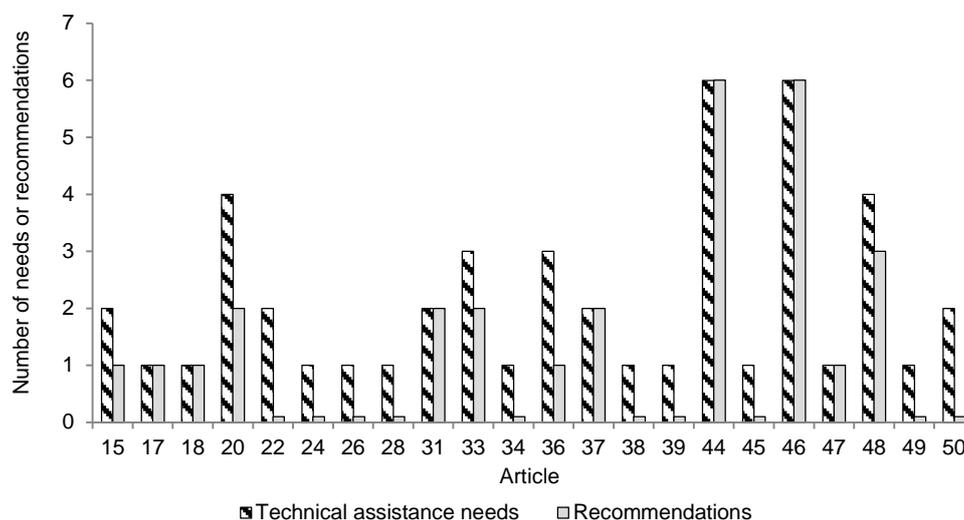
31. In the Group of Eastern European States, 8 out of 21 States had identified a total of 107 technical assistance needs. That is the lowest number of States among all the regional groups, or 38 per cent of the group, with the exception of the Group of Western European and other States, which stands at zero technical assistance needs (see figure XVI).

32. The needs identified were related to 22 of the 35 articles under review. In cross-referencing the data relating to the challenges identified by the reviewing

experts, it was also noted that when a technical assistance need had been identified, frequently a recommendation had also been issued along the same lines. Figure XVII shows the number of States in the region that identified technical assistance needs per article. A breakdown of needs by category is depicted in figure XVIII.

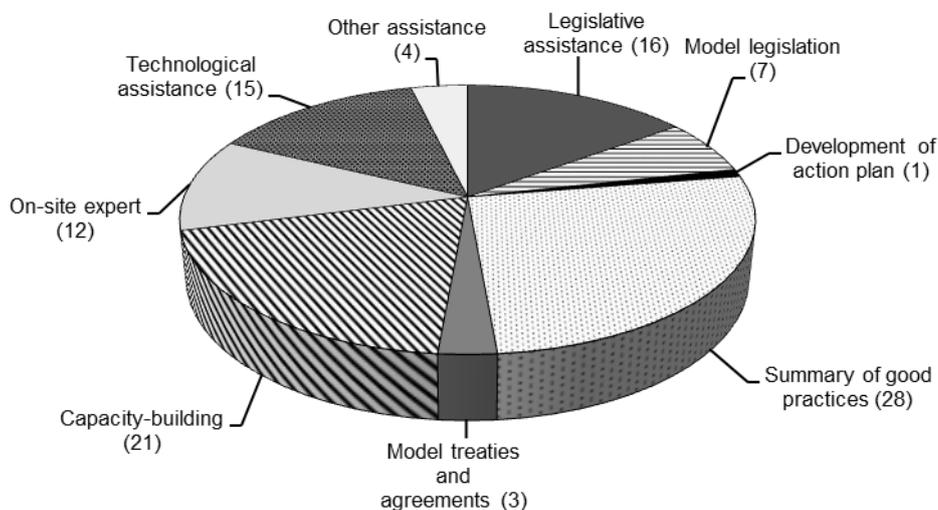
Figure XVII

Comparison of needs and recommendations, by article, for the Group of Eastern European States



33. The breakdown by category of need highlights that the type of needs follow the same pattern as seen for the overall analysis, namely with the need for summary of good practices (28 needs) as the largest number. There is then a reversal of the overall trend, with the need for capacity-building (21 needs) being the second-largest number, followed by the need for legislative assistance (16 needs). Interestingly, the need for technological assistance is relatively high in the Group of Eastern European States, with 15 instances of needs identified. Those needs concerned the establishment of databases for gathering and sharing information, case management systems, software for gathering and generating statistics and electronic templates for mutual legal assistance purposes.

Figure XVIII
Technical assistance needs, by category, for the Group of Eastern European States



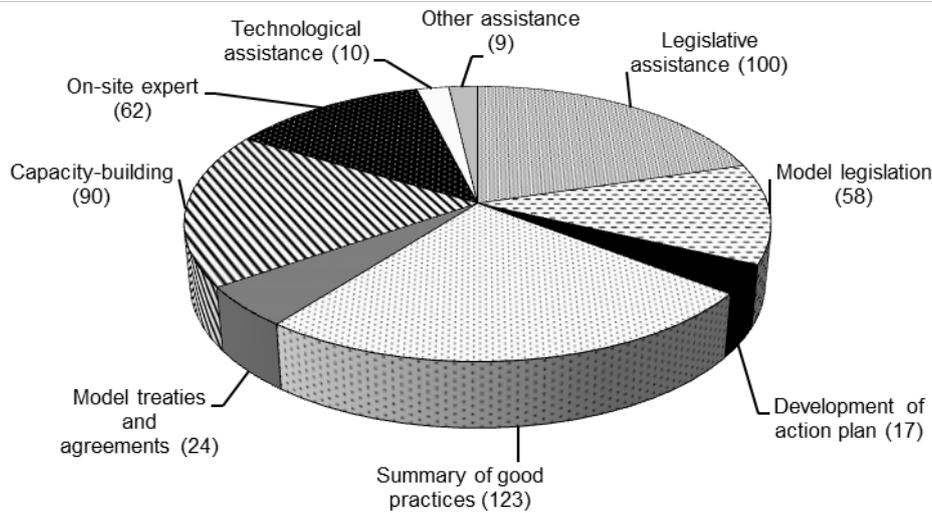
Note: total equals 107.

Group of Latin American and Caribbean States

34. In the Group of Latin American and Caribbean States, 21 of 23 States had identified a total of 493 technical assistance needs; however, one additional State noted that it had extensive needs and made a general observation to that end instead of identifying them using either the predefined categories or relating the needs to specific articles of the Convention. The Group had wide ranging instances of needs, from one State with 108 needs, to two States with only a couple of needs each.

35. The needs are depicted by category in figure XIX. The largest number of instances of technical assistance needs was identified for the category of summary of good practices and lessons learned (123 needs), followed by legislative assistance (100 needs) and capacity-building programmes (90 needs). However, in relative terms, the highest number of States parties identifying technical assistance needs concerned the category of legislative assistance (17 States), followed by capacity-building and model legislation (15 States each). Twelve States had identified the need for technical assistance to receive summaries of good practices and lessons learned.

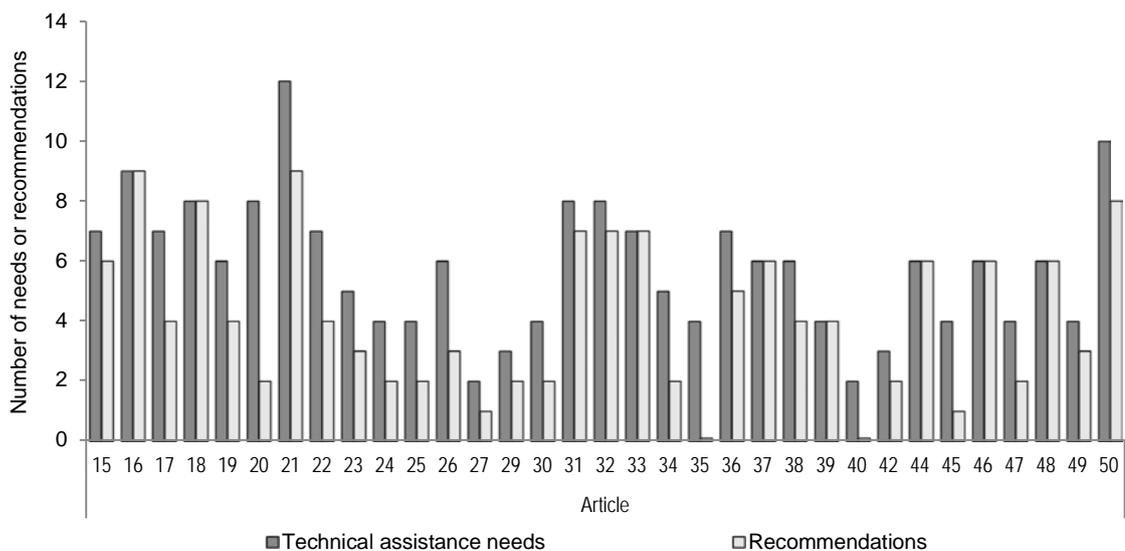
Figure XIX
Technical assistance needs, by category, for the Group of Latin American and Caribbean States



Note: total equals 493

36. For the Group of Latin American and Caribbean States, needs had been identified for all articles under review with the exception of articles 41 (Criminal record) and 28 (Knowledge, intent and purpose as elements of an offence), the latter of which is not usually assessed during the implementation review. In cross-referencing the data relating to the challenges identified by the reviewing experts, it was also noted that when a technical assistance need had been identified, frequently a recommendation had also been issued along the same lines. Figure XX shows the number of countries in the region that have identified technical assistance needs per article.

Figure XX
Comparison of needs and recommendations, by article, for the Group of Latin American and Caribbean States



Information on needs already addressed and national efforts for follow-up

37. The Conference recommended in its resolution 4/1 that States parties identify technical assistance requirements in their responses to the comprehensive self-assessment checklist and in the country reports and that those requirements preferably be prioritized. The variety of specific needs reflects the efforts of States to identify their own priority areas and to set the path for national action. The United Nations Office on Drugs and Crime (UNODC) has gained experience showing that higher-quality review reports and better-defined technical assistance needs enhanced the overall utility of the process and the country reports produced after the review. In the majority of States in the Group of African States, the Group of Asia-Pacific States and the Group of Latin American and Caribbean States, needs were also identified from outside the predetermined categories, with the direct support of the reviewing experts and the secretariat to further outline those needs.

38. The need for States parties to share good practices and lessons learned was echoed by many States parties in the information provided on the impact of the Implementation Review Mechanism and forms the basis for a note by the Secretariat (CAC/COSP/IRG/2016/12). In that note, States emphasized that the Mechanism and the review process in itself had already contributed to an enhanced coordination among national stakeholders, in that the reviews had given them the opportunity to come together and required them to enhance their national coordination efforts.

39. In line with Conference resolution 6/1, the Secretariat approached States for information on national action taken following the completion of the country review. The full analysis of the sample of information provided by 35 States in response to this request can be found in the aforementioned note (CAC/COSP/IRG/2016/12). However, it is noteworthy that technical assistance needs had been used not only as a prioritization exercise for the State party under review, but also as a means to identify entry points to provide technical assistance. Such technical assistance ranged from hands-on support to prepare the second cycle review, to exchange of staff and even a full-fledged programme of assistance. Further detail on national follow-up can be found in CAC/COSP/IRG/2016/12 and CAC/COSP/2015/6.

Future priority areas of technical assistance

40. Of the 137 States that have completed their reviews, 87 States identified between 1 and 134 technical assistance needs each — an average of around 36 needs per State. With another 30 implementation reviews under way (i.e. as part of which the self-assessment checklist has been completed), it is expected, based on the experience gained to date, that States will continue to identify a similar number of needs for the remainder of the first cycle.

41. It is likely that a significant proportion of States will identify a similar number of needs during the second cycle, taking into account the complexity of the chapters to be reviewed. Furthermore, the type of technical assistance required for implementing the chapters on prevention and asset recovery is likely to be more complex in nature than, for example, the provision of legislative drafting assistance to criminalize certain offences in accordance with the Convention. Therefore, the self-assessment checklist for the second cycle (see CAC/COSP/IRG/2016/4) has departed from the predefined categories to help identify technical assistance needs.

Instead, the various types of support required to implement the Convention have been regrouped as legislative assistance, institution-building, policymaking, capacity-building, research/data-gathering and analysis, facilitation of international cooperation with other countries and a final heading to offer an opportunity to identify needs that may not fall into the predetermined categories.

Areas for further consideration to enhance the identification of technical assistance needs and to strengthen responses

42. To date, 87 States parties have identified over 3,100 individual instances of technical assistance needs to allow them to fully implement the Convention against Corruption. With considerable effort having been made to elaborate upon and prioritize these needs, the Conference may wish to underscore the importance of addressing the technical assistance priorities identified in the reviews.

43. The needs of States in Asia and the Pacific were touched on in the previous analysis; however, a more in-depth analysis of the needs of those States, as well as those of African States, would be useful, given that these two groups together form the majority of parties to the Convention (100 States). The needs of the Pacific States were analysed in the previous analysis. As the second cycle is now under way, it is time to recall that technical assistance remains a cornerstone of the Convention and to take stock of lessons learned to date. The self-assessment checklist, as adopted by the Implementation Review Group at its seventh session, provides a more flexible way of identifying assistance needs and priorities. In seizing this new opportunity, States and reviewing experts should be encouraged to take time to elaborate and consider technical assistance needs from a strategic vantage point, thereby enhancing the usefulness of this exercise.

44. While some States use the needs identified in the country report primarily to help coordinate their own priorities, several States and development partners have incorporated the findings in the executive summaries into their assistance programmes and external actions. UNODC has seen how holding a general donor briefing during or after the country visit helps raise the profile not only of the Implementation Review Mechanism, but also of the importance of the Convention against Corruption as a whole. The Mechanism facilitates dialogue between the national authorities and relevant development partners to seek support for programmes by, inter alia, ensuring that activities are in line with the needs that have been validated through the review process. The Conference may wish to consider urging States to enhance their coordination in relation to assistance efforts.

45. The Group may also wish to recommend that States parties increase their efforts to provide direct assistance and/or funding to development partners to meet the technical assistance needs identified in the context of the Implementation Review Mechanism.