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Effective action against bribery: criminalization and enforcement of national and transnational bribery offences under the United Nations Convention against Corruption

Note by the Secretariat

Summary

The criminalization and enforcement of national and transnational bribery offences under the United Nations Convention against Corruption has presented States parties with a number of challenges. The first cycle of country reviews under the Implementation Review Mechanism has shown that there are gaps in many countries, as demonstrated by the high number of recommendations and technical assistance needs and the corresponding low number of good practices identified in the implementation of articles 15, 16 and 26, as well as of articles 30, 36, 37 and 39 of the Convention.

In its resolution 8/6, the Conference recognized that further efforts must be made to achieve full and effective implementation and, in particular, enforcement, of the obligations of States parties regarding the bribery of national public officials and of foreign public officials and officials of public international organizations.

The present note is based on resolution 8/6, which invited the Secretariat to collect good practices and lessons learned in this regard. The note contains an analysis of information provided by States parties regarding measures taken to strengthen criminalization, investigation and enforcement of bribery offences, combined with an overview of good practices in this regard from 173 executive summaries completed in the first review cycle of the Mechanism.



I. Introduction

1. The criminalization and enforcement of national and transnational bribery offences under the United Nations Convention against Corruption has presented States parties with a number of challenges. The first cycle of country reviews under the Implementation Review Mechanism has shown that there are gaps in many countries in the criminalization and effective enforcement of these offences, as demonstrated by the high number of recommendations and technical assistance needs, in particular on articles 15, 16, 30, 37 and 42 of the Convention, and the corresponding low number of good practices identified in the implementation of these articles.¹ While the majority of States parties had criminalized the active and passive bribery of domestic public officials, at least to some degree, the active bribery of foreign public officials and officials of public international organizations was found to be not, or not sufficiently criminalized in many States. Furthermore, effective enforcement was often already barred by legislation that was not clear or did not comprehensively criminalize bribery, and gaps existed with regard to facilitating the effective detection, investigation and prosecution of both national and transnational bribery offences.

2. In its resolution 8/6, entitled “Implementation of international obligations to prevent and combat bribery as defined under the United Nations Convention against Corruption”, the Conference *inter alia* called upon States parties to fulfil their obligations under articles 15 and 16 of the Convention, in accordance with its terms, to criminalize the bribery of national public officials, as well as of foreign public officials and officials of public international organizations, including the solicitation and acceptance of bribes by a national public official, and to strengthen their efforts to effectively enforce those laws.

3. The Conference further encouraged States parties to use the outcome of their country reviews to strengthen their anti-corruption frameworks, including implementation of the mandatory provisions of articles 15 and 16, and encouraged States parties to consider using the Implementation Review Group to update each other on their efforts to do so. The Conference also decided “that the Implementation Review Group should include as a topic for 2020 best practices and lessons learned by States parties in investigating and enforcing their laws implementing articles 15 and 16 of the Convention including solicitation, as well as strengthening international cooperation in this regard”.

4. The present note is based on a mandate in resolution 8/6, which invited the Secretariat to collect good practices and lessons learned in this regard. It contains a summary of responses provided by 27 States to the Secretariat’s note verbale,² which sought information on (a) measures taken to strengthen implementation of the mandatory provisions of articles 15 and 16, including on the basis of the outcome of the country reviews or other reforms undertaken; and (b) measures taken towards strengthening investigation and enforcement of laws implementing articles 15 and 16 of the Convention including solicitation, as well as measures aimed at strengthening cooperation with national authorities in line with articles 37 and 39 of the Convention. The note also contains good practices identified in the first review cycle regarding the criminalization and enforcement of bribery offences.

5. The submissions received covered many aspects of combating bribery, from legislative reforms towards a more effective legal framework to institutional aspects of law enforcement capacity and capacity building measures such as guidance and training, inter-agency cooperation in investigating and prosecuting acts of bribery, to investigative techniques such as financial investigations. Submissions also covered cooperation with the private sector and

¹ The present note is based on data from 173 executive summaries completed at the time of compilation in November 2020.

² The following States parties responded to the Secretariat’s note verbale CU 2020/99/DTA/CEB/CSS dated 16 March 2020: Armenia, Australia, Belarus, Bosnia and Herzegovina, China, Colombia, Ecuador, Egypt, Ethiopia, Hungary, Israel, Italy, Saudi Arabia, Kyrgyz Republic, Latvia, Mexico, Mongolia, Morocco, Myanmar, Oman, Singapore, Slovakia, Spain, Switzerland, Tajikistan, Tuvalu, and the United States of America. Where possible, the submissions were reflected verbatim.

incentives for cooperation, such as reporting channels and protection of reporting persons, as well as sanctions and alternative trial and non-trial resolution methods.³

6. Out of the 27 responses received, 19 States indicated that one or several of the measures were implemented in direct follow-up to their first cycle reviews, or the reviews under another peer review mechanism. Many States also attached high priority to combating bribery both nationally and transnationally, and in this regard reported that their legislative and institutional anti-bribery frameworks have undergone repeated or continuous revision since their first cycle reviews or similar reviews by other peer review bodies.

II. Analysis of submissions by States parties

A. Legal Framework

7. An effective legal framework, and the comprehensive criminalization of acts of bribery are the starting point in the fight against bribery, and clear and comprehensive legislation is necessary to allow for effective enforcement. In the course of the reviews, over 250 recommendations and numerous corresponding technical assistance needs on articles 15 and 16 demonstrate the challenges countries face in the criminalization of bribery. Most recommendations related to a too narrow scope of the covered public officials, modalities of the offences or the undue advantage, or no coverage indirect bribery committed through an intermediary.

8. In turn, good practices under article 15 were observed in only about 25 States parties and under article 16 in twelve States parties out of 173 reviewed States parties. The good practices identified relate to a wide scope of application of anti-bribery legislation to national and foreign public officials and officials of public international organizations, as well as to the private sector; a broad scope of the undue advantage; the criminalization of ex post facto payments, i.e. the criminalization of giving or accepting an undue advantage as a reward or a token of gratitude after the public official had carried out, or omitted to carry out an act; the criminalization of acts and omissions not only within, but also outside the scope of the public official's authority; evidentiary presumptions to facilitate the prosecution of bribery; the existence of separate provisions or stand-alone offences on intermediaries in bribery offences; and the establishment of extraterritorial or nationality jurisdiction.

9. In the submissions, States parties reported on measures taken to enhance their legal framework implementing articles 15 and 16 of the Convention. The most frequently reported measures related to the broadening of the scope of public officials under domestic bribery laws, both with regard to domestic and foreign public officials as well as officials of public international organizations. Other measures reported include the introduction of additional bribery offences, the addition of new modalities to existing offences, and evidentiary presumptions to facilitate enforcement. Several States parties reported that legislation to enhance their anti-bribery framework was currently underway, while others stated that their legislative framework had undergone repeated revision since their first cycle reviews, often in response to recommendations received from their reviewers. Tajikistan, for example, reported that a working group had been set up to conduct a thorough and comparative analysis of the Criminal Code, the Anti-Corruption Law, the Code of Administrative Offences, and other relevant legislative acts. Latvia reported a continuous revision of laws and filling of gaps identified in particular through peer review mechanisms, including through legislation from 2016, 2017 and 2020 to, inter alia, harmonize criminalization of active and passive bribery, and introduce the promise of a bribe to cover a small gap caused by linguistic specificities in the Latvian language.

³ The present note does not purport to be comprehensive but rather endeavours to provide a summary of the information submitted by States parties. It should further be noted that, while essential to combatting bribery, measures reported by States with a view to strengthening prevention are not reflected in this note. The topic of criminalization and enforcement of private sector bribery offences, article 21 of the Convention, is not covered in the present note and warrants a separate analysis.

10. Several States had expanded the scope of their bribery definitions, in particular the categories of public officials subject to criminal liability. Belarus had included in the definition of public official any person vested with the same authority as a government representative when fulfilling their duties relating to the preservation of public order, the combating of crime and the administration of justice, while China had included persons assigned by a public sector entity to perform a public service in a private company or institution. Saudi Arabia had included employees, members, chairmen and directors of non-governmental organizations for public interest. In turn, Hungary expanded the scope of liability of intermediaries involved in bribery offences to senior company officers, such as directors or persons with supervisory powers.

11. Several States also amended, or planned to amend, the scope of foreign public officials or officials of public international organizations: A legislative reform planned in Armenia aims to broaden the scope of foreign public officials covered, by including in the definition foreign arbitrators, auditors and lawyers, permanent, temporary or special authorities in an international public organization, representatives of international organizations that permanently or temporarily hold a special position or perform a service in the International Court of Justice or have the authority to act on behalf of the court and other officers. Similarly, in Belarus, the scope of foreign public officials included foreign arbitrators and jurors, as well as members of international parliamentary assemblies, judges, and officials of international courts. In Italy, members of international parliamentary assemblies, members of international organizations and officers and judges of international courts were covered by the definition of foreign public official.

12. On article 16, Bosnia and Herzegovina, Kyrgyz Republic, Mongolia and Slovakia indicated that they had opted to criminalize the passive bribery of foreign public officials. In Armenia, the criminalization of passive bribery of foreign public officials was under consideration and Tuvalu indicated that it planned to review the legislative framework relating to bribery of foreign public officials and officials of public international organizations. While the United States had not criminalized passive bribery of foreign public officials, it had nonetheless prosecuted foreign public officials or officials of public international organizations on the basis of offenses such as money laundering, wire fraud, and interstate transportation of stolen property where jurisdiction could be exercised.

13. Other measures reported by States to implement gaps identified through the reviews included the introduction of the additional bribery modality of promise in Mexico and Saudi Arabia, or, in Ethiopia, a reversal of the burden of proof regarding the intent to obtain an undue advantage. Oman and Tajikistan criminalized the solicitation by a public official of a bribe in order that the official undertake a legitimate work in the exercise of his or her duties, to fully bring their legislation in line with article 15 of the Convention.

14. The Parliament of Australia is considering new legislation to amend the criminal offence of bribery of a foreign public official. The bill was drafted on the basis of experience of law enforcement authorities and the identified need for even broader criminalization to allow for increased enforcement. If passed, the legislation would:

- Extend the definition of ‘public official’ to include a candidate for public office;
- Include in the bribery offences bribes solicited or accepted to obtain or retain a personal advantage;
- Remove the requirement that a benefit and/or business advantage must be ‘not legitimately due’ and replace it with the concept of ‘improperly influencing’ a foreign public official, to address hurdles faced by law enforcement where bribe payments are disguised as legitimate business transactions;
- Remove the requirement that the foreign official must be influenced in the exercise of the official’s duties, with a view to removing an unnecessary burden on the prosecution to prove the scope of a foreign public official’s duties given that this often requires reliance on mutual legal assistance (MLA) from the official’s country of origin.
- Parliament was also considering a corporate offence for failing to prevent foreign bribery, on the basis of positive experience observed in the United Kingdom.

15. In Slovakia, new legislation set conditions for imputing responsibility for commission of specific offences, including national and transnational bribery, directly to legal persons, extending accountability for corruption offences under criminal law to both physical and legal persons. Slovakia reported that since the Act entered into force, a trend of increasing criminal prosecutions and also successful convictions of legal persons, including for bribery of national public officials, has been documented. Spain also reported a broadening of the scope of the liability of legal persons for additional corruption offences, as well as broadening the scope of public officials under its bribery legislation. In 2016, Colombia established administrative liability and sanctions for legal entities engaging in transnational bribery and reported on several successful investigations over the past years.

B. Detection and investigation of bribery offences

16. Due to the clandestine nature of bribery, with both the bribe giver and the bribe recipient committing an offence, and in the absence of an immediate victim in the traditional, criminal law sense, the detection of bribery offences is significantly more difficult than in corruption offences with an identifiable victim more likely to report, such as in cases of embezzlement. Additional challenges in investigating bribery relate to the interlinkages with other economic or financial crime and corresponding capacity and skills needed by investigators and prosecutors, such as in forensic accounting, analysis of electronic evidence or cross-border information sharing. The Kyrgyz Republic summarized the challenges its law enforcement authorities face in bribery proceedings as follows: “Crimes of bribery of foreign public officials are extremely difficult to investigate and prosecute. Such bribery is difficult to detect because the individuals, companies, and officials involved are located in different countries. The bribery of a foreign public official may involve persons from the country where a commercial entity is registered, and the official receiving the bribe is located, as well as consultants, intermediaries, or shell companies located in third countries. Meanwhile, funds that appear as bribes can be laundered through offshore bank accounts or transferred to third parties (often in different jurisdictions). At the same time, documents relating to the criminal case may be composed in different languages.”

17. To overcome the detection challenges inherent to bribery offences, States have reported on a number of measures taken to facilitate detection and subsequent investigation. Measures include enhancement of law enforcement capacity, incentives for cooperation in investigations, in particular addressed to the private sector, new or improved reporting channels and protection of reporting persons, and better investigative techniques, such as the use of new technology, stronger usage of financial investigations, or reliance on additional data sources for detecting bribery, such as anti-money laundering (AML) or tax data, intelligence or media reports. In this regard, many countries also reported that they had begun to rely more strongly on the role of their financial intelligence units (FIUs) in the detection of bribery offences and that measures had been taken to improve inter-agency cooperation in general.

1. Law enforcement capacity

18. During the first cycle reviews, the specialization of relevant authorities or units and their staff, in particular for complex cases of economic fraud and corruption and adequate capacity and resources for these authorities including through practical training were identified as the most frequent good practices. Operational measures identified as good practices included measures leading to increased investigations and prosecutions, including measures to enhance effectiveness of these authorities or units, such as information-sharing, inter-agency coordination and access to information, collection and use of relevant data, clear policy guidance or the creation and use of inter-agency task forces.

19. Several States reported on measures taken to strengthen the capacity of their law enforcement agencies involved in investigating or prosecuting bribery offences, including through creating dedicated units on police or prosecutorial level, ensuring concrete and effective inter-agency cooperation and providing training or guidance on bribery-specific aspects of law enforcement, such as financial investigations or mutual legal assistance in cross-border proceedings.

20. For example, Switzerland reported on capacity building measures for courts and public prosecutors' offices at the federal and cantonal levels in terms of both staff and technical expertise in transnational corruption case. A recently passed law is envisaged to further strengthen the capacity of the Public Prosecutor's Office to work more systematically in international corruption proceedings, with prosecutions being expected to increase. Since the first cycle of review of Switzerland, Swiss authorities report that over 240 cases of foreign bribery have resulted in prosecution.

21. Italy reported that almost all its national prosecutor's offices have set up specialized working groups to investigate crimes against the public administration, including bribery. Some of these working groups also have jurisdiction over economic crimes that can be linked to corruption, such as bankruptcy, tax or corporate crimes, while other working groups had adopted organizational models to facilitate cooperation in cross-border investigations, such as an "international relations" magistrate in charge of mutual legal assistance, or investigative methodologies and relations with foreign authorities. These working groups cooperate with the Italian Guardia di Finanza (Financial Police), specialized police trained in financial investigations and investigative methodologies specifically adapted to the peculiarities of financial crime. In addition, Italy's investigative authorities have been granted full independence from the executive branch, including the public prosecutors' offices or the anti-corruption authority, with which a collaboration mechanism exists to share information.

(a) Specialized agencies or units (article 36)

22. With a view to concentrating skills and capacity in one dedicated investigative or enforcement authority, several States reported on the creation of dedicated agencies or units specialized in bribery and other corruption offences, or on the concentration or transfer of jurisdiction over bribery offences to one existing agency. In most of these States, the establishment of these dedicated units or agencies was fairly recent, or was still in the process of being implemented, but notably, some already report successful investigations resulting in indictment, including against high-level public officials. In addition to the creation of dedicated units for investigation and prosecution, States also reported on measures taken to enhance inter-agency cooperation, in particular on increased cooperation with and reliance on data from FIUs (see section on cooperation with FIUs below).

23. One of the States reporting that recent institutional changes have already led to successful investigations and resulted in indictments and sentencing, including against officials with immunity such as members of Parliament, was Hungary, where a new Criminal Procedure Act recently extended the exclusive investigating competence of the prosecutor's office to all office-related crimes, including bribery. The structure of the investigative branch of the prosecutor's office was reformed into a clearer, more concentrated system, and a new internal order concerning prosecutorial investigation was issued. While Hungary reported that the new structure has proved to be functioning well, additional resources, capacity building and training are reported to still be required.

24. In Belarus a specialized unit of the Investigative Committee has already been put in charge of investigating corruption offences, while Tuvalu and Armenia reported envisaged amendments in this regard. In Tuvalu, terms of reference have been drawn up for a Combined Law Agency Group to cover specific aspects of the implementation of articles 15 and 16 of the Convention and strengthening inter-agency cooperation. Armenian draft legislation foresees the creation of the Anticorruption Committee, a single, specialized body of jurisdiction for the detection and investigation of corruption offenses in 2021. This draft legislation is part of a broader reform of the Armenian law enforcement system, aimed at making it more specialized and effective.

25. As part of a reform of organizational and structural arrangements related to combating financial and administrative corruption, Saudi Arabia combined the supervision, investigation and prosecution authorities responsible for corruption and transferred these powers to Nazaha, its Anti-Corruption Commission, with a view to increasing efficiency and ensuring speedy resolution of cases.

26. China has concentrated investigative powers at the supervisory commissions, which are the specialized organs for overseeing all public employees exercising public power, investigating offences related to abuse of public office, carrying out efforts to establish a clean government and fight corruption, among others. In line with Chinese legislation, where other organs discover in their work any leads about suspected bribery or other offences related to abuse of public office by public employees, they shall transfer them to the supervision organs for investigation. Supervision organs may make inquiries into and freeze assets of those implicated in a case, such as savings, remittances, bonds, stocks and fund shares, in accordance with the provisions.

27. In Israel, the prosecution of foreign bribery offences is conducted under the auspices of an inter-ministerial team in charge of ensuring that serious efforts are made to obtain information regarding potential foreign bribery offences, that all information gathered is thoroughly examined, and that the monitoring of alleged offences and their investigations will not be stopped without justification. The team includes representatives from relevant law enforcement agencies, the Department of International Affairs as well as the anti-money laundering and tax authorities. The team meets periodically and monitors the treatment of cases and discusses allegations of bribery of foreign public officials received from different sources, such as MLA requests or media reports. The team may deliver instructions on courses of action, including precise investigative actions to be taken, monitor how instructions are implemented, and follow up on the provision of information in response to incoming MLA requests regarding suspicions of foreign bribery. In addition, in the Israeli National Unit for Fraud Investigations, an experienced investigations officer has been assigned to focus specifically on foreign bribery offences, with duties including the scanning of media reports and classified intelligence information. Exclusive jurisdiction for the prosecution of foreign bribery was transferred to the Tel Aviv Tax and Economic District Attorney's Office in 2015, with a view to further enhancing expertise and specialization.

28. The Italian Guardia di Finanza usually leads complex or difficult corruption investigations, due to its specialized competences and expertise for economic and financial crime, including in financial analysis. It may investigate on its own initiative or on behalf of the prosecution and its dedicated Special Anti-Corruption Unit is charged with the direct execution of inspections delegated by the Anti-Corruption Authority. Other examples cited by Italy based on information received from 78 prosecutors' offices across the country include the anti-corruption department in Milan, which consists of a senior prosecutor, magistrates and specialized personnel of the Guardia di Finanza, the Revenue Agency, the Customs and Monopolies Agency, the Bank of Italy and the FIU, and aims to combine horizontal competences between corporate criminal law, financial market law, "the unfaithful behaviour of public officials" and tax fraud. In addition, Milan established a specialized Department of International Affairs and Transnational Economic Crimes, consisting of six judges able to work in Italian, English, French and German. The Department cooperates with foreign and domestic investigative journalists and non-governmental organizations, and maintains relationships and dialogue with foreign counterparts, such as the Algerian, Brazilian, French, Nigerian and US prosecutorial or judicial authorities. At the police level, a dedicated unit has exclusive competence over foreign bribery and other transnational economic crimes, such as tax fraud and money laundering, and the unit may cooperate internationally through mutual legal assistance and maintain relationships with international organizations, including UNODC, OECD and FATF. With regard to interagency cooperation, another example cited by Italy concerns the creation of a coordination and information exchange mechanism between the prosecutors' offices from four municipalities following a natural disaster that required significant infrastructure rebuilding. With a view to detecting possible corruption in the rebuilding process, the four prosecutors' offices were also involved in the procurement proceedings related to the infrastructure rebuilding projects.

29. In Colombia, investigative powers and administrative sanctioning powers for transnational bribery offences committed by legal persons were transferred to the Superintendency of Corporations, which at the same time is empowered to regulate business ethics programmes for companies under its supervision and control, and to engage in international cooperation. The Superintendency also maintains a forensic laboratory and

cooperates closely with the Attorney-General's Office, the FIU and other, including foreign, authorities. The Specialized Directorate of Financial Investigations within the Attorney-General's Office, which is in charge of prosecuting corruption offences, reported that in 2020, 19 priority investigations were underway by March and that 160 investigative actions had been carried out between December 2019 and March 2020, including asset declaration, financial and tax analyses. At the police level, the Anti-Corruption Investigative Group of the national police has recently been strengthened, its responsibilities lie in the three areas of investigation of crimes against the public administration, specialized investigations and internal investigations for law enforcement.

30. As Mexico has opted to make bribery an administrative as well as a criminal offence, the General Directorate of Complaints and Investigations and the General Directorate of Forensic Investigation within the Secretariat of the Civil Service have the authority to investigate bribery allegations through administrative proceedings, as well as to file complaints before the Specialized Prosecutor's Office for the Fight against Corruption. From early 2019 to spring 2020, 17 investigations against public officials from five agencies were being conducted, with twelve of these investigations focusing on a possible bribery network potentially affecting the pharmaceutical sector. The Ministry also has so-called Internal Control Organs, which are present in each institution of the federal public sector and may investigate probable administrative misconduct by public servants. These control organs are currently undergoing capacity building measures to strengthen their autonomy and independence. Inter-agency and cross-border cooperation is one of the priority areas identified in the Mexican anti-corruption strategy, including through coordination and/or collaboration agreements necessary for the implementation of intelligence systems that optimize the exchange of information. The Secretariat of the Civil Service is a member of the Coordinating Committee of the National Anti-Corruption System and has concluded cooperation agreements with the FIU and the Ministry of Finance and Public Credit, and with the tax administration system.

(b) Guidance and training (article 36)

31. In light of the difficulties of detecting and investigating bribery, investigators and prosecutors need special expertise in areas such as forensic accounting, the search, seizure and analysis of financial data and electronic evidence, political or functional immunity, or the requesting of information or evidence through information channels or mutual legal assistance. Training and guidance for different law enforcement authorities involved in combatting bribery are thus vital for successful enforcement and several States reported on trainings provided to their personnel.

32. An example of very targeted training was cited by the United States, where the Department of Justice provides concrete guidance to prosecutors on the evaluation of corporate compliance programmes. The guidance assists in making informed decisions as to whether, and to what extent, a corporation's compliance programme was effective at the time of an offense, and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate form of any resolution or prosecution; monetary penalty, if any; and compliance obligations contained in any corporate criminal resolution, such as monitorship or reporting obligations.

33. Law enforcement officials in Israel undergo intensive training and awareness-raising activities regarding various aspects of economic crimes, such as cooperation between enforcement entities, confiscation, involvement of prosecutors in investigations, and the utilization of information discovered by the Israel Money Laundering and Terrorism Financing Authority, with increased emphasis on foreign bribery and related offences.

34. In Singapore, law enforcement authorities specialized in the fight against corruption regularly participate in training activities in the form of lectures and interactive seminars conducted by both domestic and international lecturers on methods to enhance detection, investigation and prosecution of corruption offences.

35. The administration of the Ecuadorian Judiciary Council has defined the fight against corruption as its first line of action and in this context has hosted seminars, created a Guide to Fighting Corruption and Organized Crime, which was approved by the Office of the

Attorney General and the Public Defender's Office, and is planning to restructure the judiciary with a view to creating units dedicated to combatting corruption and organized crime.

36. To strengthen the capabilities of members of the Moroccan Public Prosecution Office in the field of combating corruption, specialized training courses on financial crimes were organized over the past four years for the benefit of the Public Prosecution Magistrates in the specialized departments of financial crimes in the Courts of Appeal, and the Judicial Police officers in charge of researching financial crimes. In addition, with a view to expediting and increasing the efficiency of corruption investigations, the Presidency of the Moroccan Public Prosecution issued internal guidance, including on expediting the completion of investigations conducted by the police; the legal requirements that allow for collecting evidence, identifying and arresting perpetrators and coordinating with investigative judges and the court.

37. The Slovakian National Crime Agency and the Special Prosecutor's Office provide annual training activities for investigators and prosecutors focused on ensuring proactive investigation and prosecution of legal persons, including for offences of bribery of national and foreign public officials. For police specialized in corruption and money-laundering, annual trainings and international seminars on new trends in enforcing offenses of foreign bribery are organized using knowledge and experience from countries with a reported high success rate of detection and investigation of foreign bribery. Examples of recent seminars include one on the application of instruments of international legal and judicial cooperation in criminal matters for law enforcement officers specialized in investigating corruption. The focus of the seminar was on current threats of crimes with cross-border nature, legislative framework and institutional instruments of international cooperation in detecting and investigating transnational crimes, including analytical and coordinating support of Europol and Eurojust. Another seminar focused on the application of operational and investigative means, provision of evidence in pre-trial proceedings or protection of whistle-blowers in relation to corruption of national and foreign public officials.

38. In Colombia, a Strategic Directorate of the Attorney General's Office aims to strengthen the competences of law enforcement personnel through training and tools with a focus on, inter alia, economic and financial aspects, money laundering and asset recovery. Under this Directorate, a methodological guide on detecting and investigating transnational bribery is currently under preparation, taking into account the complexity of proving bribery and the difficulty in obtaining the necessary evidence for its prosecution. The Specialized Directorate of Financial Investigations of the Attorney General's Office and the Superintendency of Corporations also participate in joint trainings, in order to improve the capacities of investigators and analysts to detect possible transnational bribery. Inter-agency cooperation between these authorities also includes collaboration with the FIU, with control agencies such as the Comptroller's and Inspector General's offices, and a protocol between the Head of Financial Crime at the Attorney General's Office and the Superintendent of Corporations with a view to conducting joint actions to investigate and sanction conduct that affects the interests of the State and to facilitate immediate surveillance, control, investigation and prosecution of transnational bribery. A legislative amendment is envisaged that would allow the FIU to report directly any suspicion of transnational bribery involving legal entities to the Superintendency of Corporations and that the Superintendency may request data from the tax and customs authority, including information subject to bank secrecy.

(c) Interagency cooperation and information exchange (article 38)

39. In addition to the examples of inter-agency cooperation mentioned above, several States cited examples of formalized inter-agency cooperation, such as Ecuador, where a framework agreement on inter-institutional cooperation in anti-corruption is in place between the Comptroller-General's Office, the Attorney General's Office, the Public Prosecutor's Office and the FIU. Similarly, in Tajikistan an agreement exists on the cooperation between the Prosecutor General, the Agency for State Financial Control and Combating Corruption, the Agency for Drug Control, the Ministry of Internal Affairs, the State Committee on National Security, the Customs Service and the Tax Committee. Italy

cited several memoranda of understanding between its authorities, aimed at promoting the exchange of information and documents towards coordinated and concerted action targeting criminal corruption through a “pincer attack” (i.e. targeting criminals from different directions). In one Italian region, a memorandum of understanding exists between the Prosecutor’s Office and the Regional Administrative Court, whereby the administrative judge reports to the prosecution facts arising from court hearings that give rise to suspicion of crimes against the public administration.

40. Hungarian authorities reported that cooperation and information exchange between various authorities works well in practice, and that suspicions of bribery that come to light in the course of investigations of other offences are passed on to the specialized prosecutor’s office within a reasonable time frame.

41. The Slovakian Special Prosecutor’s Office organizes lectures and trainings aimed at raising awareness on the importance of cooperation between law enforcement authorities and other State agencies or offices, such as the FIU, Public Procurement Office, Antitrust Office or Supreme Audit Office, regarding the reporting of suspicious behaviour or transactions identified within their competence.

2. Investigative techniques or powers (articles 29 and 50)

42. With regard to investigations, many States reported on a variety of measures implemented to facilitate the work of investigators in bribery cases and to overcome obstacles in the detection and investigation in this area. While very few countries reported that a stronger focus was placed on financial investigations, reliance on FIUs and financial intelligence increased in many States. Other reported measures include access for law enforcement to additional data sources, the use of new technology in investigations and the introduction of new evidence collection or investigative techniques or powers.

43. With a view to effectively and proactively assessing accusations of bribery while weighing the interests of the person to be investigated against the public interest in a formal investigation, Israel has issued guidelines on the conduct of a preliminary investigation in cases where the evidentiary basis does not establish a reasonable suspicion of a criminal offence, but there is nonetheless a public interest in looking further into the matter. The scope of investigative measures includes many of those that are available in the course of a formal investigation, including the issuance of MLA requests. At the same time, the implications of an official investigation on a suspect, such as reputational damage, are avoided until sufficient evidence has been collected.

44. Similarly, Italian authorities can use investigative tools in a pre-inquisition phase in which the financial situation of a suspect, such as their credit card movements or cash withdrawals, can be assessed, with a view to establishing a sufficient suspicion that warrants an investigation. In addition, following a 2019 legislative amendment, undercover agents can now be used in the investigation of corruption offences. Colombian authorities, likewise, can carry out covert operations in investigations of corruption or crimes against the public administration.

45. To allow for more time particularly in complex and lengthy investigations, Italy conducted a structural reform of its statute of limitations, extending it for corruption offences. Similarly, Colombia has increased the term of limitation by 50 per cent for offences by public servants or individuals who perform public functions on a permanent or temporary basis and those who act as withholding or collection agents. Colombia reported that these changes have led to the strengthening of the investigative work in corruption matters, due to more time available for the collection of evidence and the exercise of criminal action.

(a) Financial investigations and reliance on financial intelligence (article 58)

46. Based on a recommendation stemming from a peer review, Latvia made parallel financial investigations mandatory in foreign bribery investigations, and issued internal instructions for foreign bribery investigations, which are considered to be top priority. The Italian Guardia di Finanza is trained in financial investigations and investigative

methodologies specifically adapted to the peculiarities of corruption offences. In Colombia, a Specialized Directorate of Financial Investigations exists at the Attorney General's Office.

47. While few States described measures taken to improve financial investigations, many States cited the key role of their FIUs in the fight against bribery and reported that they have been relying more heavily on financial intelligence and have improved cooperation and information-sharing between FIUs and law enforcement agencies. The Egyptian FIU, for example, is required by law to maintain a database of information it possesses which is accessible to judicial and other competent authorities. In the United States, the FinCEN database, containing approximately 180 million records of financial transactions and other reports, represents the most broadly relied upon and largest source of financial intelligence available to law enforcement, tax, and regulatory investigations and proceedings, and certain intelligence matters. FinCEN also provides research, analytical reports and assistance with investigations and law enforcement initiatives and is planning additional analytical products and investigative support based on its expertise in financial crimes and financial systems.

48. While the FIUs in the majority of countries focus primarily on detecting and reporting money-laundering in line with their original mandate, some States use their FIUs to detect specific predicate offences and assist law enforcement in their investigation. The Swiss FIU, for example, reported that 23% of suspicious transaction reports by its FIU relate to underlying offences of foreign bribery, which are subsequently investigated. The institutional and operational capacities of the Swiss FIU, bank monitoring and tax authorities has recently been strengthened. The Colombian FIU coordinates with the Office of the Attorney General and the Supreme Court of Justice to identify predicate offences to money-laundering. In addition, the Colombia FIU has led a working group of seven FIUs to dismantle a corruption network consisting of governmental officials from several States.

49. A number of States reported on measures taken to improve inter-agency cooperation of their FIUs. In Latvia, the FIU actively coordinates with law enforcement, prosecutors' offices and courts, in addition to cooperating with obliged entities under the anti-money laundering legislation through a public-private cooperation coordination group. Similarly, in Morocco, efforts have been made to strengthen and institutionalize cooperation between the FIU and other bodies, and the FIU continuously coordinates and conducts joint activities with supervisory and monitoring authorities, law enforcement authorities, and other agencies on the basis of several memoranda of understanding. Tuvalu is envisaging the creation of a so-called Transaction Tracking Unit, consisting of financial institutions, the national bank and a special unit of the police, to analyse financial transactions.

50. Singapore has set up a Risk and Typology Inter-agency Group for law enforcement and supervisory agencies, to support the identification and management of money-laundering risks as well as monitor and coordinate significant money-laundering cases. The Group has developed a case prioritisation framework to assist law enforcement agencies in identifying significant cases, including through the application of data analytics over suspicious transaction reports and other intelligence to more effectively identify systemic threats. Since the launch of the framework, the taskforce has commenced four joint investigations, involving law enforcement and supervisory authorities.

(b) Access to additional data sources and use of technology

51. Several States reported that their authorities rely on other, new or additional data sources to detect bribery. In Israel, classified intelligence information or media reports are analysed for possible acts of bribery, in addition to more traditional sources that law enforcement has access to, such as company, land and mortgage registers. In Italy, under certain circumstances authorities may request bankruptcy related data from the bankruptcy courts; and China, Hungary, and Italy reported that authorities in charge of investigating bribery offences may request other or any State organs to provide data. In order to meet the needs of the National Anti-Corruption Authority, the Guardia di Finanza also uses the authoritative powers granted to it by tax law. Mexican legislation specifies that the investigating authorities shall have, on the basis of agreements with other authorities and with due regard for privacy and data protection, access to the information necessary for the clarification of the facts, including information considered to be of a reserved or confidential

nature. In such cases provisions aimed at protecting the secrecy of information on fiscal, stock market and fiduciary matters, or those related to deposit, administration, savings and investment of monetary resources may not bar investigations.

52. On the use of technology in the fight against bribery, Armenia reported that its anticorruption strategy envisages the creation of a number of electronic platforms and the provision of operative exchange of information in order to ensure advanced cooperation between state bodies. Through legislative amendments, Italy has introduced the possibility of intrusion of personal computers and smartphones through the use of malware (Trojan horse). In addition, the specialized working groups set up by Italian prosecutors' offices report the frequent use of technical instruments such as telephonic, environmental or telematic tapping, designed to map the relations of the investigated subjects in investigations of economic and financial crime.

53. With a view to improving the detection of unreported corruption cases, the Singapore Corrupt Practices Investigation Bureau is expanding its suite of investigative support tools in the areas of digital forensics and credibility assessment in partnership with other law enforcement and industry partners on collaborative projects. The Bureau has also advanced efforts towards internal digitisation and end-to-end digitalisation of investigations, operations and prevention processes and is also seeking to develop data analytics capabilities with the goal of proactively detecting corruption. In addition, the Bureau aims to improve their digital literacy through related training and exposure, including through attachment opportunities with relevant domestic agencies and foreign counterparts.

3. Cooperation with and reporting to law enforcement authorities (articles 8, 12, 32, 33, 37 and 39)

54. In light of both the bribe giver and the bribe recipient committing a criminal offence and having little interest in reporting, incentives for the (self-)reporting of bribery are essential to detection. The United States cites the challenges in detecting and investigating acts of bribery as follows: "Obtaining evidence necessary to convict persons involved in public corruption is particularly difficult. The secretive nature of the underlying activity as well as the real and perceived power of the participants make it very difficult for the prosecutor to obtain necessary testimony and other evidence. Participants often assert their privilege against self-incrimination [...] and refuse to testify about any crimes in which they were involved." To break this cycle, States parties reported on various measures to incentivize cooperation with law enforcement authorities in line with articles 37 and 39 of the Convention. Measures reported include new or strengthened reporting channels and enhanced protection of reporting persons, the possibility of mitigated or waived sanctions in cases of successful cooperation, the possibility of plea agreements, deferred prosecution agreements or other resolutions. Good practices identified in the course of country reviews regarding cooperation with the private sector include efficient information transfer mechanisms between investigative authorities and financial institutions, and training of private sector entities on prevention measures and awareness-raising. Mechanisms to encourage the reporting of corruption and the establishment of bodies or mechanisms to facilitate cooperation, including integrity pacts and agreements or arrangements were also identified as good practices.

(a) Reporting channels and protection of reporting persons

55. To facilitate the reporting of bribery suspicions by persons who have witnessed or gained knowledge of wrongdoing, the majority of countries reported on new, strengthened or additional reporting channels and enhanced measures to facilitate anonymous reporting and offer protection measures to reporting persons (whistle-blowers).⁴ Many measures

⁴ For more information on these issues, please also cf. the Resource Guide on Good Practices in the Protection of Reporting Persons:

https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf; and the work conducted under the Working Group on Prevention: <https://www.unodc.org/unodc/en/corruption/WG-Prevention/reporting-acts-of-corruption.html>.

reported were fairly recent, including new legislation from 2017 in Armenia, Italy and Latvia, from 2019 in Slovakia and Belarus, and ongoing reforms in Spain.

56. To complement internal reporting mechanisms already in place, Armenia set up a new website for anonymous reporting that had received over 1,000 reports one year into its existence, with 20 per cent of the reports leading to criminal investigations. An electronic platform launched by Mexico in 2019 was designed on the basis of studies on protocols for handling alerts related to the diversion of public resources, abuse of functions, embezzlement and bribery, and other offences. Bosnia and Herzegovina, Egypt, Morocco and Saudi Arabia rely on hotlines for the reporting of suspected wrongdoing, and Bosnia and Herzegovina has created an online reporting mechanism as an additional method. Morocco also provides a fax number for complaints and reported that 137 arrests of suspects had already been made on the basis of reports. Saudi Arabia facilitated anonymous reporting from outside the country with information on this process available online.

57. With regard to protection measures, Latvia reported on a new law from 2019 that strengthened protection for whistle-blowers by introducing legal aid from state funds for whistle-blowers and ensuring that a whistle-blower would not be held liable in any way. Over 50 reports had been received on the basis of the new law less than one year since its entering into force. In Belarus, similarly, legislation stipulates that protection of reporting persons can entail the payment of remuneration or bearing of arising costs by the State. Morocco has also introduced protection measures for whistle-blowers, as well as for witnesses, victims and experts. Mongolia has recently extended protection measures to anyone cooperative in an investigation, allowing the provision of personal guard, the protection of confidentiality and other measures. In Tajikistan, information about a person who has reported a corruption offence or assisted in the fight against corruption is considered a state secret and may only be provided in line with established procedure, by designated authorities or the court, and with the consent of the reporting person.

58. Introduction of protection measures is envisaged in Ethiopia, and Myanmar is currently developing a public Interest Whistle-blower Protection Law in line with article 33 of the Convention. On the basis of the current system in Myanmar, around 10,000 reports are received annually, of which roughly half were responded to, a tenth was transferred to other authorities, and another tenth was under scrutiny. New legislation in Australia aims to consolidate and strengthen existing protections and remedies for whistle-blowers in the corporate and financial sector and includes new protections for anonymous disclosures, the extension of protections to a broader range of matters, the application of protections to a broader audience, and improved means by which whistle-blowers can seek redress.

(b) Reporting obligations

59. Several States opted to make the reporting of suspected wrongdoing mandatory, with non-compliance sometimes being a criminal offence, such as in Oman, or subject to disciplinary measures.

60. The obligation applied to some or all public officials in some States, and extended to the general public in other States. In Switzerland, for example, federal and most state-level public officials are subject to the obligation to denounce offences that they observe in the course of their duties, with a view to increasing detection of cases of active and passive corruption of public officials. All Hungarian public officials must report a criminal offence of which they have gained knowledge within the scope of their competence. The Israeli Ministry of Foreign Affairs has appointed a member of its Legal Department to act as a point of contact for the Ministry's officials abroad, to which they are required to report suspicions of foreign bribery involving Israeli citizens. The officials are periodically reminded of their duty to report such suspicions and the duty was recently broadened to include a new explicit obligation to actively search the local media for foreign bribery allegations involving Israeli nationals and to report such allegations to the point of contact.

(c) Private sector cooperation

61. Under measures taken to improve cooperation between law enforcement and the private sector, the majority of States referred to measures to mitigate sanctions in cases of

compliance in criminal proceedings as an incentive for cooperation (see section C.1. on sanctions below). Much more so than under the first cycle country reviews, States also reported on active cooperation with the private sector either in concrete law enforcement proceedings, or through preventive measures such as promotion of corporate compliance regimes, roundtables or inclusion of the private sector in drafting processes of strategic or policy documents.

62. On private-public cooperation on corruption prevention, Myanmar reported that its Anti-Corruption Commission and the Union of Chambers of Commerce and Industries had recently signed and issued a joint declaration on cooperation for anti-corruption and, on the basis of the fourth amendment to the anti-corruption legislation since the first cycle review, private entities can now be ordered to establish and practice codes of conduct. With a view to encouraging the private sector to play a more active role in combatting bribery, through a 2019 legislative amendment, Italy introduced the possibility of mitigating sanctions for legal persons in cases where the legal person under investigation prevented more serious consequences, facilitated the identification of responsible natural persons or the recovery of assets and eliminated the organizational shortcomings through a corporate compliance regime.

63. The Colombian Superintendency of Corporations has adopted pedagogical strategies aimed at ensuring that the corporate entities under its supervision are aware of the legal provisions applicable to them, in order to encourage the detection and reporting of transnational bribery. The adoption of business ethics programmes is promoted, and information on issues such as regulatory compliance and good business practices is made available online and through trainings and circulars. Training sessions to promote the detection of transnational bribery are conducted for tax auditors, businesses and others. Colombia reported that 437 companies have adopted mandatory transparency and business ethics programmes, and in the future more companies will be obliged to implement such programmes. The Attorney-General's Office has concluded agreements with several private sector entities, such as one with the Chamber of Infrastructure to combat corruption in infrastructure projects. Colombia also reported that the Attorney-General successfully cooperated with former executives of a major construction company involved in a transnational corruption case in Latin America to obtain information for the Colombia investigation, resulting in the identification of bribes paid to Colombian officials, and their investigation and conviction.

64. Both Australia and Singapore have set up partnerships networks between the public and private sectors to prevent and combat bribery. The Australian Bribery Prevention Network, founded in 2019, is an industry-led public private partnership hosted by the Global Compact Network Australia. Members include the Federal Police, the Attorney-General's Department, civil society organizations and several large companies. The network aims to enable companies, including SMEs, to engage across industries and up and down supply chains to share expertise and knowledge about domestic and foreign bribery. A central online hub is being developed which will provide content and tools for companies to prevent, detect and respond to the risks of bribery and corruption.

65. The Singaporean Anti-Corruption Partnership Network was founded in 2018 with the objective of promoting ownership on the prevention of corruption within the private sector and has 35 member companies that take turns in organizing events on anti-corruption and good governance. The network works with business associations, in particular those related to sectors assessed to be vulnerable to corruption, to implement ISO standards and principles set by the Corrupt Practices Investigation Bureau. Like Mexico, Singapore reported that they make use of and work towards domestic implementation of ISO 37001 on Anti-bribery management systems, but while Mexico implements it in public sector agencies, Singapore promotes its implementation in the private sector.

66. The Egyptian Administrative Control Authority, an authority with a broad mandate in investigating public sector corruption, has created a specialized unit to deal with complaints from investors and entrepreneurs from the private sector, with the aim of protecting them from the risks of corruption and exploitation.

67. In the United States, senior law enforcement officials from the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), as well as senior officials from the Department of Commerce conduct outreach to the global business community in speeches, interviews and other communications to reinforce the detriment bribery poses to business and increase awareness of the Foreign Corrupt Practices Act (FCPA) among business and individuals doing business overseas. The Departments of Commerce and State also provide training on the FCPA to U.S. officials posted abroad, who in turn may provide general information on the statute to U.S. businesses. The FCPA Guide is a detailed compilation of information about the FCPA, its provisions, and enforcement, for example on who and what is covered by the FCPA's anti-bribery and accounting provisions; the definition of a "foreign official"; what constitute proper and improper gifts, travel and entertainment expenses; the nature of facilitating payments; how successor liability applies in the mergers and acquisitions context; the hallmarks of an effective corporate compliance programme; and the different types of civil and criminal resolutions available in the FCPA context. The guide also provides insight into enforcement practices through hypotheticals, examples of enforcement actions and anonymized declinations, and summaries of applicable case law and DOJ opinion releases.

68. One aim anchored in the Mexican anti-corruption strategy is to articulate schemes of collaboration with business chambers and international organizations that promote the development and adoption of compliance policies and anti-corruption programmes, as well as the generation of open data on the subject, including from small and medium-sized enterprises. A business integrity register, set up with support by another State party, international organizations and civil society, promotes the adoption of integrity policies among companies, including codes of conduct, control, surveillance and auditing systems, reporting systems and trainings. Compliance with this initiative will be considered when participating in public tenders in the future. An online platform is currently being developed to promote reporting channels as well as provide guidance on private sector integrity measures.

69. In line with the trend identified in the country reviews, many proactive or preventive cooperation measures reported by States relate to the cooperation between the financial sector and supervisory authorities with a view to combating money-laundering. For example, Latvia has set up a platform for weekly sector specific face-to-face meetings with representatives of private sector entities subject to reporting obligations, the FIU and supervisory and control authorities. Latvian authorities have also developed guidelines for the private sector on conducting risk assessments with regard to, inter alia, money-laundering. Slovakian authorities also reported on the issuance of guidelines and the provision of trainings for the banking sector. The Colombian FIU has developed a workshop called "Role Play", in which compliance officers take on the role of FIU analysts. The workshop is also made available to FIUs in other countries and has so far reached participants from six different economic sectors.

70. Similarly, Moroccan authorities host monthly meetings between the FIU, the Central Bank and representatives of reporting entities, and the private sector involved in the national money-laundering risk assessment. Joint workshops between the financial and non-financial sectors, and supervisory and monitoring authorities also take place.

71. The Egyptian FIU has installed a board of trustees that has an oversight function over rules and instructions against money-laundering. One member of the board is a representative of the Federation of Egyptian Banks. In turn, the FIU is a member of various committees of the Federation of Banks in order to help identify obstacles in implementing those rules and instructions.

72. The public-private AML/CFT Industry Partnership in Singapore, set up in 2017, brings together stakeholders from government and senior compliance officers from the private sector to discuss transnational illicit finance risks confronting Singapore's financial and non-financial sectors as well as identify and promote focal areas to uplift the implementation of AML/CFT measures in Singapore. The Partnership develops products for private sector entities, such as a best practice paper on the misuse of legal persons.

C. Prosecution and consequences of acts of bribery (article 30)

73. Under article 30 of the Convention on prosecution, adjudication and sanctions, the second highest number of recommendations was issued across all first cycle reviews. On paragraphs 1, 2 and 7 of article 30, which deal with sanctions and consequences in place and with immunities, 89 States parties received a total of 136 recommendations to, inter alia, enhance the levels of monetary and other sanctions, especially against legal persons, and to ensure the efficiency, proportionality and dissuasive effect of sanctions. Other recommendations related to monitoring the imposition of punishment, including, where applicable, plea bargains and out-of-court settlements (art. 30, para. 1), and to allow for the disqualification of persons convicted of acts of corruption from holding public office or standing election. Innovative mechanisms to calculate fines and sentences (such as calculating fines based on the benefits obtained and intended), and the existence of guidance on the application of penalties were also identified as good practices.

74. A number of States described measures taken with regard to more effective, proportionate and dissuasive criminal and non-criminal sanctions, in particular on the possibility of mitigating a sentence, and on flexibility sanctioning, such as through the introduction of additional legal consequences for acts of bribery. Several States also described resolution methods such as plea agreements, deferred prosecution agreements or settlements that could both provide an incentive for cooperation in legal proceedings and ease the investigative burden on law enforcement authorities and/or court.

1. Sanctions

75. To various degrees and with varying level of detail, States regulated the possibility of mitigated sanctions or exemption from punishment, in particular in cases of self-reporting and provision of assistance to the investigation. United States legislation codifies the policy to encourage and incentivize cooperation between the private sector and law enforcement and specifically provides for reductions in criminal fines for companies that voluntarily self-report wrongdoing and/or cooperate with law enforcement. In turn, most of the States rely on general criminal procedure for mitigating sanctions in cases of self-reporting and/or cooperation in investigations. While Armenia had recently tightened its laws and now requires the active contribution to the detection or investigation of a crime, in addition to meeting other conditions such as voluntary surrender, compensation of the damage and the return of unjust enrichment, in China, it suffices to voluntarily confess to qualify for exemption from punishment. Additional possibilities to qualify for a mitigated sanction include voluntary surrender, performance of a major meritorious service, or a having a key role in the detection of a major case. In Hungary, the possibility of mitigating a sanction is staggered, ranging from mitigation for self-reporting prior to the detection of the crime by law enforcement, to the additional requirement of handing over any undue advantage in cases of bribery, to the exemption from prosecution in cases of active cooperation to the extent that the interests of national security or law enforcement takes priority over the interest of establishing the criminal liability of the person. In Colombia, collaboration must be effective and timely, and include useful, quality information relevant to the facts and subjects of the investigation, with regard to either (i) the identity of the persons who carried out the conduct; (ii) their connection with the offending legal person; (iii) the time, place and circumstances; (iv) the foreign public servant involved; (v) the benefits, advantages or profits received, offered or promised; and/or (vi) the purpose envisaged or obtained.

76. On additional sanctions for bribery offences, through the Penal Code of 2020, passive bribery in Oman triggers an automatic prison sentence between three years, a fine equal to at least the amount promised or given to the public official, a dismissal from office and an absolute prohibition of assuming public office again. Similarly, in Belarus, bribery carries a prison sentence as well as an automatic deprivation of the right to hold specified positions or engage in specified activities. In Mongolia, if a corruption offence is committed in the name of or on behalf of a legal person, the legal person is fined and prohibited from conducting certain types of operation as punishment. In turn, natural persons can be deprived of the right to hold public office or banned from travelling for up to three years, or even five years for politically exposed persons. In Israel, both the bribe-giver and bribe-taker

convicted of corruption can receive a banning order, which can include a permanent inability to contract with public administrations and permanent disqualification from public office even in case of rehabilitation. The accessory penalty becomes applicable even in case of the conditional suspension of the principal penalty. In Morocco, additional penalties for legal persons (besides fines and extended confiscation of assets) include, inter alia, the dissolution of the legal person, the publication of decisions issued with indictment or a temporary ban from practicing the activity. New provisions will enter into force in Switzerland regarding the violation of anti-corruption provisions in procurement and will provide for exclusion of a legal persons from procurement proceedings and revocation of the award. In Colombia, a 2019 reform of the sanctions for corruption offences introduced the inability to contract with the State for anyone convicted of bribery or other corruption offences.

77. Notably, some States distinguish between the bribe-giver and the bribe-taker regarding the mitigation of sanctions. Some States, such as Egypt, offer mitigation or exemption possibilities to the bribe-giver or mediator only. In Mongolia, if a bribe-giver or offeror voluntarily confesses to the competent authority that he/she gave the bribe to receive public service as a result of impediments created by the public official, the bribe offeror will be released from criminal sanctions and the received public service will not be undone or confiscated. Colombia prescribes 50 per cent higher sanctions by law to public officials or those carrying out public functions, while Singapore reported that heavier custodial sentences are awarded to public officials and cited a case involving a high sanction awarded to a foreign public official in Singapore where the court recognized the bribery of a foreign public officials as a distinct aggravating factor grounded in public interest, since such cases may threaten Singapore's international reputation for incorruptibility and run contrary to Singapore's obligations and efforts to combat transnational corruption.

78. In addition, several States reported on higher sentences in aggravated circumstances, such as when committed by a certain number of perpetrators (Belarus, Colombia, Mexico), where the bribery is repeated, involves a high amount, or a bribe is extorted or accepted by an official in a position of responsibility (Belarus, Ecuador).

2. Plea agreements, deferred prosecution agreements and non-trial resolutions

79. With a view to providing more flexibility to law enforcement, incentivizing cooperation by offenders or easing the burden on State resources by avoiding lengthy and costly trials, several States reported on measures used to resolve investigations through negotiated agreements between defence and prosecution, including on the success of these measures in practice.

80. The law enforcement agencies in the United States make use of methods like plea agreements, deferred prosecution agreements, non-prosecution agreements, and the appointment of corporate monitors. The United States reported that vigorous enforcement and high penalties, alongside increased private sector engagement, have encouraged the establishment of robust compliance programs and measures, particularly in large companies, which are verified by the accounting and auditing profession and monitored by senior management. In addition, the DOJ finalized the FCPA Corporate Enforcement Policy in 2018, which incentivizes self-reporting and cooperation by empowering DOJ to decline certain prosecutions (with disgorgement of profits) for companies that appropriately self-disclose wrongdoing and cooperate with DOJ, absent extenuating circumstances. The United States indicated that in addition to the highest number of charges (34) and convictions (34) of individuals to date in 2019, DOJ resolved seven corporate FCPA matters in 2019, resulting in over \$1.6 billion in criminal fines. DOJ and SEC have dedicated additional resources to enforcing the FCPA, including dedicating full-time prosecutors, FBI agents, and SEC investigators to FCPA enforcement.

81. Bosnia and Herzegovina reported that plea bargaining was introduced over 15 years ago to accelerate cases, shorten the time and costs of proceedings and catch the "big fish" through granting immunity to crown witnesses. Since then, plea bargaining has been widely used in practice including in corruption cases, and not a single case involving organized crime is reported to have been concluded without a plea bargain agreement.

82. Hungary has introduced a settlement procedure in its Criminal Procedure Code whereby the defence and prosecution can agree on the legal consequences of an unlawful act to which the defendant has confessed. The presence of a defence attorney or appointment of a public defender is mandatory for this procedure. If no agreement is reached, any communication related to the attempted settlement may not be used against the defendant at a later stage and is not admissible as evidence. The court is bound by the penalty proposed in the agreement and may only assess whether the settlement was reached fairly and with the consensus of the defendant, and whether the legal consequences are supported by adequate evidence.

83. While not yet tested in practice, a regime on deferred prosecution agreements (DPA) has been enshrined in Singaporean Law in 2018, under which corporate entities may earn the right to be offered a DPA in exchange for the entities fulfilling stringent conditions. Similarly, the Australian Parliament is currently considering legislation which, if passed, would establish a DPA scheme for certain specified corporate crimes, including bribery. The DPA would have to contain a number of terms, including one requiring the company to cooperate with law enforcement, for example in relation to an associated prosecution of an individual, implement or improve a corporate compliance programme, and relinquish financial benefits associated with their offence. If the company fulfilled its obligations under the DPA, it would not subsequently be prosecuted for the offences specified in the DPA. The aim of the draft legislation is to encourage companies to self-report corporate misconduct by providing an opportunity to avoid some of the reputation and financial costs associated with lengthy trial processes and possible conviction.

D. International cooperation (chapter IV)

84. In particular in cases of transnational bribery, international cooperation, such as exchange of information, mutual legal assistance or joint or parallel investigations are essential. At the same time, with over 1,000 recommendations, article 46 of the Convention on mutual legal assistance is the article with the highest number of gaps identified in the course of country reviews. Good practices identified related to, inter alia, the use of the Convention as a legal basis for mutual legal assistance, the designation of competent central authorities, communication between requested and requesting State and flexibility with regard to dual criminality, such as waiving it on the basis of reciprocity or focusing on the underlying conduct rather than the denomination of an offence when determining dual criminality.

85. While not requested by the Secretariat's note verbale, some States described measures of international cooperation that had proven successful, including the use of various direct communications channels (Hungary), such as video conferences or in-person meetings with foreign counterparts (Israel) and the possibility to conclude bilateral or multilateral agreements for joint investigations, or conduct of such investigations on an *ad hoc* basis (Oman).

86. The Australian Federal Police (AFP) reported that it is a founding member of the International Foreign Bribery Taskforce (IFBT) comprising enforcement agencies from Australia, New Zealand, the United States, Canada and the United Kingdom. The IFBT effectively fights international corruption and economic crime together to disrupt fraud, organized crime and terrorism at its source.

87. Colombia reported on the signing, in 2017, of the Brasilia Declaration on International Legal Cooperation against Corruption in which the Attorneys General, Prosecutors and General Prosecutors of Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador, Mexico, Panama, Peru, Portugal and Venezuela "made commitments to provide the broadest, fastest and most effective international legal cooperation in the Odebrecht case". To optimize results, a special task force was created, composed of prosecutors in charge of investigating and prosecuting those involved in criminal acts related to this international case without discriminating against their social or political status. Colombia amended its law to criminalize bribes offered and received from the directors of the multinational company and public officials in charge of infrastructure works in the country. The cooperation of Odebrecht executives and material evidence brought by counterparts from Brazil,

Switzerland, the Principality of Andorra, Peru and Ecuador, among other factors, led to, inter alia, eleven convictions, 93 proceedings, 39 investigations, three indictments, eight charges, and 20 incarcerations in Colombia.

III. Outlook

88. The present analysis is based on the submissions of 27 States parties and does not provide a general overview of the state of implementation of the covered articles across all States parties. The Secretariat plans to collect more information from additional States parties, with a view to presenting a more comprehensive overview in the future.
