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**Implementation Review Group  
of the United Nations Convention  
against Corruption**  
Third session  
Vienna, 18-22 June 2012

**Implementation of chapter III (Criminalization and  
law enforcement) of the United Nations Convention  
against Corruption**

**Thematic report prepared by the Secretariat**

*Summary*

The present thematic report contains information on the implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption and technical assistance needs of States parties under review in the first and second years of the first cycle of the Mechanism for the Review of Implementation of the Convention, established by the Conference of the States Parties to the Convention in its resolution 3/1.

**I. Implementation of chapter III**

**A. Introduction, scope and structure of the report**

1. In its resolution 3/1, the Conference adopted the terms of reference of the Review Mechanism (contained in the annex to that resolution), as well as the draft guidelines for governmental experts and the secretariat in the conduct of country reviews and the draft blueprint for country review reports (contained in the appendix to the annex to resolution 3/1), which were finalized by the Implementation Review Group at its first session, held in Vienna from 28 June to 2 July 2010.
2. In accordance with paragraphs 35 and 44 of the terms of reference of the Review Mechanism, the present report has been prepared in order to compile the



most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the country review reports, organized by theme, for submission to the Implementation Review Group, to serve as the basis for its analytical work.

3. The present report contains information on the implementation of chapter III (Criminalization and law enforcement) of the Convention by States parties under review in the first and second years of the first cycle of the Review Mechanism and related technical assistance needs. It is based on information included in the review reports of nineteen States parties that had been completed, or were close to completion, at the time of drafting.<sup>1</sup>

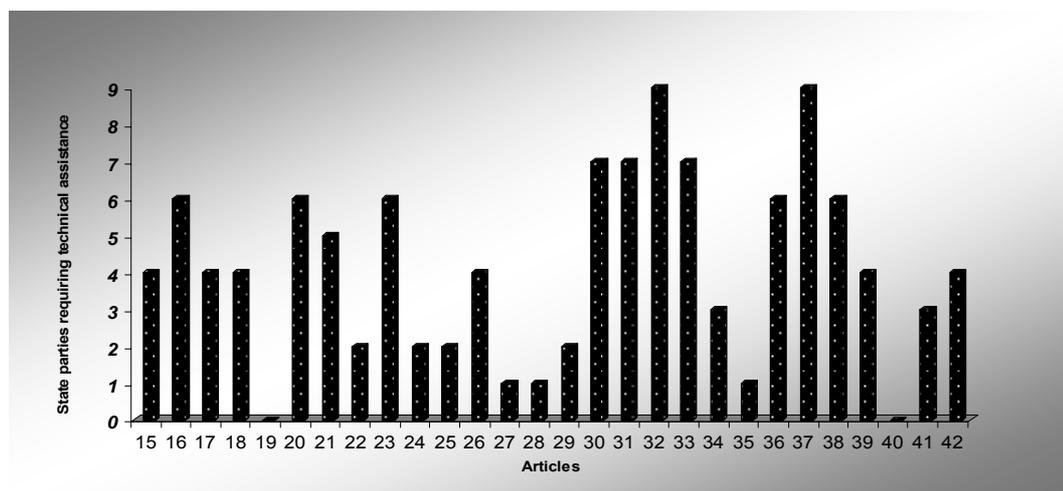
## B. General observations on technical assistance

4. Pursuant to paragraph 11 of the terms of reference, one of the goals of the 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. Pursuant to paragraph 44 of the terms of reference, the Implementation Review Group is to consider technical assistance requirements in order to ensure effective implementation of the Convention. As had been previously requested by the Group, this report contains a thematic overview of technical assistance needs, where possible with a regional breakdown.

5. Of the nineteen States parties included in this report, thirteen requested technical assistance for chapter III of the Convention. These included five States parties from the Group of Asian and Pacific States, five from the Group of African States, five from the Group of Eastern European States, and one from the Group of Latin American and Caribbean States. As the report is based on a limited number of responses received from States parties under review, it does not purport to be exhaustive regarding overall technical assistance needs.

Figure 1

### Technical assistance needs for chapter III



<sup>1</sup> The present data are based on country reviews as on 31 May 2012.

## C. Implementation of the criminalization provisions of chapter III

### General observations

#### *Definition of “public official”*

6. A cross-cutting issue related to the implementation of chapter III concerns the scope of coverage of the term “public official”. For example, in the case of one State party members of Parliament were not considered public officials, thus limiting the implementation of several corruption offences with respect to parliamentarians, including domestic and foreign bribery and abuse of functions. Recommendations were made by the reviewing States parties to extend the scope of the relevant offences and provide for appropriate sanctions for parliamentarians. In the case of the same State party, also the definition of “foreign official” did not explicitly include persons exercising public functions for a public enterprise. In one jurisdiction, the definition of “public servant” did not cover the main categories of persons enumerated in the Convention, and in two cases the relevant laws used inconsistent terms to define the class of covered officials. In another case, the anti-corruption legislation did not contain any explicit definition of the term “public official”, which was only defined indirectly by reference to other concepts. With respect to the offence of abuse of functions, in particular, it was noted that in one jurisdiction, prosecutions often resulted in acquittals, due to the established court practice of excluding liability for a wide range of persons that did not fall under the term “officials”, and the need for a new criminal law approach was identified.

### Bribery offences

#### *Bribery of national and foreign public officials and officials of public international organizations*

7. All of the States parties had adopted measures to criminalize both active and passive bribery of domestic public officials and, in addition, some had taken steps towards establishing as criminal offences the bribery of foreign public officials and officials of public international organizations. Nonetheless, a number of common issues were observed concerning the implementation of these offences. In several States parties, cases of a “promise” of an undue advantage were not explicitly covered or were indirectly covered under related concepts. Two of these States parties had additionally adopted a “conduct-based” approach whereby only the actual exchange was the subject of the offence, while an offer of bribery was not explicitly covered, although in one of these cases the offer could be prosecuted as an attempted crime. Further, for the same State party, an “omission” to act was not criminalized and, additionally, passive bribery was only partly criminalized. Recommendations were issued by the reviewing States parties accordingly. In two cases, issues were raised concerning the concept of “official duty” and in several cases there were gaps as to third parties, such as the coverage of indirect bribery involving intermediaries or the accrual of benefits to third parties. In a few cases the legislation contained specific exemptions, for example regarding bribery below certain threshold amounts, a defence of “reasonable excuse”, or immunity from prosecution for officials who reported the receipt of a bribe within 30 days. In one case, the domestic bribery provision required the involvement of at least two people in the criminal conduct and further required an element of “economic benefit”,

which was interpreted to cover only pecuniary benefits and not any other undue advantage. A recommendation to broaden the scope of the law was issued accordingly. A similar issue regarding the undue advantage was noted in two States parties, in one case where a “value-based” approach was taken, which punished bribery only when it involved material advantages, and in another, where it was unclear whether the phrase “any valuable thing” in the national law and “undue advantage” were to be regarded as identical in nature and practice. In one case the nuance of an aggravated form of bribery existed where the official acted in breach of an obligation. Legislation had been drafted or introduced in several States parties to more fully implement the bribery provisions of the Convention.

Box 1

**Example of the implementation of article 15**

In one State party, the bribery law contained a very broad definition of the concept of an “undue advantage”, which was defined as “gift or other gain” understood to comprise money, any item regardless of its value, and a right or a service provided without recompense or other quid pro quo, which created or may create a sense of obligation by the recipient towards the giver. It was noted that even the smallest amount of money or other objects could be considered as gifts and would suffice to be considered constituent elements of the criminal offence.

8. A number of States parties had not adopted specific measures to criminalize both active and passive bribery of foreign public officials and officials of public international organizations. In particular, the relevant conduct had not been criminalized in eight cases, although legislation was pending in five, and only criminalized with respect to active bribery in four others. One of these States had, however, prosecuted foreign officials on money-laundering charges with corruption being the predicate offence under related laws. Common challenges related to the inadequacy of normative measures and limited capacity. Recommendations were issued, as required, to adopt specific measures to explicitly cover foreign public officials and officials of public international organizations. In two cases, the foreign bribery statute contained an exception for facilitation payments made to expedite or secure the performance of routine government action by foreign officials, political parties or party officials, and recommendations were issued accordingly. In a third case, the definition of covered officials was limited to foreign officials and the international organizations or assemblies of which the State party was a member, while in another jurisdiction the pending legislation would only address officials who did not enjoy diplomatic immunities. The active bribery provision of one State party did not contain a specific reference to third-party beneficiaries, although jurisprudence was provided to cover this scenario. It was also noted that in States that had relevant legislation in place there were few reported cases.

## Box 2

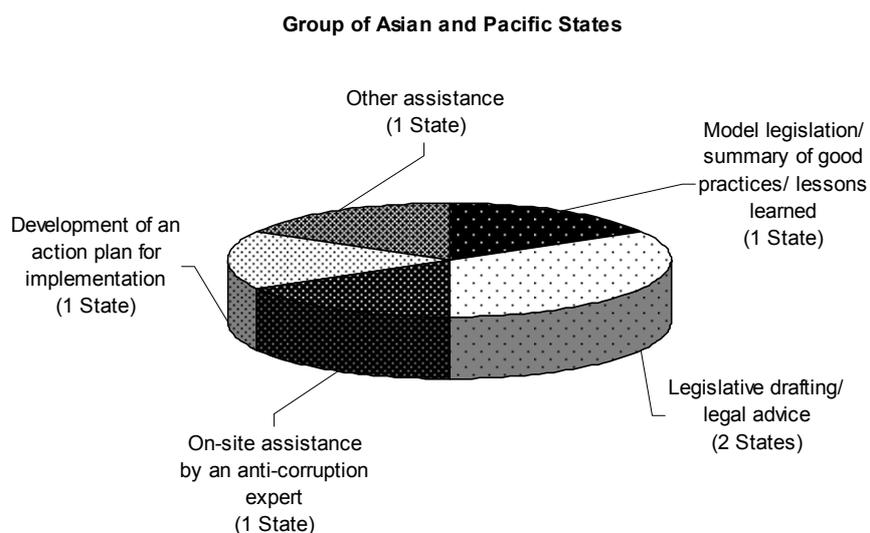
**Examples of the implementation of article 16**

In two States parties, the foreign bribery law went beyond the requirements of the Convention and also covered cases where the bribe was not intended to “obtain or retain business or other undue advantage in relation to the conduct of international business”.

In one case, the definition of “foreign public official” extended to officials designated by foreign law or custom, in particular to any individual who held or performed the duties of an appointment, office or position created by custom or convention of a foreign country or part of a foreign country.

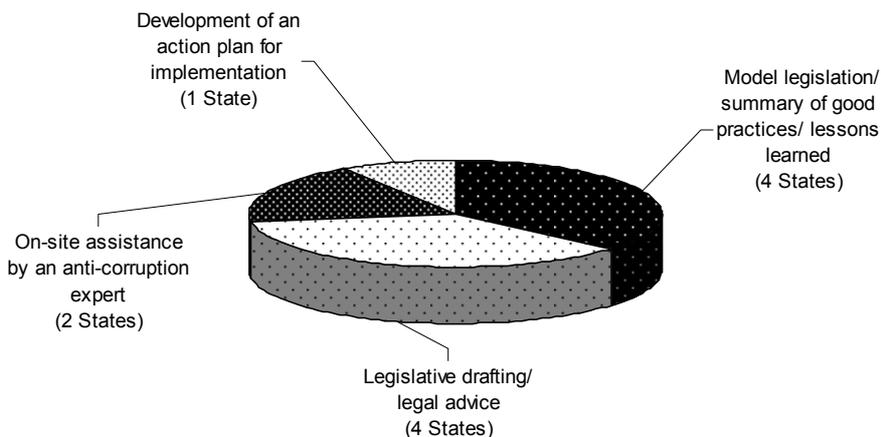
**Technical assistance needs related to articles 15 and 16**

9. Of the four States parties requesting technical assistance to support the implementation of article 15, two countries requested legislative drafting and legal advice, and other assistance in the form of training. Individual requests were received for: model legislation, a summary of good practices and lessons learned; an on-site visit by an anti-corruption expert; and the development of an implementation action plan. One State from the Group of Eastern European States requested model legislation, a summary of good practices and lessons learned, while one country from the Group of African States requested other assistance in the form of training.

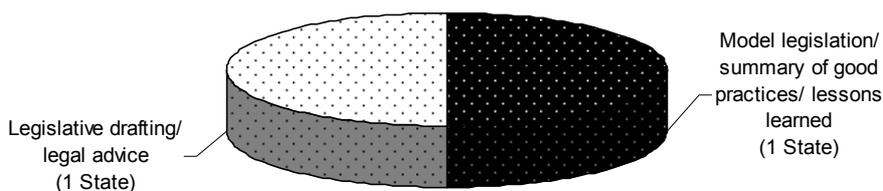


10. Of the six States parties requesting technical assistance to support the implementation of article 16, the types of assistance requested were: legislative drafting and legal advice (five States); model legislation, a summary of good practices and lessons learned (five States); on-site assistance by an anti-corruption expert (two States); and the development of an implementation action plan (one State).

**Group of Asian and Pacific States**



**Group of African States**



**Abuse of power or office and related conduct**

*Embezzlement; trading in influence; abuse of functions; illicit enrichment*

11. While all of the States parties had established measures to criminalize the embezzlement of public funds, common issues encountered related to the scope of the property that was the subject of the offence. In two cases, immovable assets were outside the scope of the offence, as a person could only embezzle property that was in his or her possession. In another case the national legislation covered only property, monies or securities belonging to the State, to an independent agency or to an individual, thus limiting the scope of coverage to private funds entrusted to an individual public official but not to an organization. A recommendation was issued to extend the law to such cases. In five cases there were limitations or discrepancies concerning the accrual of benefits to third parties. One of these jurisdictions further criminalized only misappropriation and conversion, not embezzlement and diversion. In one case, the relevant legislation applied not just to public officials but to all persons who were entrusted with or had received property, including company directors, members and officers.

12. Trading in influence had not been established as a criminal offence in several States parties, although legislation had been drafted or introduced to criminalize

trading in influence in several jurisdictions. In one case, the adoption of implementing legislation had been considered, but eventually the concept of trading in influence was considered overly vague and not in keeping with the level of clarity and predictability required in a criminal law. A recommendation was issued to reconsider the possibility of introducing appropriate legislation. Where relevant legislation was in place, there were certain deviations from the scope of the Convention. For example, in one case the offence established was broader than in the Convention, but required that the conduct be carried out for the purpose of economic benefit and additionally, with regard to the passive version of the offence, the person influenced must be a public official. In another case, only the passive version of the offence had been established. In a third case, the abuse of “supposed” influence did not appear to be covered. In one case, the relevant law also covered trading in influence with respect to foreign public officials, though there was no specific reference to third-party beneficiaries, while in another case the offence did not apply to decision-making by foreign public officials or members of foreign public assemblies.

Box 3

**Example of the implementation of article 18**

In one State party, the applicable legislation on trading in influence was observed to cover all material elements of the offence and additionally, neither the influence peddler, nor the person whose influence was sought had to be public officials. It was understood that the influence could be real or merely supposed, and the undue advantage could be for the perpetrator him/herself or for another person. The offence appeared to be completed whether or not the intended result was achieved, and additionally a separate offence was fulfilled if the person whose influence was sought actually carried out the act requested as a result of the improper influence. While no case examples on trading in influence were available, relevant actions had been brought under the anti-corruption law.

13. Most States parties had adopted measures to criminalize the abuse of functions by public officials, though a separate offence was not always explicitly recognized and there were some deviations. In one case, only the abuse of powers had been criminalized, though legislation was pending to more fully implement the offence. In another case, the relevant legislation criminalized only the illegal act, subject to a minimum threshold amount, and not an omission in the discharge of functions, though related offences existed and relevant legislation had been drafted. In one case, the legislation was limited to abuses causing losses to the State and additionally did not appear to cover non-material benefits. In another case, the abuse of functions was prohibited under public service regulations and only disciplinary sanctions were available. As noted above regarding the definition of “public officials”, in one jurisdiction parliamentarians were exempted from the scope of coverage. In two cases, the accrual of benefits to third persons was considered to have been only indirectly or not explicitly addressed. In one State party, as with the offence of bribery, the offence required the involvement of at least two people in the criminal conduct and otherwise did not fully meet the requirements of the Convention, and a recommendation was issued accordingly. In two cases where the offence was not established, legislation had been drafted or introduced to implement the article.

Box 4

**Example of the implementation of article 19**

In one State party, the criminal code prohibited a wide array of activity, including where an official unlawfully acted with the intention of dishonestly obtaining a benefit for himself or another person or dishonestly causing a detriment to another person.

The broad scope of the domestic provision was noted in one State party where an “undue advantage” was not required as an element of the offence.

14. Illicit enrichment had not been established as a criminal offence in the majority of States parties, but legislation was pending in several cases. Objections to enacting relevant legislation commonly related to the constitutionality of such legislation. Where illicit enrichment had not been criminalized, a similar effect was achieved by way of asset and income declaration requirements, as described in Box 6 below. In one State party, provisions in the criminal code on concealment and non-justification of resources, as well as the tax code pursued the same objective. However, in another jurisdiction where the concept of unjustified wealth and sanctions for a failure to declare assets were provided for, the law did not contain the required element that a public official could be obliged to explain an increase in assets. In another State party, unexplained wealth could be restrained and confiscated outside the criminal justice system under proceeds of crime laws, and the court could compel a person to prove in court that his or her wealth was not derived from a criminal offence where there were reasonable grounds to suspect that the person’s total wealth exceeded the value of lawfully acquired wealth.

Box 5

**Examples of the implementation of article 20**

In one State party, a comprehensive provision on illicit enrichment had been enacted and two cases were pending in court. In another State party with limited asset and interest disclosure requirements, the offence had been established.

Box 6

**Using asset and income declarations in lieu of illicit enrichment**

In one jurisdiction where illicit enrichment had not been criminalized, a similar effect was achieved by way of a legal requirement that all public officers submit asset and income declarations and could be asked to explain any asset increases described in their disclosures. Noting a reporting rate of 99.5% on such disclosures, a recommendation was issued to include stricter sanctions in the declaration requirements, such as forfeiture of undeclared property.

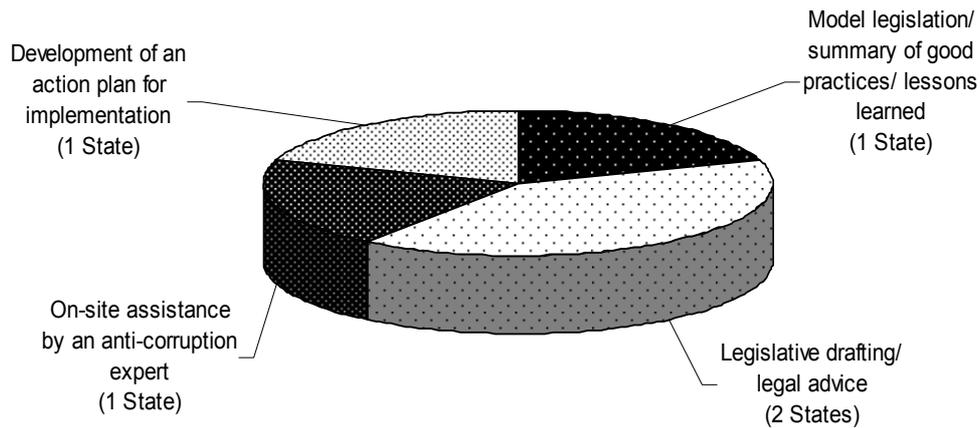
Similarly in another case, evidence of unexplained wealth could be introduced in court as circumstantial evidence supporting charges of corruption and senior officials were additionally obligated to file truthful financial disclosure statements, subject to criminal penalties.

One State party was piloting the submission of such declarations before considering it a legal requirement. In the same case there were issues with respect to the property that was the subject of the illicit enrichment laws, and a recommendation was issued to consider streamlining the process of income and asset declarations.

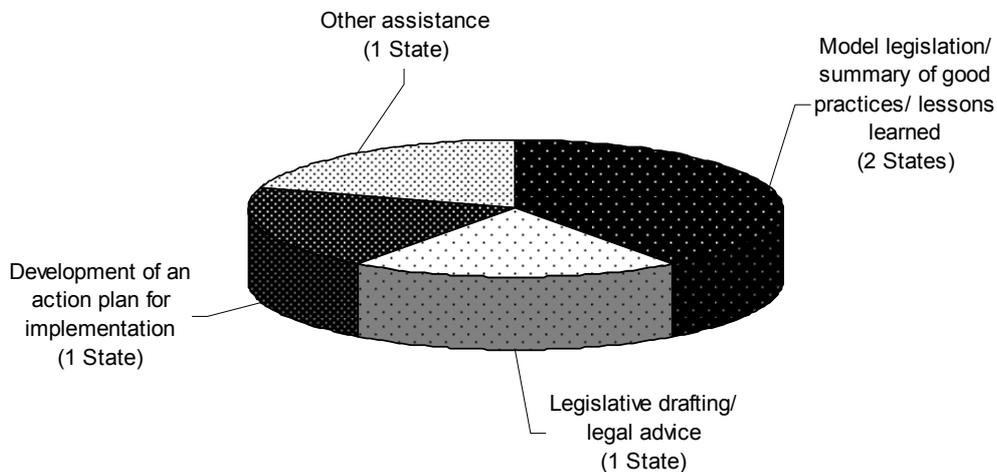
### Technical assistance needs related to article 20

15. Of the six States parties requesting technical assistance to support the implementation of article 20 of the Convention, the main types of assistance requested were: legislative drafting and legal advice (four States); model legislation, a summary of good practices and lessons learned (four States); and the development of an implementation action plan (two States). Individual requests were received for: on-site assistance by an anti-corruption expert; and other assistance in the form of training.

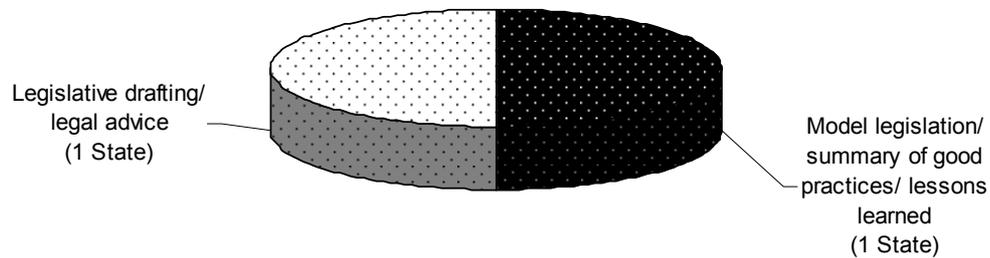
**Group of Asian and Pacific States**



**Group of African States**



### Group of Eastern European States



### Private sector offences

#### *Bribery and embezzlement in the private sector*

16. Less than half of the States parties had adopted measures to fully criminalize bribery in the private sector and, in four cases, introduced relevant legislation. In one case, the law limited bribery in the private sector to a breach of obligations “in the purchase or sale of goods or contracting of professional services,” although it was noted that other cases of bribery in the private sector would be covered under other provisions of the penal code. In another case the relevant conduct was criminalized notwithstanding that the act, favour or disfavour was not done or given in relation of the business or affairs of an employer. In a third case, the relevant provisions did not cover the indirect commission of the offence, although non-governmental organizations and foundations were covered to the extent that they engaged in “economic, financial or commercial activities”. The indirect commission of the offence was covered in one State party, where it was notably absent in the corresponding bribery offence involving public officials. In another State party there were issues concerning the scope of private sector officials covered, although legislation was pending to address the matter, and in a further case the relevant offence required damage or detriment to be caused to the represented entity, in variation from the provisions of the Convention. In one State party, notwithstanding the lack of a federal commercial bribery law, commercial bribery had been effectively prosecuted under related laws and was further criminalized at the state level. In another case the conduct was pursued under the fraud provisions of the penal code.

17. All of the States parties had criminalized embezzlement in the private sector. However, in one case the provision did not expressly refer to embezzlement in the course of economic, financial or commercial activities and only indirectly covered various elements of such criminal conduct. A recommendation was issued to adopt a specific provision that more precisely reproduced the offence established in the Convention. In three cases, immovable assets were excluded from the scope of the national law and an appropriate recommendation was issued. In another case, measures to more fully implement the article were still under discussion at the time of the country review. In one case very low penalties were observed.

Box 7

### Examples of the implementation of articles 21 and 22

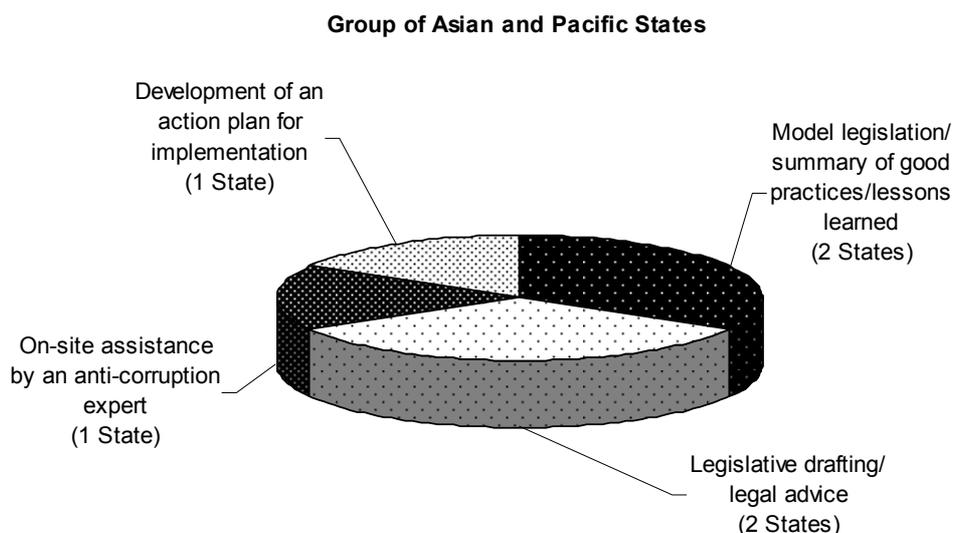
In one State party, the relevant law went further than the Convention in that a breach of duty was not required to establish bribery in the private sector.

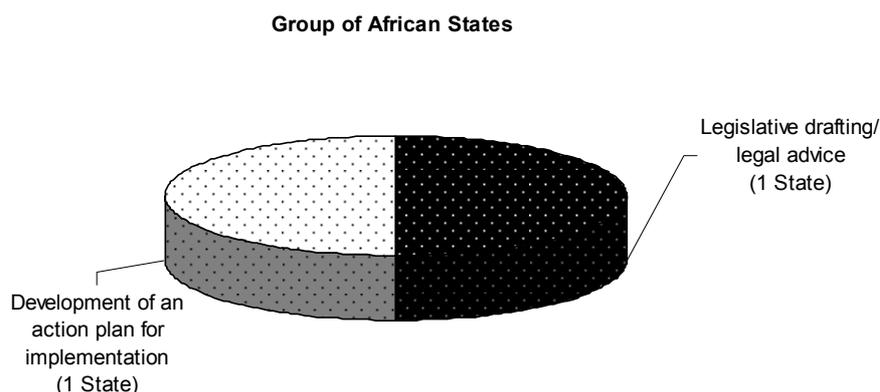
In one State party, the offence of embezzlement in the private sector was broader than in the Convention, as it did not contain the condition for the offence to be committed “in the course of economic, financial and commercial activities”.

In another State party, the penalty for the offence of private sector embezzlement was aggravated according to value of the embezzled asset and further aggravated if the offender “received the asset upon deposit imposed by law, by reasons of occupation, employment or profession, or as a tutor, trustee or court custodian”.

### Technical assistance needs related to article 21

18. Of the five States parties requesting technical assistance to support the implementation of article 21 of the Convention, the types of assistance requested were: legislative drafting and legal advice (three States); model legislation, a summary of good practices and lessons learned (three States); the development of an implementation action plan (two States); and on-site assistance by an anti-corruption expert (one State). One State from the Group of Latin American and Caribbean States requested model legislation, a summary of good practices and lessons learned.





### Other offences

#### *Money-laundering; concealment; obstruction of justice*

19. There was some variation among the States parties with regard to the criminalization of money-laundering. While most States parties had taken measures towards establishing money-laundering as a criminal offence, in several cases there were significant gaps in the implementing law, which covered only part of the conduct described in subparagraphs (1)(a)(ii) and (1)(b)(i) of article 23, and only minor parts of subparagraphs (2)(a) through (e). As a result, while noting that legislation to fully implement the article had been introduced, an “urgent” recommendation was issued to enact appropriate legislation. There were similar issues with regard to the partial implementation of subparagraph (1)(a)(ii) of article 23 in another State party, where also accessory conduct such as counselling for the purpose of committing money-laundering and supporting a person in the commission of the predicate offence to evade the consequences of his or her actions were not criminalized. Here, also a recommendation was issued to broaden the list of predicate offences to include embezzlement in the private sector. In another case, attempted money-laundering was not punishable, though this would have been covered in a pending amendment of the law. Similarly, in another jurisdiction, the predicate offences did not include all the offences stipulated in the Convention, the participation in acts of money-laundering was not criminalized, and provisions on conspiracy, assistance or attempt covered only the commission of money-laundering and not other corruption offences. Issues were also encountered concerning the objects of money-laundering: in one case the law appeared to be limited to certain objects of laundering, though it was explained that all types of property were covered; in another case the penal code did not contain a definition of property, though legislation was pending to address the issue. Gaps in implementation also existed in other States parties, for example in one case concerning the absence of any provision to criminalize “self-laundering” due to a perceived inconsistency with fundamental principles of national law, and in another case regarding a limitation of the money-laundering offence to only criminal predicate offences and not to conduct such as tax evasion. In one State party, pending a legislative amendment, the scope of the money-laundering offence was limited to banking, financial and other economic operations which, though widely interpreted, was observed not to cover all potential areas of laundering of proceeds. Appropriate recommendations were issued by the reviewing experts. Several States parties had adopted an “all crime

approach” that did not restrict application of the money-laundering offence to specific predicate offences or categories of predicate offences, while others applied the law to “serious offences”, though the applicable thresholds differed. The limited scope of the money-laundering offence was noted in several cases, because not all offences established under the Convention had been criminalized. In addition, in several cases, issues were encountered with respect to the coverage of predicate offences committed outside the territory of the State party: in one case, the extension was implicit; in two cases offences committed outside the State party were not considered predicate offences or were considered as such only for certain crimes; and in another case, dual criminality was required for prosecution of predicate offences committed abroad. Legislation was pending to address the issue of overseas predicate offences in some cases.

Box 8

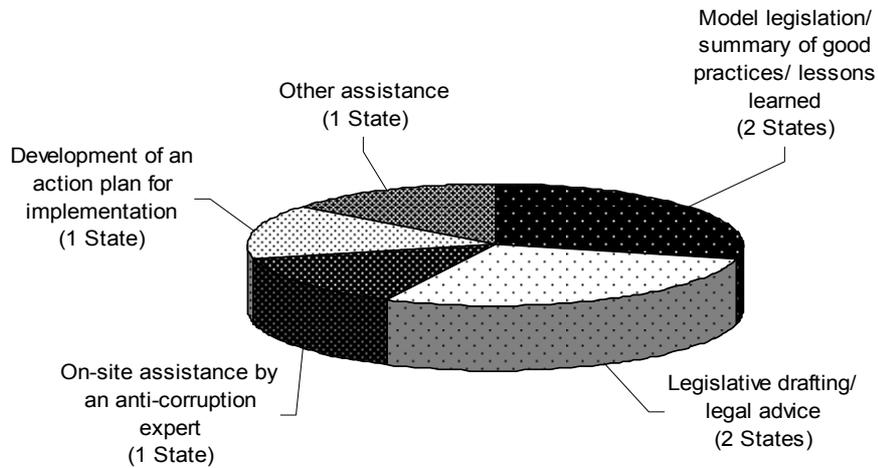
**Example of the implementation of article 23**

In one State party the money-laundering offenses incorporated the mental state elements of intent, recklessness and negligence, which went beyond the minimum requirements of article 23 of the Convention. Statistics and case examples were provided, including one case involving a syndicate that laundered cash derived from commercial narcotics trafficking by depositing cash into innocent third party bank accounts. This released the equivalent legitimate funds from overseas money remitters, which could then be forwarded as payment for the drugs. The defendant, a low to middle level operator of the syndicate, was sentenced to 7 years imprisonment with a non-parole period of 4½ years for recklessly dealing in the proceeds of crime where the value of the money was \$1 million or more. The judge declared that if the defendant had not pleaded guilty, a sentence of 8 years imprisonment with a non-parole period of 5½ years would have been imposed.

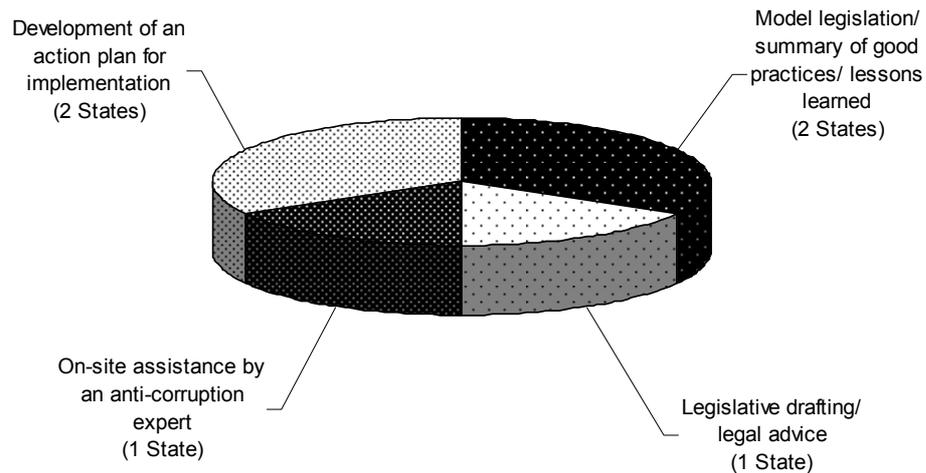
**Technical assistance needs related to article 23**

20. Of the six States parties requesting technical assistance to support the implementation of article 23 of the Convention, the types of assistance requested were: model legislation, a summary of good practices and lessons learned (four States); legislative drafting and legal advice (three States); the development of an implementation action plan (three States); on-site assistance by an anti-corruption expert (two States); and other assistance in the form of training (one State).

**Group of Asian and Pacific States**



**Group of African States**



21. In several States parties that had established concealment as a criminal offence, there were issues with respect to the continued retention of property. Legislation had been drafted or introduced in some jurisdictions to fully implement the article. The offence was not recognized in all States parties.

22. Obstruction of justice had been established as a criminal offence (or was covered in the penal code with respect to all required elements of the offence) in most States parties. In two cases, issues related to the scope of coverage over conduct intended to interfere not just with the giving of testimony but with the production of non-oral evidence in a relevant proceeding. Additionally, in one of

these cases, the relevant law covered only conduct in order to interfere with the true testimony of witnesses, not of experts, and further did not explicitly regulate the specific means of obstruction of justice (e.g., physical force, intimidation, offering or giving of an undue advantage). Similarly, in three cases, the specific means (use of physical force, threats, or intimidation) to induce false testimony or the production of evidence were not fully covered. In one case, interference with the exercise of official duties by a justice or law enforcement official was limited to acts committed by public officials and not other persons. Issues related to penalties were raised in some cases.

### **Substantive and procedural provisions supporting criminalization**

*Liability of legal persons; participation and attempt; knowledge, intent and purpose; statute of limitations*

23. All except one of the States parties had adopted measures to establish the liability of legal persons for offences covered by the Convention, though a general liability provision did not always exist and there was considerable variation concerning the type and scope of such liability and the extent of coverage. Common challenges related to the inadequacy of existing normative measures and specificities in national legal systems. Thus, a number of States parties had established some form of criminal liability of legal persons for corruption offences, with certain exceptions or limitations in some cases. For example, in one jurisdiction the scope of the criminal liability of legal persons was narrowed by an exception for public entities, including publicly owned companies. In three cases, the liability was limited to certain offences or conduct, such as money-laundering (in two cases) and to money-laundering and bribery of national and foreign officials (in the third), with a further restriction that the offences in question must have been committed directly and immediately in the interest of the corporate body. In another case, certain offences were excluded from the scope of coverage, such as passive bribery of public officials, embezzlement in the public and private sectors, abuse of functions and obstruction of justice. There was a lack of clarity in two cases as to whether legal persons were included in the scope of the relevant law, as an interpretation had not been given by the courts, and a recommendation was issued to clarify the situation, and in a third case the threshold for liability was unclear and a need to ensure that companies could be prosecuted independently of their natural persons was noted. In one case, the criminal code prohibited establishing the criminal liability of legal persons. A similar prohibition existed in another jurisdiction, where only administrative liability was established. In a third case where civil and administrative measures were established, pending legislation would introduce the criminal liability of legal persons. Sanctions generally varied, ranging from administrative penalties, including blacklisting for certain violations, in one case, to monetary penalties, in another, and a combination of sanctions including confiscation and dissolution in two others. Sanctions for legal persons were generally higher than for natural persons. In five cases, a specific recommendation was issued to consider increasing the level of sanctions or adding non-monetary sanctions to the list of possible penalties, and legislation that would address the issue was pending in another case. Multiple forms of liability were possible in several jurisdictions. In one case, only civil liability had been established, pending amendments to the penal code that would, if adopted, have addressed the criminal liability of both legal and natural persons.

Box 9

**Example of the implementation of article 26**

Some form of criminal liability of legal persons for corruption offences had been established in a number of States parties. In one case, the law provided for the criminal liability of legal persons for some of the offences established in accordance with the Convention, and the liability of natural person perpetrators was in no way affected. Moreover, legal persons could be found criminally liable notwithstanding that the individual offender could not be identified or was otherwise not punished.

24. All of the States parties had adopted measures to criminalize the participation in, and attempt to commit, the offences enumerated in the Convention, though the scope and coverage of the provisions varied. In three States parties, the preparation of an offence (paragraph 3 of article 27) was not specifically criminalized, because it did not accord with basic principles of the national legal system. Similarly, in another case the preparation of a crime (i.e., conspiracy, abetting or proposal of the same) was punishable only for money-laundering offences, not corruption. In several States parties, legislation was pending or had been drafted to more fully implement the article.

25. All of the States parties had adopted measures to establish knowledge, intent and purpose as elements of the offences enumerated in the Convention that could be inferred from objective, factual circumstances. In most cases, these measures were included in the criminal procedure codes, the criminal or penal codes, evidentiary and case law. In two cases, the matter was not explicitly addressed in the law and further clarification was sought by the reviewing experts.

26. There was considerable variation among the States parties with regard to the length and application of the statute of limitations for offences established under the Convention. One State party had established a minimum period for such offences of five years, which extended in some cases to ten years. The reviewing experts were of the view that ten years was a sufficiently long time, but that the appropriateness of a five-year statute depended on the possibility of prolongation or suspension of the statute and its application in practice. In this regard it is noted that several States parties did not provide for a suspension or interruption of the statute. Similarly in another jurisdiction, for offences under the Convention, the statute of limitations period was either ten years (for offences punishable with imprisonment for more than three years) or five years (for offences punishable with imprisonment between one and three years). Another State party had established a general statute of limitations period of five years, which was disrupted when the defendant committed a new offence, and suspended by the formalization of the inquiry, which normally took up to two years. The statute of limitations period was also extended when the culprit fled the country, but not when the culprit evaded the administration of justice within the borders. A recommendation was issued to introduce a longer statute of limitations that covered every case of justice evasion, irrespective of whether the culprit was within or outside the country. Similar recommendations were issued in other cases: in one jurisdiction, to consider extending the limitation period of five years (although this was routinely increased by up to three years upon request of a prosecutor and a relevant court finding); in a second case, to consider extending the three-year period to seven years for offences punishable by over three years' imprisonment and to five years for those punishable by less than three years; and in

another State party to reconsider the periods of three years and two years, respectively, for offences punishable by more than one year and by up to one year or a fine, pending the adoption of a legislative amendment. A suggestion to commence the statute from the time of discovery, not the commission of the offence, was issued in one case where a six-year statute was established for offences punishable by fine, custody or imprisonment of not more than three years. In one case, the statute established a period of limitations of 20 years if the most severe penalty provided for the offence was fixed-term imprisonment for more than eight years, and ten years if the most severe penalty provided was between two and eight years.

Box 10

**Example of the implementation of article 29**

In one State party, when a criminal action was instituted against a civil servant, the interruption of the statute of limitations was applicable to all persons participating in the commission of the criminal offence, not just the perpetrator.

Four States parties had no statute of limitations in place for corruption offences, because the applicable law did not apply to criminal cases or there was no general statute of limitations.

**Measures to enhance criminal justice**

*Prosecution, adjudication and sanctions*

27. Common challenges with regard to the implementation of the provisions on prosecution, adjudication and sanctions related to specificities in national legal systems and limited capacity. For example, in several cases recommendations were issued concerning the proportionality or dissuasiveness of the sanctions. There were also issues concerning paragraph 2 of article 30 on immunities and privileges in several States parties. In one case, immunities were accorded to certain categories of public officials, including commissioners of government agencies, in the respective constituting laws of the agencies. A suspension of immunities by Parliament was needed to investigate these officials, though there was no legal procedure to resolve cases where requests to suspend immunities remained unanswered. Investigations of members of Parliament had been suspended previously due to the laws on immunity, and recommendations were issued accordingly. In another case, immunities were granted at the Constitutional level to several categories of officials, including members of Parliament and members of the Constitutional Court, though measures had been taken to reduce the categories and scope of application. In a third case, parliamentarians were granted functional immunity, which could be lifted if there was “concrete and sufficient” evidence of corruption-related offences. In several States public officials did not enjoy immunities or jurisdictional privileges, though in two of these cases members of Parliament were accorded some forms of immunity (or parliamentary privilege) for opinions expressed in Parliament or owing to conduct in the consideration of a parliamentary matter. In another case, Ministers were granted jurisdictional privilege and were tried in special courts for offences committed in the course of their tenure. Likewise members of Government, for acts performed in the holding of their office, must be tried by a special court, though they did not enjoy immunity or jurisdictional privileges for acts performed outside the exercise of their office. Further, while members of Parliament did not enjoy immunity, their arrest or other deprivation of liberty in a criminal or

disciplinary matter (with the exception of felonies or cases in flagrante delicto and when a conviction had become final) required the authorization of the relevant Bureau of the House; additionally, authorization by the President of the National Assembly was required for any investigation of a parliamentarian. In another State party the law conveyed immunities to a number of high-ranking officials, but the anti-corruption authority, unlike other law enforcement agencies, was not required to seek permission to investigate certain categories of officials. The absence of immunities or jurisdictional privileges was established at the Constitutional level in one case, while in another case the Constitution provided immunity only to the President of the State. In one jurisdiction, the supervising court could take a decision on the lifting of immunity at the end of the investigative stage, and a recommendation was issued that decisions on the lifting of immunities should not prevent subsequent investigations once the officials in question were no longer in service. Concern was raised in one case at a broad Constitutional provision which covered any person acting on behalf or under authority of the Head of State and in another at pending legislative amendments that could undermine existing provisions on corruption-related offences and the independence of the anti-corruption body.

28. Common issues were also encountered with regard to paragraph 3 of article 30 on discretionary legal powers relating to the prosecution of persons for offences under the Convention. In this regard, several States followed a discretionary prosecutorial model. In one case, corruption investigations and access to bank records required the prior authorization of the prosecutor's office, and a delegation of even partial powers by the Prosecutor-General to the anti-corruption commission was prohibited by law. In another State with discretionary prosecution, when the identity and domicile of the perpetrator were known and there was no legal obstacle to commencing a public prosecution, the prosecutor could only decline the case when "the particular circumstances linked to the commission of the offence" justified this. Moreover, the criminal procedure code granted a person who had denounced facts to the district prosecutor the right to appeal to the Prosecutor General against a decision not to prosecute. In one case prosecutorial discretion was exercised in order to encourage cooperating defendants to provide additional relevant information by dismissing or reducing charges or making recommendations to the judge or magistrate concerning sentencing. Among the States that did not apply discretionary prosecution, one State party's criminal justice system was based on the principle of mandatory prosecution, whereby the prosecutor could waive prosecution only in cases of petty criminality or if it would be "unreasonable" to charge the offender, and applicable guidelines for prosecutors were in effect. In another State, the prosecution was governed by the principle of legality and no discretionary legal powers were foreseen. Under the Constitution, the legislature was required to authorize the criminal charge and proceedings of its members, deputies and senators, and cases showed that the parliamentary practice of granting such authorization had been established as a rule. In one case, concern was raised at the manner in which the Attorney-General exercised discretion to discontinue cases for the protection of the public interest, which, although rarely applied, was considered to present the potential for abuse, and observations were also made as to the discretionary forms of sentencing available outside of judicial oversight. Recommendations were issued in several cases.

29. Several States parties had taken measures to implement paragraph 6 of article 30 on the suspension, removal from office or reassignment of public officials

accused of corruption offences. Suspension of public officials was possible in several jurisdictions, including in one case by regulations allowing temporary suspension pending trial and in another case at the discretion of Parliament, and was mandatory for criminal matters in other States. In one case, the removal of accused officials was governed by public service standing orders and applicable regulations that permitted the conditional release of public officials on half pay pending judicial procedures, with a prohibition on their working or leaving the State. In another case, the legislation provided for the suspension of accused public officials, but was silent on removal or reassignment. In a third case, there was no legal provision that would permit the removal or resignation of an official whose guilt had not been established in a court, and investigative bodies could only request the suspension of officials who could interfere with an investigation. It was considered essential, in order to protect victims and witnesses and to ensure the smooth functioning of investigations, to have rules of procedure in place that would allow for suspending the official authority of suspects, including high ranking officials, pending a court decision and their removal from office if guilt was established. Similar restrictions existed in other States where a suspension from office was only possible after a conviction.

30. While disqualification from holding public office was possible in several States parties, in one case the disqualification period was relatively short and disqualification was neither permanent nor prohibited a subsequent transfer to another public office. In several cases, disqualification was not mandatory but available as an additional penalty for criminal offences, and in one case would only prohibit future election to the Parliament or Cabinet. In another case, general provisions in the criminal code required the dismissal of a public official for any imprisonment in excess of two years, unless the court deemed that the person was not unsuited to attend to a public function. For periods of imprisonment of less than two years, dismissal was permissive if the court believed that the person was unsuitable to attend to a public function. Members of Parliament or elected officials could not by law be dismissed pursuant to a court decision, though the Constitution provided for the dismissal of parliamentarians who had been sentenced to imprisonment for deliberate crimes. Additionally, persons holding office in enterprises owned in part or in whole by the state could not be dismissed on the basis of a conviction. Any suspension or dismissal was recorded in the personnel file of a public official and known to authorities considering recruitment in the future. In one jurisdiction, the concept of a publicly-owned enterprise was not defined in the legislation and, in another case, no procedures had been established for the disqualification of convicted persons from holding public office.

Box 11

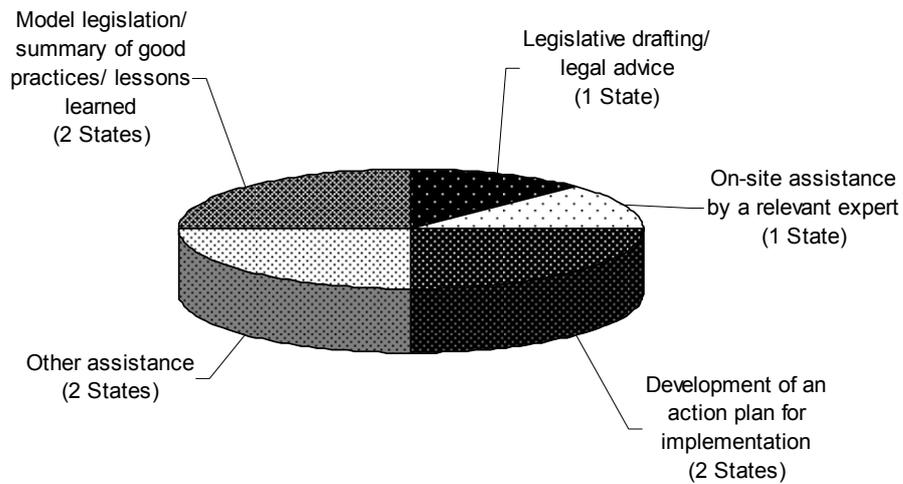
**Example of the implementation of article 30**

In one State party, the rules and practice of the Public Service Commission of recording disciplinary and ethics proceedings and timely producing transcripts were observed to promote transparency, accountability and consistency, and to significantly enhance public confidence in decision-making processes of the body. The period in which disciplinary and ethics cases were disposed of by the relevant tribunal had been reduced in recent years from an average time of several years to an average period of three to six months. Moreover, training of civil servants on matters related to ethics, discipline and good governance, among others, drew upon the participation of a wide range of government ministries, departments and agencies, including the anti-corruption agency, the police and prosecutor's office, the office of the Auditor General and the Ministry of Finance; the Commission conducted regular surveys and studies to assess the impact of its trainings.

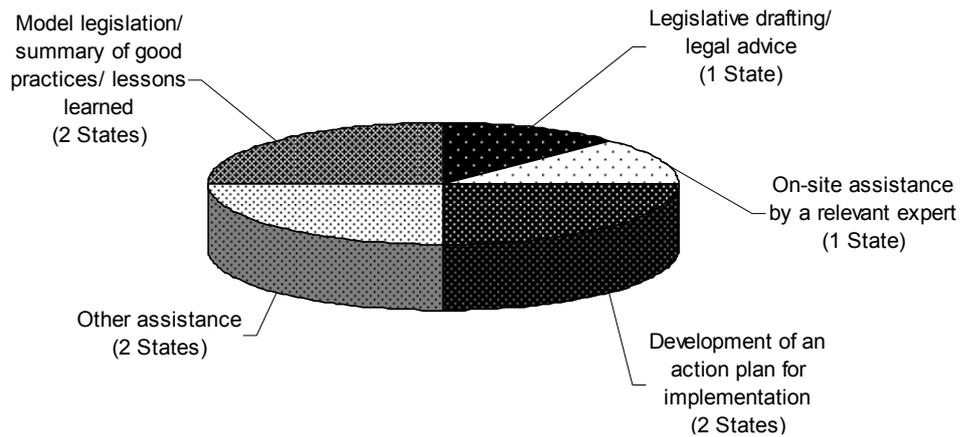
**Technical assistance needs related to article 30**

31. Of the seven States parties requesting technical assistance to support the implementation of article 30 of the Convention, the types of assistance requested were: model legislation, a summary of good practices and lessons learned (four States); the development of an implementation action plan (four States); other assistance (four States); legislative drafting and legal advice (two States); and on-site assistance by an anti-corruption expert (two States). Other assistance included capacity-building (i.e. training) and resources for law enforcement authorities on how to investigate and prosecute corruption-related offences, as well as the sharing of experiences in how to address immunities.

**Group of Asian and Pacific States**



**Group of African States**



*Freezing, seizure and confiscation*

32. Several common issues were observed regarding the implementation of article 31. In several cases, measures to enable the confiscation of instrumentalities, as opposed to proceeds, of crime were not provided for, while in one jurisdiction only instrumentalities were covered in cases other than money-laundering. In two of these cases, measures to enable the tracing, freezing or seizure of proceeds or instrumentalities of crime for purposes of eventual confiscation (paragraph 2 of article 31) were also lacking. Additionally, in the third case, there were no detailed rules on confiscation and identification of proceeds or instrumentalities of crime. In this jurisdiction the seizure of goods other than bank accounts further presented difficulties in practice due to the high standard of proof required, which resembled a *prima facie* case. In a fourth case, the reviewers expressed reservations that the regulation of seizures and freezing of property could be done by reference to the civil procedure code and recommended to consider addressing this matter in a uniform manner to avoid its fragmentation in different legislative pillars and to limit possible questions of interpretation. Similarly, in another case concern was raised as to the permissive wording of the law, which appeared to give courts discretion of whether property could be confiscated, and a need to apply confiscation measures more consistently in criminal cases was observed. Conversely, in another case the additional penalty of confiscation was incurred in the cases provided by law or regulation, and also automatically for felonies and misdemeanours punishable by a prison term of more than one year, excluding press offences. In one case it was noted that most of the offences under the Convention fell within the scope of the law on forfeiture of proceeds of crime, with the exception of bribery in the private sector, and legislation was being prepared to more fully implement the article.

33. In several jurisdictions, confiscation extended also to proceeds of crime that had been transformed or converted (paragraph 4) or intermingled with property from legitimate sources (paragraph 5), as well as income or other benefits derived therefrom (paragraph 6). In two cases, the seizure and confiscation of transformed, converted and intermingled property was partly possible, and a recommendation was issued to establish a solid legal basis for such measures by amending the law accordingly. In four cases the confiscation of property corresponding to the value of proceeds of crime was not covered, as the law was based on the principle of object confiscation and not value confiscation, even where the anti-corruption law provided for the confiscation of proceeds of crime that had been derived from corruption. Additionally in one of these cases a draft anti-money-laundering law would have provided for the option of freezing, seizure and confiscation of property for an equivalent value. In one State party income derived from direct or indirect criminal proceeds was subject to confiscation only in proportion to the value of the proceeds of crime in comparison to the funds of legal origin. In two cases there was some ambiguity as regards the coverage of cases of intermingled property, with no provision to permit bank interest and income from illegal assets to be confiscated in one jurisdiction. In another case, recommendations were issued that intermingled property be liable to confiscation up to the assessed value of the intermingled proceeds, and income or other benefits derived from such proceeds be liable to the measures referred to in article 31. One State party did not have any specific provisions regulating the confiscation up to the assessed value of intermingled proceeds (paragraph 5), nor the confiscation of income or other benefits derived from proceeds of crime that had been transformed or converted or intermingled with

lawful property (paragraph 6), although value-based confiscation of proceeds of crime and intermingled property was possible. In this jurisdiction, the confiscation of property obtained by criminal means and transferred to third parties was also not provided for.

34. Several States parties faced issues with regard to the administration of frozen, seized and confiscated property. For example, in one case, a recommendation was issued to consider strengthening measures for the management of frozen, seized and confiscated property in order to regulate the process more methodically and not limit it to cases where the property was perishable. The reviewing experts reiterated the importance of having in place appropriate mechanisms to regulate the administration of such property.

35. A reversal of the burden of proof for demonstrating the lawful origin of alleged proceeds of crime or other property (as the relevant provision of the Convention was interpreted by several States parties) had not been introduced in most jurisdictions. This was either considered a violation of the principle of the presumption of innocence or inconsistent with the restrictive view taken by the criminal justice system towards any reversal of the burden of proof in criminal cases. Common challenges related to limited capacity, the inadequacy of existing normative measures and specificities in national legal systems. In one case where the law provided for a reversal of the burden of proof, the accused had to make a declaration in writing in order to prove the legal nature of the property and, if he/she did not make such declaration or the declaration was incomplete, the property was presumed to have been derived from criminal activity. In one case where the burden of proof was reversed there was doubt as to whether the provisions could be used in respect of assets that had been dissipated, sold or transferred. Legislation on unexplained wealth was pending in one jurisdiction.

Box 12

### Examples of the implementation of article 31

#### Conviction

In one State party, any criminal offence allowed for a decision of confiscation of proceeds of crime, even in cases when the offender was not convicted or was exempt from criminal liability. The possibility also applied to legal persons, even if an individual perpetrator could not be identified or convicted. Confiscation of proceeds was also possible against persons on whose behalf or advantage the offence was committed and further was mandatory for instrumentalities of crime.

In another State party, a variety of measures for restraining and confiscating proceeds and instruments of crime was noted, including: a non-conviction based procedure under which confiscation could be taken independently of prosecution; pecuniary penalty orders, which required a person to pay an amount equal to the profits derived from crime; and unexplained wealth orders, which required a person to pay a proportion of their wealth, where they could not satisfy a court that that wealth had been legitimately acquired. Non-conviction-based *in rem* forfeiture was also possible in another jurisdiction.

In one State party, confiscation was conviction-based and considered as an accessory sanction of the crime; however, if no sanction could be imposed, the confiscation could be upheld in the absence of a criminal conviction.

#### Protective measures prior to judicial proceedings

In one State party, the criminal procedure law allowed for freezing, seizure and confiscation prior to the filing of judicial proceedings where such action was based on an investigation or prosecution.

Similarly in another State party, an investigator could freeze assets for up to seven days and was then required to request a court order, which could be granted for up to four months and was renewable for the same period.

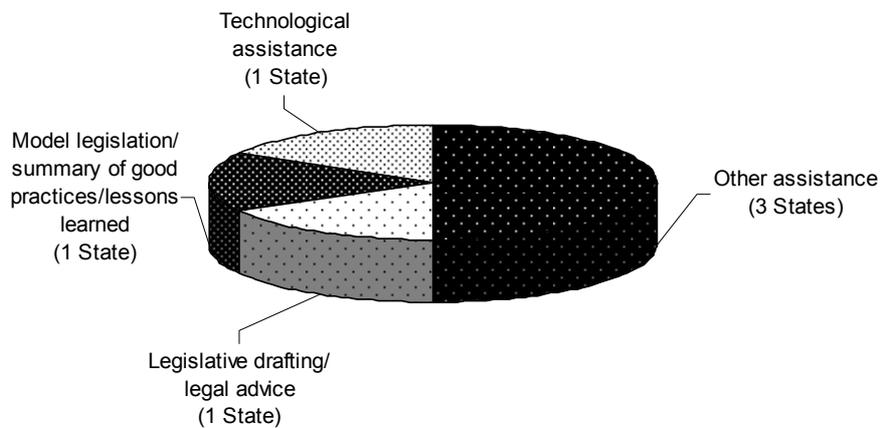
#### Management of assets

In one State party, a separate institution dedicated to the management of seized and confiscated assets, especially “complex” assets requiring effective management, had been established and its operations were self-financed from the sale of confiscated property.

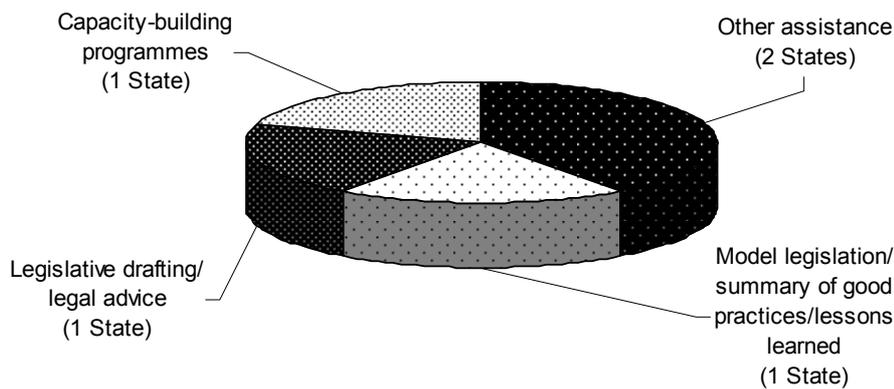
#### Technical assistance needs related to article 31

36. Of the seven States parties requesting technical assistance to support the implementation of article 31 of the Convention, the main types of assistance requested were: other assistance (five States); model legislation, a summary of good practices and lessons learned (two States); and legislative drafting and legal advice (two States). Individual requests were received for: capacity-building programmes; and technological assistance. Other assistance included the establishment of appropriate facilities and training that cover financial investigations, specifically on the tracing, seizing and confiscation of assets, as well as on the management of seized assets.

**Group of Asian and Pacific States**



**Group of African States**



*Protection of witnesses, experts and victims*

37. There was wide variation among the States parties with regard to the protection of witnesses, experts and victims. In particular, in one State, the right of victims and witnesses to receive adequate protection in the course of criminal proceedings was recognized and broad protections were afforded at the Constitutional level. Some States had enacted legislation or other practical measures to afford the minimal protection of non-disclosure of the identity or whereabouts of witnesses and other persons being heard during pretrial investigations or in court. In some cases the protections went further to also include physical protection measures. On the other hand, in several cases no measures had been taken for the effective protection of witnesses and experts. The authorities in several jurisdictions repeatedly noted the absence of witness protection systems as a major weakness in the fight against corruption, noting the significant costs of such systems, the inadequacy of existing normative measures, specificities in the legal system and

limited capacity as concrete challenges. Some States parties also pointed to the existence of pending legislation. Several recommendations were issued, including to enact comprehensive legislation and systems for the protection of experts, witnesses and victims where these were absent, to give adequate attention to such measures on the ground, for example through sensitizing the police and other law enforcement agencies, and to strengthen measures to protect the identity of informants in order to alleviate concerns that the names of witnesses could be traced. In a number of States parties, no comprehensive witness protection or relocation programmes were in place, but practical measures such as separate court rooms were taken on a case-by-case basis for special categories of persons. In one case, the inclusion of corruption offences in the witness protection system was not automatic and a recommendation was issued to extend such protections in a direct and explicit fashion to witnesses and victims of corruption offences.

38. Regarding the victims of corruption, in two cases the protection of victims and the provision of funding regarding their protection were not regulated by law, while in others victims of offences took fully part in the proceeding where their identity was known. Specifically, in one of these cases, the Constitution and criminal procedure code provided for the views of victims to be heard at any stage of the proceedings. In another, a recommendation was issued that the role of victims in a trial as regards their position as complainants, victims or witnesses should be clarified. In one State party, a recent amendment to the criminal procedure code had instituted a special judge delegated for victims of crime, who could intervene only at the request of victims to ensure consideration of victims' rights in the implementation and enforcement phases of a case. Victim impact statements were admissible as evidence in several States parties to provide details to the court of the harm suffered by victims.

Box 13

**Examples of the implementation of article 32**

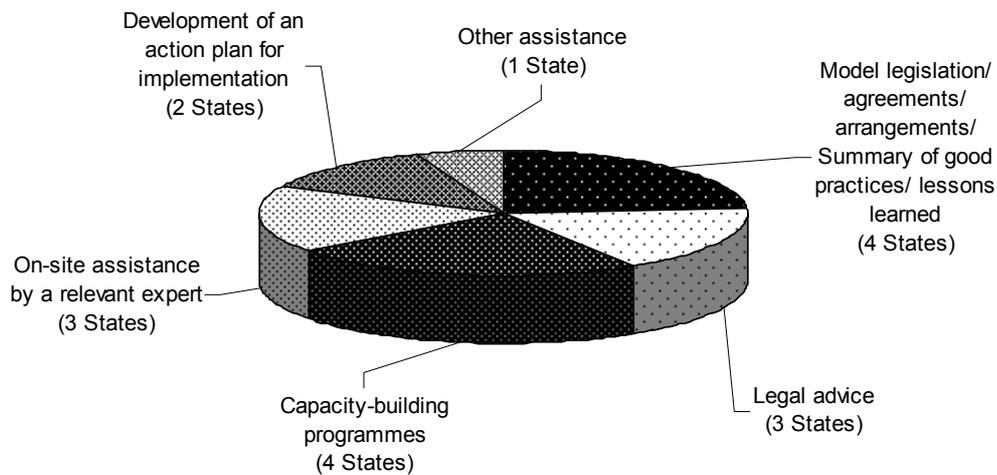
In one State party, the right of victims and witnesses to receive adequate protection in the course of criminal proceedings was recognized at the Constitutional level and regulated by different normative sources. Additionally, a law on witness protection existed, though this had only been applied in exceptional cases. Protections and support measures also covered family members, and legislation was pending to extend the protections to cases posing significant protection risk.

In another State party, measures to protect witnesses were taken by the prosecutor, judge or court when there were reasons to presume a real danger to the life, health or property of witnesses, relatives or closely related persons. Measures included personal physical guarding by government bodies and non-disclosure of identity. A programme on the protection of threatened persons was also available, which encompassed personal physical security, property guarding, temporary safe accommodation, change of residence, work place or education and identity change. A specific procedure was established to allow for the interrogation of witnesses by pretrial authorities and courts in secrecy. A defendant could also put questions to the witness in writing, which would be answered by video conference and altering the voice and image of the witness, with verification by a judge.

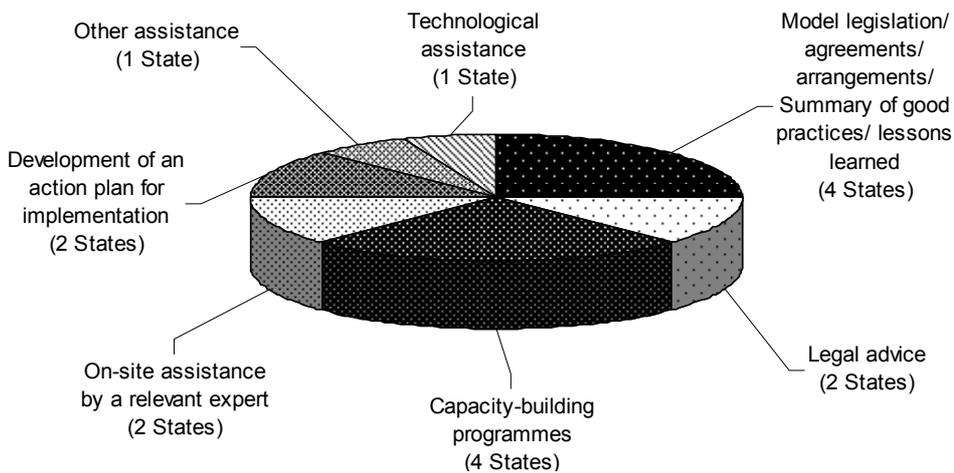
**Technical assistance needs related to article 32**

39. Of the nine States parties requesting technical assistance to support the implementation of article 32 of the Convention, the types of assistance requested were: model legislation, agreements or arrangements, a summary of good practices and lessons learned (eight States); capacity-building programmes (eight States); legal advice (five States); on-site assistance by a relevant expert (five States); the development of an implementation action plan (four States); other assistance (two States); and technological assistance (one State). Other assistance included information technology training, facilities to provide for consultative services, and the sharing of experiences.

**Group of Asian and Pacific States**



**Group of African States**

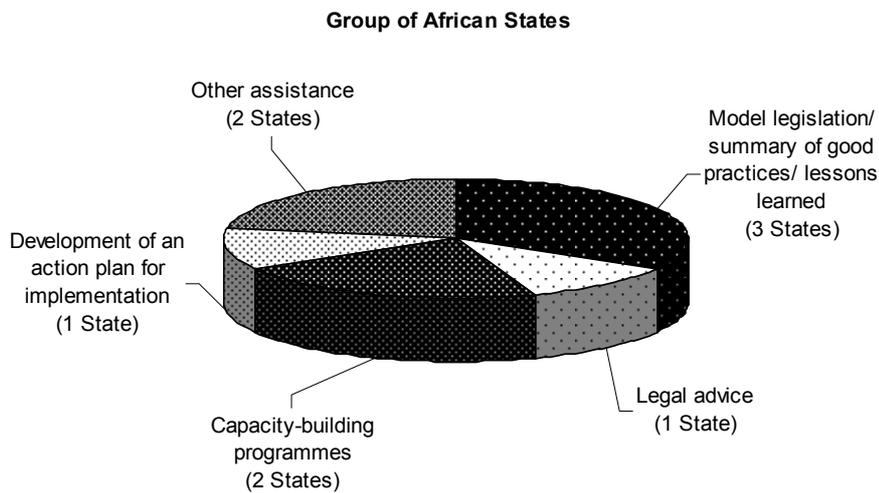
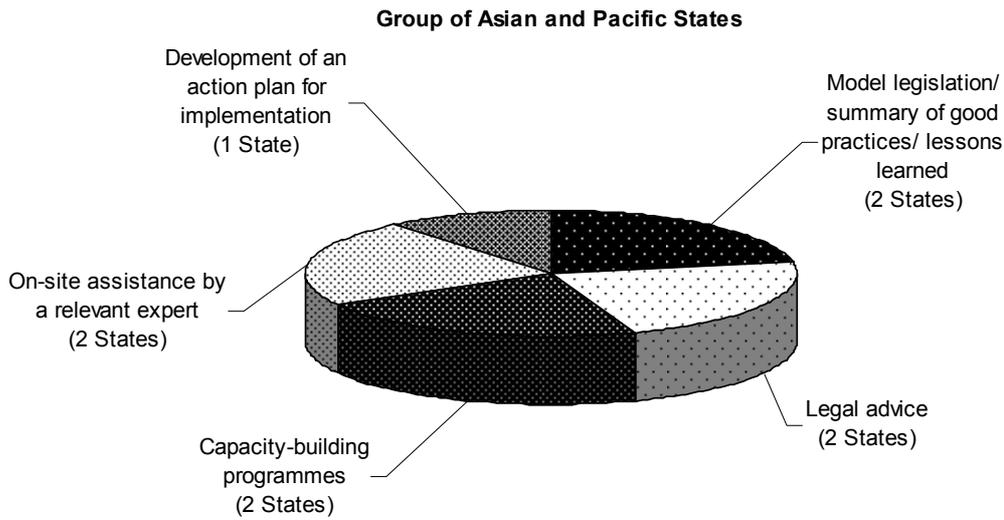


*Protection of reporting persons*

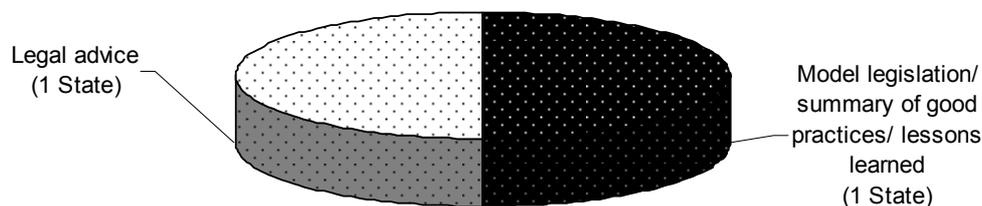
40. As with the protection of witnesses, experts and victims, there was considerable variation among the States parties with regard to the implementation of article 33. Several States parties had not established comprehensive measures to implement the article, though legislation was pending in some cases. Common challenges related to specificities in national legal systems, limited capacity and the absence of specific regulations or systems for the protection of whistle-blowers, which were noted as a concern in several cases. In some cases related measures were found in the labour or civil service codes. In one case, the matter was partly regulated by the anti-corruption law and draft legislation had been introduced; however, there was no comprehensive legislation on “whistle-blower” protection and victim and witness protections were not provided to informants, despite an obligation for civil servants to report cases of corruption. Recommendations were issued to enact appropriate legislation in this and other cases, including to explore the possibility of allowing all citizens to report suspicions of corruption anonymously. In one case where no specific whistle-blower protection system existed, the provisions on witness protection were applicable. In this case a recommendation was issued to explore the possibility of establishing a comprehensive system for the protection of whistle-blowers, which was under consideration by the national authorities. In a third case, despite a duty of all citizens to report crimes to the competent authorities, which was encouraged by the establishment of hotlines, the person reporting criminal conduct had to confirm the report formally afterwards. A recommendation was issued to ensure that specific rules for the protection of whistle-blowers in labour and administrative laws were enacted. A similar confirmation requirement was also observed in another jurisdiction. In one case where comprehensive whistle-blower legislation had recently been enacted, the law applied to all persons who disclosed information and had already yielded “useful” information, including through anonymous reports that had resulted in several pending cases. However, the possibly insufficient incentives for whistle-blowers were noted and several recommendations were issued to enact regulations relating to back pay and other action to eliminate the effects of victimization, and to raise awareness by employers and among the public. In another case, only public officials who reported and not private persons were afforded protection, which covered both labour and procedural protections. A recommendation was issued to implement an appropriate protection system to encourage persons other than public officials to report offences under the Convention. In one jurisdiction where only basic measures protecting the identity of informants and allowing anonymous reporting were in place, the possible consequences of reporting misconduct were noted as a serious concern and a recommendation to consider instituting appropriate measures was issued. In another case, the inclusion of corruption offences in the whistle-blower system was not automatic and a recommendation was issued accordingly. Some States parties had enacted measures protecting both public and private sector whistle-blowers and made details of reports publicly available, with legislation for the establishment of a comprehensive scheme for public sector whistle-blower protection under review in one State.

**Technical assistance needs related to article 33**

41. Of the seven States parties requesting technical assistance to support the implementation of article 33 of the Convention, the types of assistance requested were: model legislation, a summary of good practices and lessons learned (six States); capacity-building programmes (four States); legal advice (four States); on-site assistance by a relevant expert (two States); the development of an implementation action plan (two States); and other assistance (two States). Other assistance included awareness-raising to support the enforcement of anti-corruption legislation and the reporting of corruption-related incidents, and to inform the public on what protection is available under existing whistle-blower laws.



### Group of Eastern European States



#### *Consequences of acts of corruption*

42. There was considerable variation among the States parties regarding the implementation of article 34. In one case, no specific provisions to regulate the matter existed, though general principles of contractual law applied that permitted annulment of a contract on the basis of the lack of good faith by at least one of the parties, if the contract was the result of corruption. Similarly in another jurisdiction, general principles of contractual law applied to void contracts that contradicted or circumvented law or good morals and in specific circumstances listed in the legislation. Here also the law stipulated the exclusion of candidates who had been convicted of bribery from participation in public procurement. Similar restrictions existed with respect to the participation of legal persons in concessions. On the other hand, in one jurisdiction, while the civil law contained comprehensive regulations on voiding transactions, the notion of contract rescission as a result of corrupt acts had not been reflected in national law. In another case, the matter was heard by a court of auditors, which had no administrative capacity to intervene in a given case, but a mandate to review or consider corruption and other matters brought to its attention, and could issue disciplinary, financial, and criminal penalties. A recommendation was issued that investigations and prosecutions should follow such proceedings. In two States parties, the matter was regulated by contract or public procurement laws, though in one case their application was unclear. While contracts could be rescinded under the procurement law, it was observed that a regulation on concessions was missing. In another case, the criminal code established various interdictions on the activity of legal persons and the exclusion from public tenders permanently or for a period of up to five years, with related additional penalties for persons convicted of specified corruption offences. The authority to withdraw corporate licenses and blacklist companies was not always recognized, but considered to be a useful measure.

Box 14

**Examples of the implementation of article 34**

In one State party, a forfeiture of the public sector contribution to a convicted official's pension fund was noted as a possible consequence for public officials who engaged in corruption.

In another State party, a public institution affected by a corruption offence was obliged to participate in the penal procedure as complainant to defend the best interests of the institution.

The greater use of standard terms in procurement contracts designed to allow the government to rescind contracts, withdraw licenses and take other similar remedies where corruption or criminal conduct had occurred was noted as a good practice in one jurisdiction.

In another State party, the penal code established an obligation to "repair" the civil consequences and damages of corruption once there had been a criminal conviction, and an annulment of the contract, concession or other legal instruments was considered part of such reparation of damages.

*Compensation for damage*

43. All of the countries had adopted measures to fully or partly implement the article, though in several cases there was no established procedure or practice for bringing such cases. The implementing legislation was either civil, criminal or procedural, and in one case the matter was addressed in the anti-corruption law, which covered only part of the cases foreseen in article 35. In one case, there appeared to be no specific provisions that guarantee eligible persons the right to initiate legal proceedings in the absence of a prior criminal case and a recommendation was issued accordingly.

Box 15

**Examples of the implementation of article 35**

In one State party, a court decision had authorized a non-governmental organization active in the area of corruption prevention to bring a civil action in criminal proceedings regarding corruption offences.

**D. Implementation of the law enforcement provisions of chapter III****Institutional provisions***Specialized authorities*

44. While all but one of the States parties had established a body or specialized department to combat corruption through law enforcement, often these were newly created and faced common challenges related to limited capacity and resources for implementation as well as competing priorities. Similar recommendations were issued in a number of cases to increase manpower and resources for training and capacity-building, to strengthen the presence in the regions and provinces, to increase political support and to continue efforts to combat corruption through

independent law enforcement bodies focusing, in particular, on addressing implementation challenges in this field. In one case, a recommendation was issued to consider focusing the responsibilities of the various law enforcement authorities, their staffing and training due to overlapping functions. A need for effective inter-agency coordination was also noted in several other jurisdictions. In several cases observations were made regarding the independence of these bodies. For example in two cases, corruption investigations or related actions against public officials required the prior authorization of the government or prosecutor's office. In one of these cases, additional concerns were raised because a high ranking official of the agency had been appointed by the government. In the same case, doubts were raised as to the independence of contractors and staff members of the agency who could hold office outside the agency and were not subject to any conflict of interest law. In the second case, while it was noted that the anti-corruption law prohibited influencing or interfering in the operation of the agency, a recommendation was issued to also consider establishing related criminal sanctions and to increase the mandate of the agency to investigate all offences under the Convention. In one case, concerns were raised as to the selectiveness of the body in deciding which cases to pursue, and in another as to the low number of corruption cases instituted relative to the number of allegations. A need to develop statistical indicators to establish benchmarks, develop strategies and measure progress of the body was also noted. In another case, a recommendation was issued to strengthen the accountability of the judiciary through a consistent and strict application of all legal and disciplinary means to sanction corruption. In some cases, legislation had been introduced or prepared that would strengthen or re-organize the functions and authorities of the law enforcement body, with steps underway in one case to secure a Constitutional anchor for the agency.

Box 16

**Examples of the implementation of article 36**

In one State party, the anti-corruption law contained a unique provision that prohibited a decrease in the anti-corruption agency's budget from the previous year and further required the agency's corruption-related recommendations to public sector institutions to be implemented. A three-sided agreement among the agency, government and civil society was in place for collaborative efforts against corruption, and civil society also held a seat on the advisory council of the agency.

In one case, the establishment and operation of a dedicated agency was specifically noted as the primary success in addressing corruption in the country. The agency had brought cases against former Ministers, members of Parliament, senior officials, mayors, company directors, and one of its own staff. The creation of a separate anti-corruption court, in addition to specialized judges in the Supreme Court, was noted as a positive measure, with plans for additional courts underway.

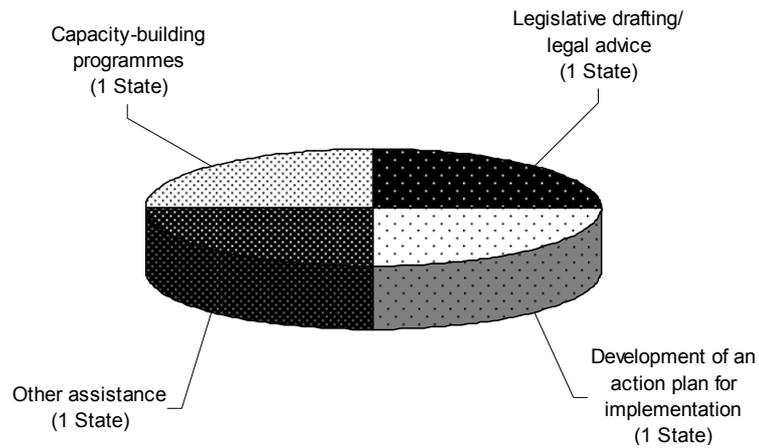
In one State party, the police force had incorporated extensive statistical reporting into their daily operations through a series of key performance indicators, including some related to targeted reductions in the number of disciplinary cases in the police force. The police tracked significant activities in a number of areas on a quarterly and annual basis and reported these to the Ministry of Defense quarterly, in addition to annual reporting to the public.

The anti-corruption body in one State party had recognized particular problems of corruption in traffic enforcement and upon analysis determined that reducing fines for traffic violations would adequately deter traffic violations while also reducing the incentive and opportunities for corruption. This was found to be the case, notably because members of the public were less inclined to engage in corruption with traffic enforcers when the amounts at risk were minimal.

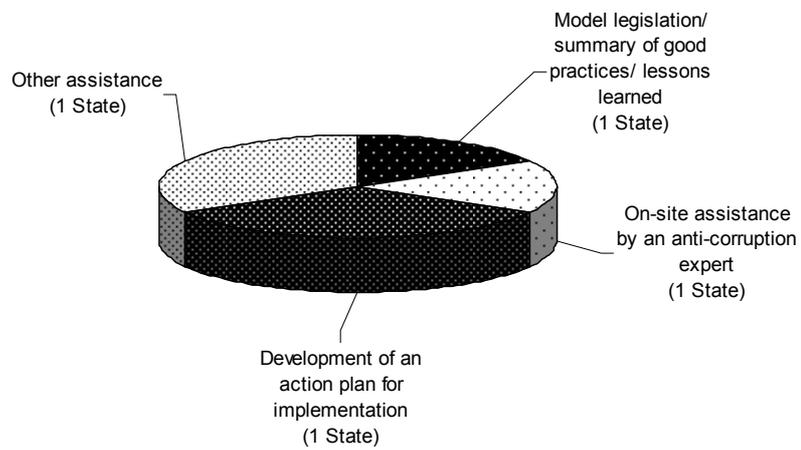
**Technical assistance needs related to article 36**

45. Of the six States parties requesting technical assistance to support the implementation of article 36 of the Convention, the main types of assistance requested were: other assistance (four States); the development of an implementation action plan (two States); model legislation, a summary of good practices and lessons learned (two States); and on-site assistance by a relevant expert (two States). Individual requests were received for: capacity-building programmes; and legislative drafting/ legal advice. One State from the Group of Latin American and Caribbean States requested other assistance. Other assistance included training (also on the use of existing facilities and investigative techniques), resources, and knowledge sharing between specialized authorities.

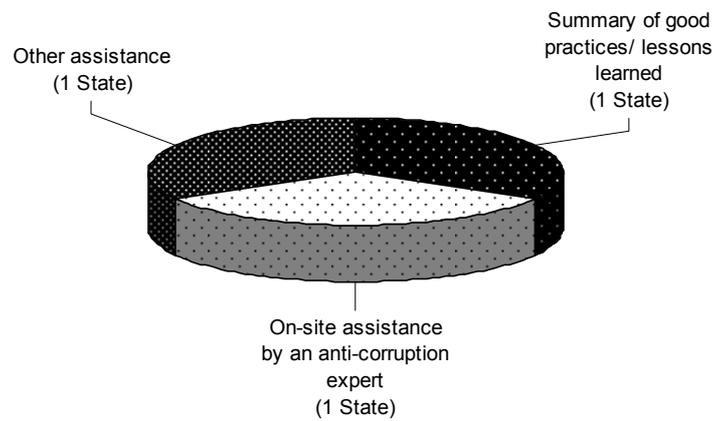
**Group of Asian and Pacific States**



**Group of African States**



**Group of Eastern European States**



*Cooperation with law enforcement authorities*

46. A number of States parties had taken measures to encourage the cooperation of persons who have participated in the commission of corruption offences with law enforcement authorities in investigations. Although whistle-blower protections did not always apply to cooperating perpetrators, measures had been frequently implemented to permit collaboration to be considered as a circumstance mitigating criminal liability and taken into account in sentencing or as grounds for decreasing punishment where perpetrators had attempted to prevent or remove the effects of an offence. In the latter case, recommendations were issued to consider providing for the possibility of non-punishment of perpetrators of corruption offences who spontaneously and actively cooperated with law enforcement authorities and also to consider expanding the scope of the domestic legislation on the mitigation of punishment of such perpetrators who assisted law enforcement authorities in investigating offences committed by other persons involved in the same case. In several cases, no explicit policies or legal provisions were in place to either protect or encourage the cooperation of persons who participated in the commission of corruption offences or provide for the mitigation of their punishment, although in some cases legislation on the mitigation or release from punishment of accused cooperators was pending. Recommendations were issued in several cases to include the physical protection of collaborators of justice in future legislation and to provide for the mitigation of punishment or other measures to encourage cooperation with law enforcement authorities. A related issue concerns the concept of “spontaneous confessions”, which had been established in four jurisdictions as circumstances warranting mitigation or release from punishment or immunity from prosecution but were not considered by the reviewing States parties as fully implementing the requirements of the Convention.

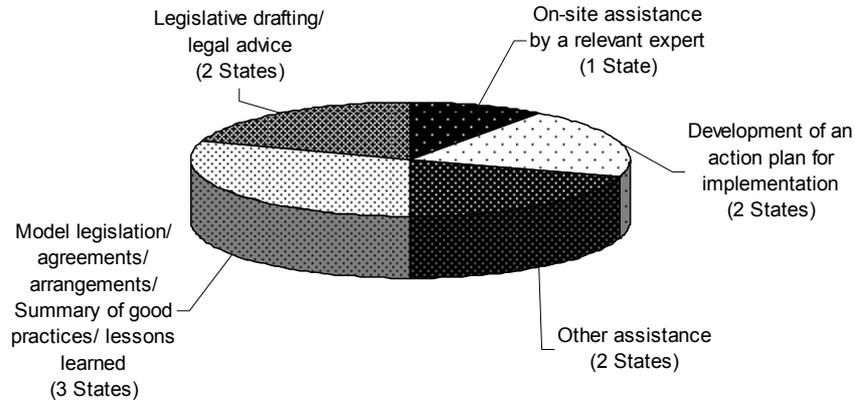
47. With regard to the possibility of granting immunity from prosecution to accused cooperators, the majority of States parties had not established the respective measures, although in one case partial immunity could be granted in bribery cases and in some cases immunity could be granted on a discretionary basis by prosecutors or courts. In one State party where immunity from prosecution was not established, cooperating offenders fell under the definition of witnesses and could be subject to the witness protection measures guaranteeing immunity from prosecution to informants. In another case, the law allowed for immunity to attempted perpetrators who cooperated effectively with the competent authorities, while cooperating offenders who completed the crime were only entitled to a reduction of their custodial sentence and not an exemption from prosecution. A draft law on plea bargaining was additionally being developed in one case.

**Technical assistance needs related to article 37**

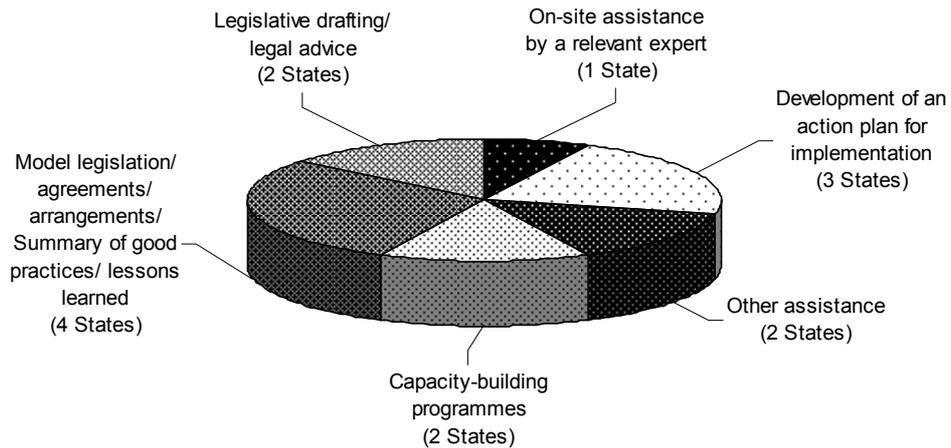
48. Of the nine States parties requesting technical assistance to support the implementation of article 37 of the Convention, the types of assistance requested were: model legislation, agreements or arrangements, a summary of good practices and lessons learned (eight States); legislative drafting/ legal advice (five States); the development of an implementation action plan (five States); other assistance (four States); capacity-building programmes (two States); and on-site assistance by a relevant expert (two States). Other assistance included law enforcement cooperation to raise awareness of anti-corruption legislation and the reporting of

corruption-related incidents, and to inform the public on what protection is available under existing whistle-blower laws.

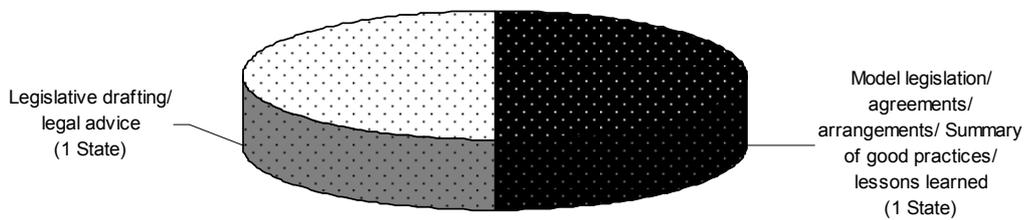
**Group of Asian and Pacific States**



**Group of African States**



**Group of Eastern European States**



*Cooperation between national authorities and the private sector*

49. Several States parties had established obligations to report corruption incidents on the part of public officials and, in several cases, by citizens or specific categories of legal persons in the private sector, though anonymous reporting was not always possible. There were exceptions, where no such duty existed for either citizens and/or public officials, and appropriate recommendations were issued to adopt measures to encourage such persons to report acts established as offences by the Convention. In addition to reporting requirements, various measures had been established by States parties to encourage cooperation between national authorities and with the private sector, including, in several cases, a duty to cooperate anchored in law or the operation of specialized administrative bodies (inspectories) in every central public body to collect signs of corruption and inform prosecuting authorities of evidence concerning criminal activities. The measures most often related to financial institutions and, in one case, a recommendation was issued to explore the usefulness of broadening the scope of cooperation between national law enforcement authorities and private sector entities that were not financial institutions. In two cases, an obligation by the financial intelligence or audit units to report suspicious transactions involving corruption to the anti-corruption authority was absent, and in one of these cases a duty by banks and tax authorities to spontaneously transmit information on suspected corruption was also absent, although prosecutors were entitled to request assistance from banks and financial institutions. Similarly, in another case the limited powers of the financial intelligence unit to obtain information and records from public and private sector institutions due to bank secrecy and confidentiality restrictions absent a court authorization in relevant cases were noted as a concern. Frequently, inter-agency memoranda of understanding or other networks of cooperation had been established. Initiatives to promote awareness of corruption in the private sector had also been taken in a number of States parties. The most common challenges in this area related to inter-agency coordination and limited capacity for implementation. A reluctance to report on the part of public officials, especially where anonymous reporting was not provided for, and fear of retaliation were observed in some cases.

Box 17

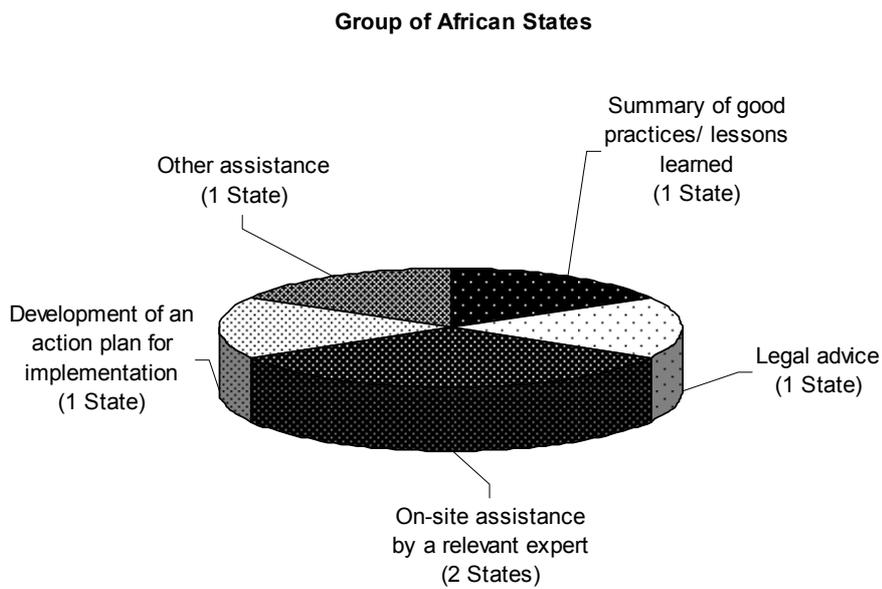
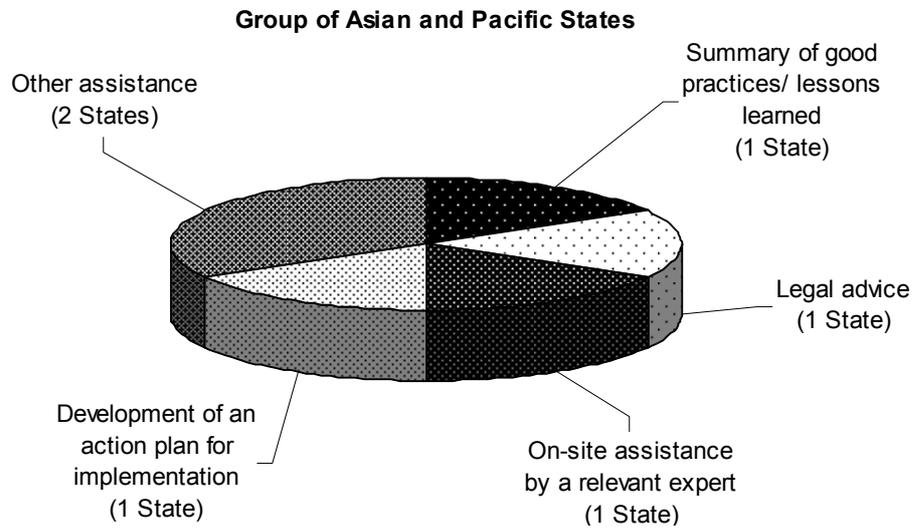
**Example of the implementation of article 39**

In one jurisdiction, the reviewing States parties acknowledged the outreach by the anti-corruption commission to civil servants and the private sector as well as oversight of the legal profession. Lectures to the private sector comprised nearly half of the total workshops held and were also conducted together with civil society. Officials reported that the workshops served as an important safeguard and fostered corruption reporting.

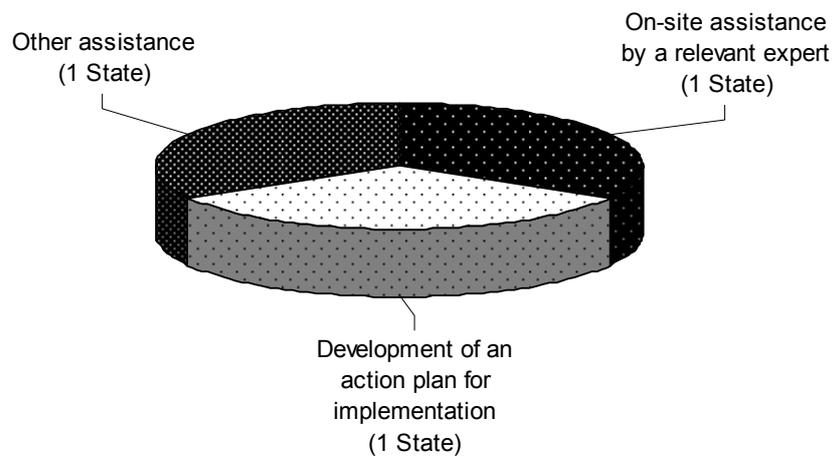
**Technical assistance needs related to article 38**

50. Of the six States parties requesting technical assistance to support the implementation of article 38 of the Convention, the types of assistance requested were: on-site assistance by a relevant expert (four States); other assistance (four States); the development of an implementation action plan (three States); a summary of good practices and lessons learned (two States); and legal advice (two States).

Other assistance included measures to harmonize information, such as a case management system, as well as financial and technical cooperation.



### Group of Eastern European States



### Other provisions

#### *Bank Secrecy, Criminal Record, Jurisdiction*

51. In most jurisdictions, bank secrecy did not present significant issues, even in cases where bank secrecy rules were in place, although issues with regard to the lifting of bank secrecy were noted in a few jurisdictions. Most notably, in one case, difficulties for investigators to obtain the lifting of bank secrecy existed due to the particularly high standards of proof required by the supervising judge. In addition, concerns were noted about the lengthy treatment of requests for the lifting of bank secrecy by judges and the subsequent provision of information by concerned banks. A recommendation was issued to adopt suitable measures to facilitate the practical implementation of the standards on the lifting of bank secrecy. Delays in the lifting of bank secrecy were also observed in another case, as the procedure was regulated by court authorization upon request of the prosecutor. Such delays were not noted in one jurisdiction where judicial permission was not required, and additionally the law established an obligation of credit institutions to provide information as required. In another jurisdiction with bank secrecy rules in place, in practice these rules did not pose major difficulties and were limited by the duty to collaborate in accordance with the requirements of the public interest. In practice, this meant that banks and other financial institutions should facilitate access to data and precedents as required. In one case where bank secrecy rules were in place, the prosecutor's office had the authority, in investigations against civil servants for offences committed in the exercise of their functions, to order the disclosure of the suspect's current accounts and balances as a whole, and not only of specific transactions related to the issue under investigation. In one jurisdiction a recommendation was issued to address the requirement that permission of the Chairman of the Central Bank was needed for law enforcement agencies and judges, in practice, to obtain or seize bank, commercial or financial records from banks and other financial institutions.

52. In several jurisdictions previous convictions in another State could not be taken into account with regard to corruption offences, whereas provisions existed in

relation to other offences such as money-laundering, in one case, and the offences of human trafficking, drug trafficking, and acts of terrorism, in another. In a few cases the article had been implemented by reference to other international legal instruments, such as the European Convention on the International Validity of Criminal Judgments and the Convention on Mutual Assistance in Criminal Matters between the Community of Portuguese Speaking Countries. Additionally, in one case, the criminal law contained a rule stipulating that courts take into account verdicts of foreign courts in regard of alleged offenders in the cases established by international agreement. In some cases, the article had not been implemented or there were no laws or practice on criminal record.

53. Issues with regard to jurisdiction were noted in a few States parties that did not provide for extra-territorial jurisdiction in corruption matters. In one case, the requirement of double criminality was applied to offences committed abroad by or against a national, but this general principle was not applicable in respect of active and passive bribery of national and foreign public officials and members of Parliament and, additionally, the passive personality principle was limited by the requirement that the acts committed abroad be punishable by imprisonment of more than six months. In two cases, the passive personality principle had not been established, while in three other cases, both the active and passive personality principles were limited or had not been established. In three cases, additionally, the state protection principle was limited or had not been established, and a recommendation was issued accordingly. In one case, nationals could only be prosecuted for offences committed abroad on the basis of either a complaint by the victim or its legal successors or official denunciation by the authority of the country where the offence was committed. Several States parties had established measures that prohibit the extradition of nationals or allow such extradition only when applying international treaties and according to the principle of reciprocity, as discussed further in the thematic report on the implementation of chapter IV of the Convention (International cooperation) (CAC/COSP/IRG/2012/CRP.2).

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