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**Implementation Review Group**

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**Review of implementation of the United Nations  
Convention against Corruption**

**Developing a set of non-binding recommendations and  
conclusions based on lessons learned regarding the  
implementation of chapters III and IV of the United Nations  
Convention against Corruption**

**Discussion paper prepared by the Secretariat**

*Summary*

The present discussion paper has been prepared in line with paragraph 11 of resolution 6/1 of the Conference of the States Parties to the United Nations Convention against Corruption to contribute and facilitate deliberations of the Implementation Review Group on a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention during the first review cycle.

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\* [CAC/COSP/IRG/2017/1](#).



## **I. Introduction**

1. In paragraph 11 of its resolution 6/1, the Conference of the States Parties to the United Nations Convention against Corruption requested the Implementation Review Group to analyse the information on successes, good practices, challenges, observations and technical assistance needs emanating from the country reviews of the first review cycle, considering the thematic implementation report prepared in accordance with paragraph 35 of the terms of reference of the Mechanism for the Review of Implementation of the Convention, and to submit a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention to the Conference for its consideration and approval at its seventh session.

2. Based on that mandate, the Secretariat submits the present discussion paper to the Group to facilitate its deliberations on the matter. The following observations and good practices regarding the implementation of chapter III (Criminalization and law enforcement) and chapter IV (International Cooperation) of the Convention have been identified by analysing all the observations made and good practices identified during the first cycle country reviews to date. It is based on 149 finalized executive summaries of country review reports of the first cycle of the Implementation Review Mechanism.

## **II. Recommendations issued and good practices identified regarding the implementation of chapters III and IV of the Convention**

3. The selection of articles in the tables below is based on a quantitative analysis of observations made and good practices identified regarding the implementation of chapter III (table 1) and chapter IV (table 2) of the Convention. The observations and good practices have in part been reformulated in order to make them more broadly applicable and capture the essence of a wider range of country-specific observations, without changing their overall content and meaning.

Table 1

**Most prevalent observations and good practices regarding chapter III (Criminalization and law enforcement)**

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
<i>All articles: general and cross-cutting recommendations</i>	<p>Strengthen the collection and availability of statistical data on the implementation of anti-corruption measures across institutions, in particular statistical data on investigations, prosecutions and adjudications, for example through the creation of a national crime register.</p> <p>Adopt a comprehensive definition of the term “public official” in line with art. 2 (a) of the Convention, or adopt a more consolidated use of the term “public official”, to ensure that all categories of persons set out in art. 2 of the Convention are covered as subjects of the offences.</p> <p>Consider consolidating or simplifying the legal framework to criminalize corruption offences, and consider clarifying interpretative principles.</p> <p>Continue to devote adequate resources and attention to capacity-building for authorities responsible for combating corruption, including by undertaking a comprehensive assessment of technical assistance needs where needed. Sufficient resources should be made available to address capacity constraints in the areas of investigation, prosecution, and adjudication of cases.</p>	
<i>Bribery offences and trading in influence (arts. 15, 16, 18 and 21)</i>	<p>More clearly delineate the elements of the articles of the Convention, to ensure in particular that all modalities of the commission of an offence (promise, offer, giving, solicitation, acceptance), as well as third party beneficiaries and indirect acts are covered.</p> <p>Ensure that the subjects of the offence include all categories of persons listed in art. 2 of the Convention (see also above).</p> <p>Expand the objects of the offence, in particular as regards non-material benefits and “facilitation payments”.<sup>a</sup></p> <p>Align exceptions or defences concerning immunities for spontaneous confessions, the attempted commission of the offence, and acts committed with lawful authority or reasonable justification, with the requirements of the Convention.</p>	Wide scope of application of anti-bribery legislation to national and foreign public officials and officials of public international organizations, as well as to the private sector.

<sup>a</sup> The term “facilitation payment” is not included in the Convention and the concept to which the term refers is not recognized by it.

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
	<p>With respect to bribery of foreign public officials and officials of public international organizations (art. 16), devote adequate attention to enforcement.</p> <p>With respect to trading in influence (art. 18), consider adopting a specific offence, separate from bribery, covering all elements of art. 18, in particular the abuse of real or supposed influence.</p> <p>With respect to bribery in the private sector (art. 21), ensure that any person who directs or works in any capacity for a private sector entity is covered as a possible bribe recipient.</p>	
<i>Laundering of proceeds of crime (art. 23)</i>	<p>Include as predicate offences all offences established in accordance with the Convention, whether committed within or outside the jurisdiction of the State party in question.</p> <p>Ensure that all modalities of the commission of the offence in para. 1 are covered.</p> <p>Strengthen enforcement and address issues of jurisdictional overlap and coordination among the competent authorities.</p>	<p>Comprehensive legal framework and “all crimes approach”; anti-money-laundering regulations in place and enforced.</p> <p>Mens rea of the offence goes beyond the minimum standards in art. 23 (e.g. gross negligence).</p>
<i>Statute of limitations (art. 29)</i>		<p>Absence of a limitations period for offences under the Convention; interruption or suspension mechanisms; calculation of the statute of limitations period from the time of discovery of the offence.</p>
<i>Prosecution, adjudication and sanctions (art. 30)</i>	<p>Ensure the efficiency, proportionality and dissuasive effect of sanctions for offences under the Convention, including by considering a more coherent approach in the sanctioning of offences (e.g. the harmonization of penalties according to the gravity of offences and across different anti-corruption laws); also consider adopting sentencing guidelines and monitoring the imposition of punishment, including plea bargains and out-of-court settlements.</p> <p>Establish a greater balance between immunities or jurisdictional privileges accorded to public officials and the possibility of effectively investigating, prosecuting and adjudicating offences under the Convention; in particular review the procedures for lifting immunities to avoid potential delays, the loss of evidence and any</p>	<p>Innovative mechanisms to calculate fines and sentences, and the existence of guidelines or practice directives for prosecutors and judges providing detailed instructions on the application of penalties depending on the gravity of the corresponding offence.</p> <p>Absence of criminal immunities for offences under the Convention and successful investigations or prosecutions of public officials.</p>

Articles of the Convention	Observations	Good practices
<i>Freezing, seizure and confiscation (art. 31)</i>	<p>obstacles preventing investigative steps from being taken before immunities are lifted.</p> <p>Consider adopting measures for the disqualification of persons convicted of offences under the Convention from holding public office.</p> <p>Enable confiscation of proceeds of crime derived from all offences under the Convention, including value-based confiscation.</p> <p>Expand the definition of proceeds of crime, property and, in particular, instrumentalities that are subject to the measures in art. 31.</p> <p>Strengthen the capacity of competent authorities to trace, seize and freeze property and ensure that interim measures leading to confiscation apply to all offences under the Convention.</p> <p>Strengthen the administration of frozen, seized and confiscated property, in particular in the case of complex assets, and consider the establishment of a dedicated asset management office.</p>	<p>Comprehensive legislation for the confiscation of proceeds of crime, including value-based and non-conviction-based confiscation, and effective application of the legal framework in practice.</p> <p>Institutional arrangements, including coordination and the exchange of information among authorities, leading to successful confiscation cases, and the existence of specialized authorities dedicated to the administration of seized and confiscated assets.</p> <p>Confiscation may be ordered even if the offender cannot be convicted; shifting evidentiary standards or presumptions facilitating confiscation; and extended confiscation covering assets beyond proceeds of crime, unless proved otherwise.</p>
<i>Protection of witnesses, experts and victims (art. 32)</i>	<p>Strengthen the effective protection of witnesses, experts and victims, as well as their relatives or associates, as appropriate, in particular by adopting a legal and institutional framework on witness protection and by means of adequate enforcement and funding. The framework for such protection should offer all necessary forms of protection, including physical protection and evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures their safety. Consider adopting a witness protection programme.</p> <p>Extend the scope of witness protection measures to all offences under the Convention.</p> <p>Strengthen the participation of victims in criminal proceedings (art. 32, para. 5).</p>	<p>The establishment of a specialized anti-corruption authority, a specialized anti-corruption unit within</p>
<i>Specialized authorities (art. 36)</i>		

*Cooperation with law enforcement authorities (art. 37)*

Adopt measures to encourage the cooperation of offenders in investigations and prosecutions, including by offering the possibility of mitigated punishment, plea bargaining or immunity from prosecution, and ensure such persons are subject to the protections in art. 32 of the Convention.

*Cooperation between national authorities (art. 38)*

the police force and the prosecution service, and/or a specialized anti-corruption court.

Specific mandate and independence mechanisms, as well as adequate capacity and resources for the specialized authorities.

Operational measures to enhance effectiveness (e.g. information-sharing, inter-agency coordination, collection and use of relevant data, clear policy guidance) leading to increased investigations and prosecutions.

Effective cooperation mechanisms among the investigating and prosecuting institutions and public authorities, including through the exchange of personnel and information.

Establishment of centralized bodies or mechanisms to facilitate coordination; inter-agency agreements and arrangements.

*Cooperation between national authorities and the private sector (art. 39)*

Active engagement of public authorities with the private sector, in particular through training of private sector entities on prevention measures and awareness-raising.

Mechanisms to facilitate access to information by law enforcement authorities and to encourage the reporting of corruption.

Establishment of bodies or mechanisms to facilitate cooperation, including integrity pacts and agreements or arrangements.

Table 2

**Most prevalent observations and good practices regarding chapter IV (International cooperation)**

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
<i>All articles: general and cross-cutting recommendations</i>	Consider the allocation of adequate resources to further strengthen the efficiency and capacity of international cooperation mechanisms.	Provision of training to practitioners, in particular law enforcement and judicial officers, regarding applicable laws, procedures and time frames to be followed in international cooperation cases.  Active participation in international and regional networks, platforms and forums aimed at promoting international cooperation.  Efficient use of technology and electronic databases to track, monitor and follow up on international cooperation requests.
<i>Extradition (art. 44)</i>	Ensure that all offences established in accordance with the Convention are extraditable, such as by:  (a) Using the Convention as a legal basis for cooperation on extradition;  (b) Revising the minimum penalty thresholds for extradition or the lists of extraditable offences in domestic legislation in case of the strict application of dual criminality requirements;  (c) Relaxing the strict application of the dual criminality requirement and granting extradition even for those offences that are not punishable under domestic laws; and  (d) Reviewing or concluding bilateral or multilateral extradition agreements and arrangements to cover all offences under the Convention.	Flexible interpretation of the dual criminality requirement in extradition cases, focusing on the underlying conduct and not the legal denomination of the offence.  Expedition of extradition proceedings through channels such as the International Criminal Police Organization and electronic communication.
<i>Extradition and mutual legal assistance (arts. 44 and 46)</i>	Put in place and render fully operational information systems compiling in a systematic manner information on requests for extradition, mutual legal assistance and other forms of international cooperation, with a view to facilitating the monitoring of such requests, assessing the effectiveness of the implementation of international cooperation arrangements, and gathering comprehensive statistics.	Development of manuals, guidelines, checklists, dedicated websites or model requests for extradition and mutual legal assistance with a view to providing administrative and legal certainty for making, processing and executing requests.

<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
	<p>Make or update the requisite notifications to the United Nations as to:</p> <p>(a) Whether the State party takes the Convention as the legal basis for cooperation on extradition (art. 44, para. 6);</p> <p>(b) The designation of a central authority for mutual legal assistance (art. 46, para. 13);</p> <p>(c) The languages acceptable for mutual legal assistance requests (art. 46, para. 14).</p>	<p>Use of the Convention as a legal basis for extradition and mutual legal assistance.</p>
<p><i>Procedure for extradition and mutual legal assistance (art. 44, para. 9 and art. 46, para. 24)</i></p>	<p>Ensure that extradition proceedings are carried out in the shortest possible time, and simplify and streamline procedures and evidentiary requirements relating thereto. Similarly, expedite the execution of mutual legal assistance requests.</p>	
<p><i>Consultations with requesting States parties (art. 44, para. 17 and art. 46, para. 26)</i></p>	<p>Engage in informal consultations with requesting States before refusing extradition and mutual legal assistance requests.</p>	
<p><i>Mutual legal assistance (art. 46)</i></p>		<p>Provision of mutual legal assistance in the absence of dual criminality.</p>
		<p>Close communication and consultations between central authorities for mutual legal assistance, including the possibility of the requested authority accepting and reviewing requests informally before submission of a formal request.</p>
<p><i>Spontaneous sharing of information (art. 46, paras. 4 and 5)</i></p>	<p>Allow for or expand the practice of spontaneous transmission, i.e. without a prior request, of information that could assist in undertaking or successfully concluding investigations and criminal proceedings in other States parties or could result in formal mutual legal assistance requests being made by other States parties.</p>	



<i>Articles of the Convention</i>	<i>Observations</i>	<i>Good practices</i>
<i>Non-coercive mutual legal assistance in the absence of dual criminality (art. 46, para. 9)</i>	Ensure that mutual legal assistance that does not involve coercive action can be provided even in the absence of dual criminality.	
<i>Transfer of sentenced persons and transfer of criminal proceedings (arts. 45 and 47)</i>	Establish a legal and procedural framework for the transfer of sentenced persons and the transfer of criminal proceedings, and consider entering into relevant bilateral or multilateral agreements.	
<i>Law enforcement cooperation, joint investigations (arts. 48 and 49)</i>	Take steps to enhance law enforcement cooperation and conclude agreements or arrangements to allow the competent authorities responsible for the investigation of corruption offences to establish joint investigative teams with law enforcement agencies in other jurisdictions.	Organization of joint anti-corruption training workshops and capacity-building exchange programmes with a view to strengthening cross-border law enforcement cooperation (art. 48). Active use of joint investigation teams in transnational corruption cases (art. 49).
<i>Special investigative techniques (art. 50)</i>	Take measures to allow competent authorities to use special investigative techniques and to make evidence derived therefrom admissible in courts.	Wide use and application of special investigative techniques in corruption cases both domestically and internationally.