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Review of implementation of the United Nations Convention against Corruption

Implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption (review of articles 15-29)

Thematic report prepared by the Secretariat

Summary

The present thematic report contains information on the implementation of articles 15-29 of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption by States parties under review in the first, second and third 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 United Nations Convention against Corruption in its resolution 3/1.

* CAC/COSP/IRG/2014/1.

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I. 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 meeting, 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, thematic reports have been prepared in order to compile the most common and relevant information on successes, good practices, challenges and observations 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. An analysis of related technical assistance needs is included in a separate report (CAC/COSP/IRG/2014/3).

3. The present thematic report supplements and builds upon the previous thematic reports on the implementation of chapter III of the Convention (contained in documents CAC/COSP/2013/6, CAC/COSP/2013/7 and CAC/COSP/2013/8), in which trends and examples of implementation for 44 States parties under review in the first, second and third years of the first cycle of the Review Mechanism were presented. To avoid repetition and allow greater focus on specific trends and nuances, the present report focuses primarily on the 12 newly completed country reviews,[1] for which specific examples of implementation are highlighted in boxes 1-9. In addition, as in previous thematic reports, cumulative information is presented in tables and figures showing the most common challenges and good practices for all the States parties covered by the analysis.

II. General observations on challenges and good practices in the implementation of chapter III of the Convention

4. As requested by the Group, the present report contains an analysis of the most prevalent challenges and good practices in the implementation of chapter III, organized by article of the Convention. For article 30 (Prosecution, adjudication and sanctions), which covers a range of topics and for which a number of challenges and good practices were identified in the country review reports, a further breakdown according to paragraphs of the article is provided (see tables 1 and 2). The figures and tables below cover the analysis for all 56 States parties reviewed to date.

[1] Data used in the preparation of the present report are based on country reviews as at 14 February 2014.

Figure I
Challenges identified in the implementation of chapter III of the Convention

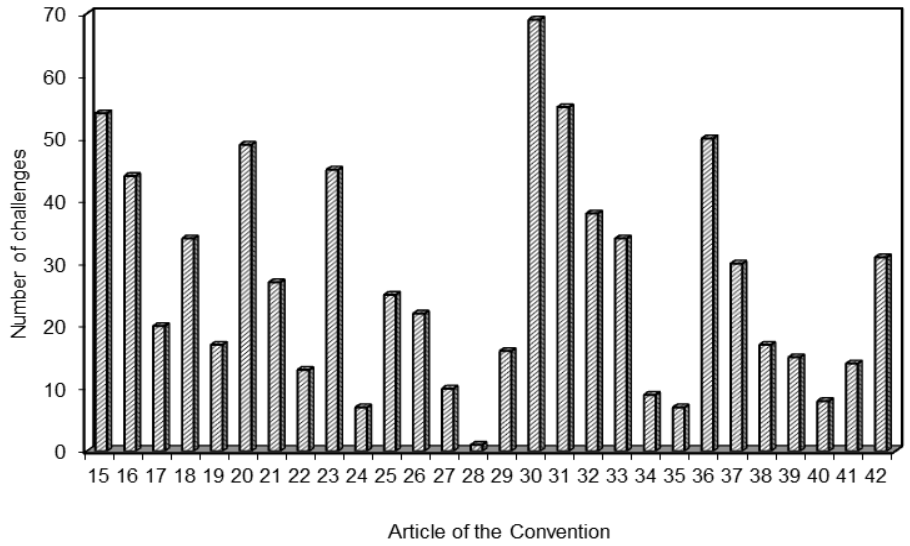


Table 1
Most prevalent challenges in the implementation of chapter III of the Convention

Article of the Convention	*Most prevalent challenges in implementation (in order of prevalence of identified challenge, organized by article of the Convention)*
Prosecution, adjudication and sanctions (art. 30)	
Sanctions for offences under the Convention (para. 1)	1. Enhancing the levels of monetary and other sanctions, especially against legal persons, and considering a more coherent approach and the harmonization of existing penalties for corruption-related offences, in particular bribery and embezzlement, in order to ensure the efficiency, proportionality and dissuasive effect of such sanctions.
Immunities and jurisdictional privileges (para. 2)	1. Establishing a greater balance between privileges and jurisdictional immunities afforded to public officials to perform their official functions and the possibility of effectively investigating, prosecuting and adjudicating offences under the Convention, as well as assessing whether immunities go beyond the protections necessary for public officials to perform their official functions. 2. Revisiting the procedures for lifting immunities, in particular to avoid potential delays and the loss of evidence in criminal cases.
Removal, suspension or reassignment of accused persons (para. 6)	1. Considering the adoption of measures for the removal, suspension or reassignment of public officials accused of offences under the Convention.
Freezing, seizure and confiscation (art. 31)	1. Measures to facilitate confiscation are absent or inadequate, in particular for identifying, freezing and seizing assets, as well as excessively burdensome formal requirements for freezing financial accounts, and identified challenges in establishing non-mandatory measures to provide that an offender must demonstrate the lawful origin of alleged proceeds of crime.

Article of the Convention	*Most prevalent challenges in implementation (in order of prevalence of identified challenge, organized by article of the Convention)*
	2. Challenges in the administration of frozen, seized or confiscated property.
	3. Definition of criminal proceeds, property and, in particular, instrumentalities that are subject to the measures in article 31.
	4. Application of existing measures to transformed, converted and intermingled criminal proceeds, as well as income and benefits derived from them.
	5. An identified need to overhaul, enhance and ensure greater coherence of existing measures, frameworks and capacity to conduct asset confiscation, freezing and seizure.
Bribery of national public officials (art. 15)	1. Application of the bribery offence to benefits extended to third persons and entities.
	2. The scope of the undue advantage, in particular as regards non-material benefits and "facilitation payments".[a]
	3. The scope of public officials covered by the bribery offence, in particular the application to members of Parliament.
	4. Coverage of indirect bribery, in accordance with article 15.
	5. Coverage of the promise, in addition to the offer or exchange, of an undue advantage.
	6. Applicable distinctions between acts within and outside the scope of official duties of public officials.
Specialized authorities (art. 36)	1. Strengthening law enforcement and prosecutorial bodies, in particular the mandate to conduct investigations without prior external approval, enhancing the efficiency, expertise and capabilities of staff, and ensuring the existence of specialized law enforcement capacity for offences under the Convention.
	2. Strengthening the independence and resources of law enforcement and prosecutorial bodies.
	3. Increasing inter-agency coordination among relevant institutions, considering reconstituting their functions, and assessing how to make existing systems and operations more effective.
Illicit enrichment (art. 20)	1. Domestic decisions not to establish a criminal offence of illicit enrichment.
	2. Issues relating to asset and income disclosure systems.
	3. Constitutional limitations, in particular relating to the principle of the presumption of innocence.
	4. Reported specificities in the legal system, in particular regarding the criminal burden of proof.
	5. Particularities of domestic legislation not foreseen by article 20.
	6. Application (and potential overlap) of existing laws, such as tax and anti-money-laundering legislation, to cases of illicit enrichment.

Article of the Convention	*Most prevalent challenges in implementation (in order of prevalence of identified challenge, organized by article of the Convention)*
Laundering of proceeds of crime (art. 23)	1. Scope of predicate offences committed within and outside the jurisdiction and application to offences under the Convention. 2. Furnishing copies of legislation to the United Nations. 3. Application to specific acts of laundering (subparas. (1)(a)-(b)(i) of art. 23), in particular the acquisition, possession or use of criminal proceeds. 4. Coverage of participatory acts to money-laundering, including association and conspiracy. 5. "Self-laundering" not addressed.
Bribery of foreign public officials and officials of public international organizations (art. 16)	1. Absence of a criminal offence addressing the bribery of foreign public officials and officials of public international organizations. 2. Insufficiency or lack of provisions concerning the non-mandatory offence of passive bribery of foreign public officials and officials of public international organizations. 3. The scope of foreign public officials and officials of public international organizations covered by the offence. 4. Application of the offence to benefits extended to third persons and entities.
Protection of witnesses, experts and victims (art. 32)	1. Establishing comprehensive legislation on the protection of witnesses, experts and victims and ensuring effective implementation of relevant measures. 2. Establishing evidentiary rules that ensure adequate protection. 3. Considering relocation arrangements with foreign authorities.

[a] The term "facilitation payment" is not included in the Convention and the concept to which the term refers is not recognized by it.

Figure II
Good practices identified in the implementation of chapter III of the Convention

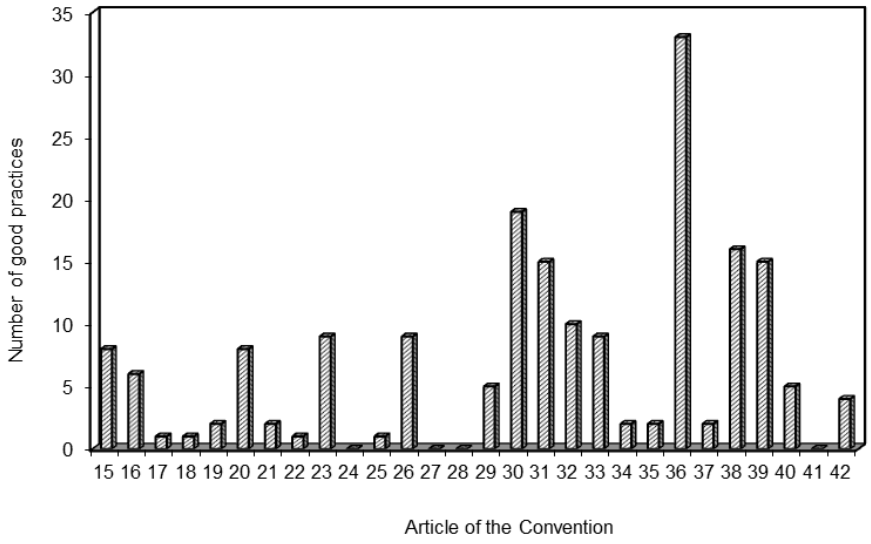


Table 2
Most prevalent good practices in the implementation of chapter III of the Convention

Article of the Convention	*Most prevalent good practices in implementation (in order of prevalence of identified good practice, organized by article of the Convention)*
Specialized authorities (art. 36)	1. Specialization of relevant authorities and their staff, also for complex cases.
	2. Specific mandate, oversight mechanisms and operational measures, including the use of strategy documents and statistical indicators.
	3. Adequate capacity and positive results.
	4. Measures to ensure independence.
	5. Existence of specialized anti-corruption courts.
	6. Measures related to the operation of financial intelligence units.
Prosecution, adjudication and sanctions (art. 30)	
Sanctions for offences under the Convention (para. 1)	1. Determination of sanctions taking into account the gravity of offences and measures to pursue penal law revisions in line with the Convention.
Discretionary legal powers (para. 3)	1. Effective enforcement of anti-corruption laws and appropriate operational oversight of institutions within the framework of prosecutorial discretion.
Removal, suspension or reassignment of accused public officials (para. 6)	1. Consequences for public officials who engage in corruption, including the possibility of their suspension, removal or reassignment.
Reintegration of convicted persons (para. 10)	1. Measures to strengthen the reintegration of offenders into society.
Cooperation between national authorities (art. 38)	1. Specific examples of effective inter-agency coordination, including Government partnerships, operational synergies, training and staff secondments.
	2. Establishment of a centralized agency to facilitate coordination.
	3. Inter-agency agreements and arrangements.
Freezing, seizure and confiscation (art. 31)	1. Comprehensive conviction-based and non-conviction-based forfeiture mechanisms.
	2. Evidentiary standards facilitating confiscation and the lifting of bank secrecy.
	3. Institutional arrangements conducive to the effective confiscation and administration of frozen, seized or confiscated assets.
Cooperation with the private sector (art. 39)	1. Extent and quality of overall cooperation between public authorities and the private sector.
	2. Operational measures, including outreach, awareness-raising and oversight, coupled with relevant enabling regulations.
	3. Institutional arrangements (e.g. working groups or independent organizations) to bring together Government and the private sector.
	4. Participation and action by civil society and the private sector.
Protection of witnesses, experts and victims (art. 32)	1. Comprehensive legislation to protect witnesses, experts and victims.
	2. Witness protection programmes and institutional arrangements.
Laundering of proceeds of crime (art. 23)	1. Comprehensive legal framework and “all crimes approach”.
	2. Specific anti-money-laundering regulations in place and enforced.
	3. Mens rea of the offence goes beyond the minimum standards in article 23.
Liability of legal persons (art. 26)	1. Criminal liability of legal persons for corruption-related offences, notwithstanding the release of natural persons from criminal liability.
	2. Dissuasive penalties for legal persons who engage in corruption.
	3. Strict liability for failure to prevent corruption in relevant entities.

III. Implementation of the criminalization provisions of chapter III of the Convention

A. General observations

Definition of "public official"

5. Previous thematic reports identified the scope of coverage of the term "public official" as a cross-cutting issue related to the implementation of chapter III. In several jurisdictions the relevant laws did not cover the main categories of persons enumerated in the Convention or used inconsistent terms to define the class of officials covered. For example, in some States parties unpaid persons performing a public function or providing a public service were not explicitly covered, including one specific case in which such persons performed services for a legislative or judicial entity. Judicial officers were also not always fully covered. Recommendations were made for several States parties to consider adopting a more consolidated or simplified terminology, including in one State party where the applicable definition of a public official in the anti-corruption law was more limited in scope than in other laws.

Box 1
Examples of implementation

In one State party, the criminal code defined public officials in a comprehensive manner that included actors who, de facto, were in a position to commit any type of corruption offence, such as employees and assistants working in the public administration, temporary staff and volunteers.

One State party had adopted a broad definition of "official" in the criminal code, which included employees performing tasks in the service of a legal person, thus extending corruption offences also to the private sector.

The relevant definition in another State party covered officials working for public institutions that managed private funds, the aim being to prevent the existence of safe havens for corrupt conduct.

In another State party, the provisions on bribery were equally applicable to persons holding political office who had been appointed to boards or engaged *ad honorem*. It was irrelevant whether the person received remuneration or had been elected or appointed. Office holders in associations, unions and organizations, as well as members of Parliament, local councils and other elected representatives, were covered, as were judges and arbitrators. In addition to foreign public officials and officials of public international organizations, private sector representatives and representatives of non-governmental organizations were also covered.

B. Bribery offences

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

6. Consistent with the trends identified in previous thematic reports, all of the States parties had adopted measures to criminalize both active and passive bribery of domestic public officials. However, a number of common issues were observed concerning the implementation of those offences. In several States parties, the "promise" of an undue advantage was not explicitly covered or was indirectly covered under related concepts. For example, in one State party, the notion of a "promise" was included in the definition of "gratification" in the anti-corruption law, while in another State party it was covered under the concept of "offer". In one State party, the offence of bribery in the anti-corruption law contained a limitation that the bribe giver could only be charged together with the offending public official. Recommendations were issued by the reviewing States parties accordingly, including for one jurisdiction to more specifically address the elements of the offence that were otherwise covered by jurisprudence and other statutory principles. In a number of jurisdictions, there were gaps with respect 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 or limitations, which were noted as a concern by reviewers. For example, concern was raised in several cases regarding the nearly automatic immunity from prosecution for persons who reported acts of bribery, including in a few cases the possibility of having all or part of the property, which might have been seized or confiscated, returned. One State party's law contained an additional requirement that the act of bribery had to take place in relation to the "procurement of a thing of general interest", meaning that the act of bribery was in some way contrary to the public interest. Some States parties' legislation was based on a principal-agent relationship directed at bribery involving "agents", thus limiting the scope of the offence to acts "in relation to the affairs of a principal" and recommendations to broaden the scope of the offence were issued accordingly.

Box 2
Examples of the implementation of article 15

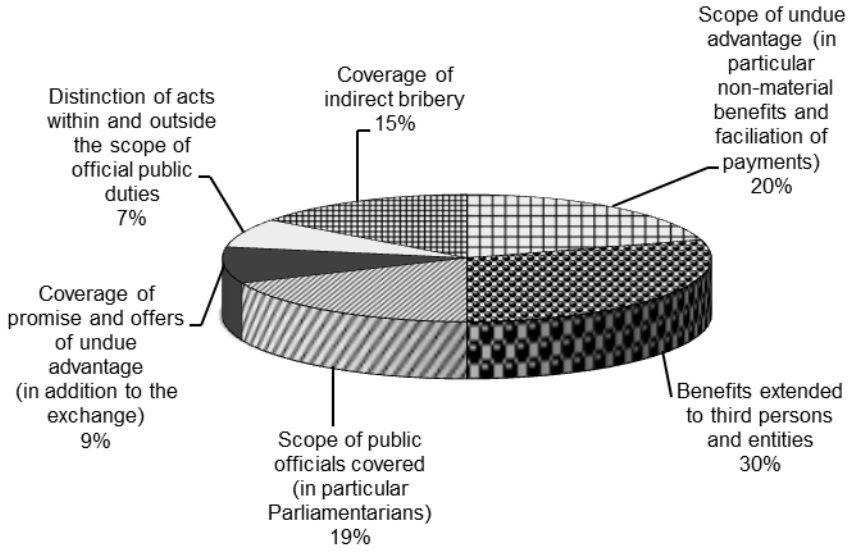
In some States parties, the law established a rebuttable presumption that a gratification had been corruptly received, unless the contrary was proven. Furthermore, in one of the States parties evidence was not admissible to show that a gratification was customary in a profession, social occasion or similar context.

Challenges related to article 15

7. The most common challenges in the implementation of article 15 related to the application of the bribery offence to benefits extended to third persons and entities (30 per cent of cases), the scope of the undue advantage, in particular as regards non-material benefits and "facilitation payments" (20 per cent of cases), the scope of public officials covered by the bribery offence, in particular the application to members of Parliament (19 per cent of cases), the coverage of indirect bribery in accordance with article 15 (15 per cent of cases), the coverage of the promise, in addition to the offer or exchange, of an undue advantage (9 per cent of cases) and

applicable distinctions between acts within and outside the scope of official duties of public officials (7 per cent of cases) (see figure III).

Figure III
Challenges related to article 15 (Bribery of national public officials)

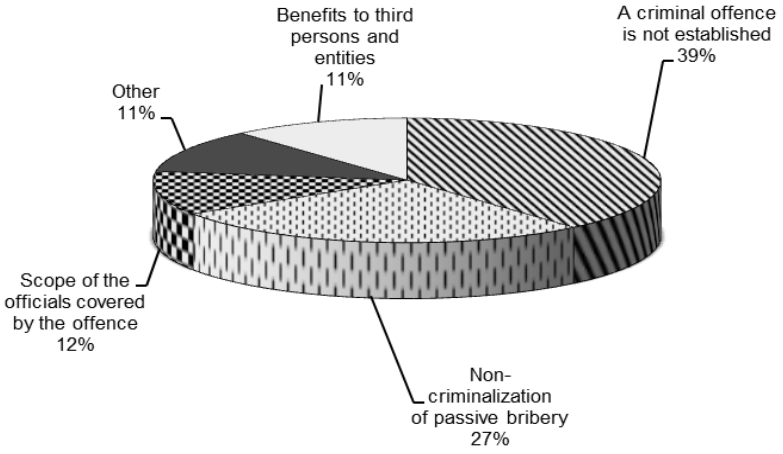


8. Consistent with the information presented in previous thematic reports, a number of States parties had not adopted specific measures to criminalize both active and passive bribery of foreign public officials and officials of public international organizations, although legislation was pending in some cases. In several other jurisdictions only active bribery had been criminalized. One State party that had not established the offence of passive bribery could prosecute passive foreign bribery cases under the provisions of its criminal law, and foreign public officials could furthermore be prosecuted for money-laundering, as corruption crimes were predicate offences. Common challenges in this area 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. Gaps were also identified with respect to the scope of officials covered by the offence. In a few cases, the definition was limited to foreign officials and the international organizations or assemblies of which the State party was a member, while in other States the legislation did not extend to officials of public international organizations. In several jurisdictions benefits to third-party entities were not covered. For example, one State party penalized active foreign bribery committed in order to omit or delay the performance of an action, but did not provide for the concept of indirect bribery, and recommendations were issued accordingly. It was also noted that in States parties which had relevant legislation in place, there were few reported cases.

Challenges related to article 16

9. The most common challenges in the implementation of article 16 related to the absence of a criminal offence addressing the bribery of foreign public officials and officials of public international organizations (39 per cent of cases), insufficient or no provisions concerning the non-mandatory offence of passive bribery of foreign public officials and officials of public international organizations (27 per cent of cases), the scope of foreign public officials and officials of public international organizations covered by the offence (12 per cent of cases), and the application of the offence to benefits extended to third persons and entities (11 per cent of cases) (see figure IV).

Figure IV
Challenges related to article 16 (Bribery of foreign public officials and officials of public international organizations)



C. Abuse of power or office and related conduct

Embezzlement, trading in influence, abuse of functions and illicit enrichment

10. Consistent with the information presented in previous thematic reports, all of the States parties had established measures to criminalize the embezzlement of public funds. However, in several cases, immovable assets were outside the scope of the offence and recommendations were issued to consolidate and extend the law to cover assets of every kind. In a number of cases there were limitations or discrepancies concerning the accrual of benefits to third parties. In one of the concerned jurisdictions, for example, the offence was only constituted where property was diverted to a person other than the public official himself. In another case, an individual could only be prosecuted for embezzling property above a specified minimum amount. In several jurisdictions, the relevant legislation applied not just to public officials but to all persons who were entrusted with property,

including company directors, members and officers. While in some cases the embezzlement of public funds could constitute an aggravating circumstance, the legislation did not always apply to all public officials.

Box 3
Examples of the implementation of article 17

In one State party the law on embezzlement extended to administered public funds or assets and private property that were under judicial administration or had been frozen or seized, as well as private-company assets when the State was a shareholder.

In another State party the offence was deemed to have been committed irrespective of any resulting damage to the public office or any benefit or enrichment for the public official.

11. The findings regarding trading in influence, a non-mandatory provision, were consistent with those identified in previous thematic reports. The conduct had been established as a criminal offence in the majority of States parties, and in some jurisdictions legislation had been drafted or introduced to criminalize trading in influence. Where relevant legislation was in place, there were certain deviations from the scope of the Convention. In some cases, only the passive version of the offence had been fully or partially established. In other cases, the abuse of "supposed" influence did not appear to be covered. In one State party, although the law incorporated elements of trading in influence, a comprehensive offence was not established, since the impropriety of the offence, the exchange of benefits, indirect acts, and omissions were not addressed. In some States, the relevant law also covered trading in influence with respect to foreign public officials, although there was not always a specific reference to third-party beneficiaries.

Box 4
Example of the implementation of article 18

One State party's law was not limited to acts intended to alter a public official's course of conduct and did not require that the bribery be committed in order to obtain an undue advantage for oneself or for others. Furthermore, the influence exercised did not have to be illegitimate or improper.

12. Consistent with the information presented in previous thematic reports, nearly all the States parties had adopted measures to criminalize the abuse of functions by public officials, a non-mandatory provision, although a separate offence was not always explicitly recognized and there were some deviations. Omissions to act were not covered in all States parties and in one case the State had restricted the offence to specific acts. The relevant provision in two States parties covered both public and private sector interests. Proof of an "undue advantage" was not required in one State party.

13. The findings with respect to illicit enrichment, a non-mandatory provision, were consistent with those identified in previous thematic reports. Illicit enrichment had not been established as a criminal offence in the majority of States parties, but legislation was pending in several jurisdictions. Objections to enacting relevant legislation commonly related to constitutionality. Where illicit enrichment had not

been criminalized, a similar effect was achieved by way of asset and income declaration requirements, although the absence of a consistent approach to verifying disclosures was noted in several States. The reviewers of one State party welcomed that country's efforts to establish an asset declaration system and recommended measures to improve the operation of the system, such as stronger and more efficient sanctions as well as increased investigative efforts. In some States parties, provisions in the criminal code on concealment and non-justification of resources, as well as in the tax code, pursued the same objective. Some countries required a prior investigation into another offence to be undertaken to inquire into disproportionate wealth. Bank secrecy restrictions were noted as an obstacle to the effective application of the legislation concerning illicit enrichment in one State party. In another State party there were significant limitations in the applicable legislation. A more detailed analysis of the implementation of article 20 of the Convention is provided in a previous report on the regional implementation of chapter III of the Convention (CAC/COSP/IRG/2013/10).

Box 5
Examples of the implementation of article 20

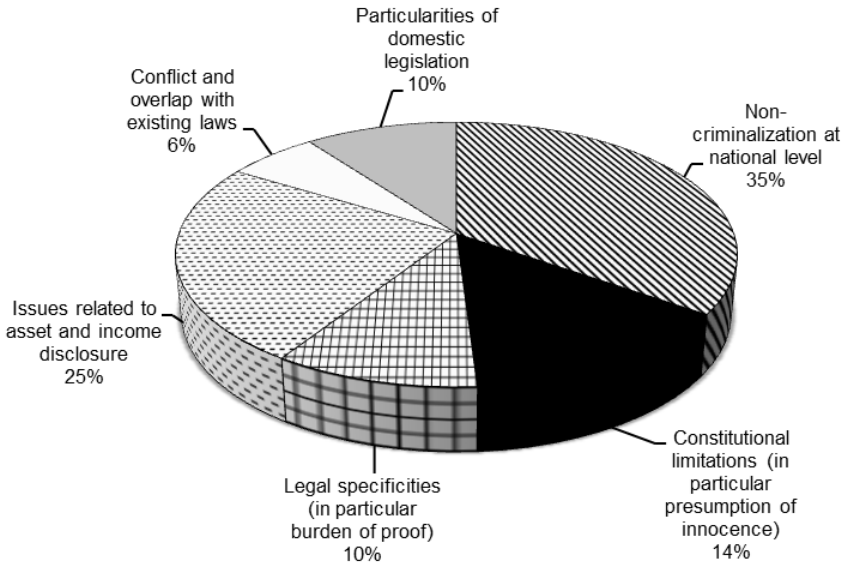
The extension of criminal liability to individuals who facilitated the illicit enrichment of public officials was noted as a positive step in one State party.

The public nature of tax statements and rules on access to information were found to help increase accountability and transparency in one jurisdiction, thus contributing to preventing the accumulation of ill-gotten wealth.

Challenges related to article 20

14. The most common challenges in the implementation of article 20 related to the non-criminalization of illicit enrichment at the national level (35 per cent of cases), identified issues relating to asset and income disclosure systems (25 per cent of cases), constitutional limitations, in particular concerning the principle of the presumption of innocence (14 per cent of cases), reported specificities in the legal system, in particular regarding the criminal burden of proof (10 per cent of cases), particularities of the domestic legislation not foreseen by article 20 (10 per cent of cases), and the application and potential overlap of existing laws, such as tax laws and legislation to counter money-laundering, to illicit enrichment cases (6 per cent of cases) (see figure V).

Figure V
Challenges related to article 20 (Illicit enrichment)



D. Private sector offences

Bribery and embezzlement in the private sector

15. Consistent with the trend identified in previous thematic reports, more than half of the States parties had not adopted measures to fully criminalize bribery in the private sector (a non-mandatory provision). For example, in several States parties the offence was limited to relationships between a principal and an agent, and in one case the prior consent of the agent's superior was required to prosecute acts of bribery. The absence of prosecuted cases was noted in some jurisdictions.

16. All of the States parties had adopted measures to criminalize conduct constituting embezzlement in the private sector, a non-mandatory provision; this trend is consistent with the information presented in previous thematic reports. However, in a number of cases the provision only indirectly addressed various elements of such criminal conduct or certain property or categories of persons, and recommendations were issued to more precisely incorporate the offence established in the Convention. For example, in one State party only publicly administered funds or property were covered. In several cases, immovable assets were excluded from the scope of the law.

E. Other offences

Money-laundering, concealment and obstruction of justice

17. There was some variation among the States parties with regard to the criminalization of money-laundering, consistent with the information presented in previous thematic reports. 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 (b) and 2 (a)-(c) of article 23. For example, in a number of jurisdictions, the participation in acts of money-laundering was not fully criminalized so as to cover acts of conspiracy, assistance and attempt. Recommendations were issued, as appropriate. Although a number of States parties had adopted an "all crimes" approach that did not restrict application of the money-laundering offence to specific categories of predicate offences, others applied the law to "serious" or enumerated offences, and the applicable thresholds differed. The limited scope of the money-laundering offence was noted in several jurisdictions, because not all offences established under the Convention had been criminalized or constituted predicate offences. In a number of countries, issues were encountered with respect to the coverage of predicate offences committed outside the State party, and in several cases dual criminality was required for prosecutions involving foreign predicate offences. For example, in one State party dual criminality was required to establish jurisdiction when foreign nationals committed serious offences outside the country, but not in the case of nationals. Issues regarding sanctions were sometimes observed: in one jurisdiction only offences punishable by at least two years' imprisonment qualified as predicate offences and accomplices or participants could receive lower penalties than principals; and in another State party a nearly automatic privilege for cooperating defendants effectively operated as an immunity provision. A lack of relevant statistics, awareness-raising and coordination in the enforcement of money-laundering cases was also noted in some cases.

Box 6
Examples of the implementation of article 23

Under the law of one State party, money-laundering not only covered the transaction or attempted transaction of proceeds of crime, but also acts of facilitating and failing to report covered and suspicious transactions.

In one State party which followed an "all-crimes" approach, the predicate offence did not have to be specified so long as it was proven beyond a reasonable doubt that the subject proceeds derived from a criminal act.

According to the legislation in one State party, a specific purpose of the prohibited act was not required to prosecute money-laundering.

18. In several States parties that had established concealment (a non-mandatory provision) as a criminal offence, there were issues with respect to the continued retention of property. The offence was limited in relation to certain offences in some States parties, and legislation had been drafted or introduced in a few jurisdictions to fully implement the article.

19. Obstruction of justice had been established as a criminal offence in the majority of States parties. However, in several States parties there were issues related to the coverage of conduct intended to interfere not just with the giving of testimony but with the production of non-oral evidence in a relevant proceeding. In a number of States parties, the specific means (use of physical force, threats or intimidation and the offering or giving of an undue advantage) to induce false testimony or the production of evidence were not fully covered. For example, in one

State party although acts of bribery to induce false testimony could be prosecuted as aiding and abetting perjury, a recommendation to more closely align the legislation to the Convention was issued. In another jurisdiction the legislation was limited to acts that prevented a witness from appearing in the criminal proceeding and did not cover cases where the person was present but gave false testimony or cases of interference with all categories of law enforcement officials.

Box 7
Examples of the implementation of article 25

One State party's law prohibited influencing, retaliating against or interfering with persons who participated in the administration of justice and their next of kin, which could include witnesses, experts and others who provided testimony or evidence in criminal proceedings, as well as any person who worked or performed a service for the police, the prosecuting authority, the court or correctional services.

In one State party the penalty for obstruction of witnesses was increased by half when the subjects of the offence were judges, prosecutors, investigators, experts, judicial executors, police officers or military personnel.

F. Substantive and procedural provisions supporting criminalization

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

20. Among the 12 newly completed country reviews, all of the States parties had adopted measures to establish the liability of legal persons for offences covered by the Convention, although there was considerable variation in the type and scope of such liability. Continuing previous trends, a majority of the States parties had established some form of criminal liability of legal persons for corruption offences, with certain exceptions or limitations. For example, in several States parties the liability was limited to certain offences or conduct, such as money-laundering and bribery. In several States parties, the criminal code did not provide for, or prohibited establishing, the criminal liability of legal persons, although in one case criminal measures could be pursued when a legal entity was used to commit or aid and abet the commission of a crime. In this jurisdiction and in another State party with a similar prohibition, only administrative liability was established. Sanctions generally varied, ranging from administrative penalties, including blacklisting for certain violations, to monetary penalties or a combination of sanctions, including confiscation, dissolution and the loss of tax incentives. Issues regarding penalties for legal persons were observed in a number of jurisdictions, and specific recommendations were issued to consider increasing, clarifying or adding non-monetary sanctions to the list of possible penalties. In one State party, a recommendation was issued to explicitly extend the application of the anti-corruption law to legal persons, especially during sentencing. Multiple forms of liability were possible in most jurisdictions.

Box 8
Example of the implementation of article 26

In one jurisdiction, the range of available penalties included monetary fines and/or deprivation of the right to conduct business, wholly or in part, permanently or for a given period of time. The prosecuting authority could issue fines without a court order, which could be disputed by the legal person in a court of law. Moreover, a public authority could revoke the licence of a legal person. A natural person did not have to be convicted in order for the legal entity to be punished, and the absence of statutory maximum fines for corporations was considered to be conducive to deterrence.

21. Consistent with the information presented in previous thematic reports, all of the States parties had adopted measures to criminalize the participation in, and attempt to commit, the offences enumerated in the Convention, although the scope and coverage of the provisions varied. For example, in some States parties preparatory acts were covered only in relation to acts of bribery or to serious offences, which did not encompass all offences under the Convention. In a number of States parties, the preparation of an offence (art. 27, para. 3) was not specifically criminalized or was punishable only for money-laundering offences or concealment, although one State had adopted a specific offence in the criminal code of preparation to commit any felony.

22. There continued to be considerable variation among the States parties with regard to the length and application of the statute of limitations for offences established under the Convention, continuing the trends identified in previous thematic reports regarding the length and interruption of the applicable limitations period. For example, concern was raised in one State party about the relatively short statute of limitations (3-15 years for major offences) and the limited possibilities for interruption. A suggestion to commence the statute of limitations at the time of discovery, not the commission of the offence, was issued in a few cases. Several jurisdictions had adopted a statute of limitations of 20 years.

Box 9
Examples of the implementation of article 29

In one jurisdiction, in the event of an offence committed by a public official against the public administration or against public property, the statute of limitations was suspended while any public official implicated in the case still held public office.

Similarly, in another State party the statute of limitations for offences occurring while the person held a public function only began to run from the time the official left his or her post.

The period of limitations for criminal cases in one State party ranged from 2 to 25 years and was interrupted by any legal proceedings charging a suspect. The presence of the offender was not required to interrupt the period of limitations.

In one State party the terms of prescription were interrupted by the completion of any legal action, which initiated a new prescription term. However, interruptions could not exceed the double of the prescribed statute of limitations. The statute could be suspended during the period where a legal provision or unforeseen circumstance hindered the commencement or continuation of criminal proceedings.

One State party had adopted a statute of limitations for the majority of corruption offences of 5 to 10 years, depending on the applicable sentencing period, which commenced from the date the offence was committed. The prescription period could be interrupted for a number of reasons, including the time during which an offender could not stand trial due to legal impediments or the criminal prosecution was interrupted for other reasons.

A number of States parties had no statute of limitations in place for corruption offences, either because the applicable law did not apply to criminal cases or because there was no general statute of limitations. In one case, it was up to the court to assess whether, in view of the time elapsed, it was reasonable to initiate a trial.

One State party provided comprehensive statistics on the number of corruption cases barred by the statute of limitations in the past five years.