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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 30-42)**

Thematic report prepared by the Secretariat

Summary

The present thematic report contains information on the implementation of articles 30-42 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. Examples of implementation are highlighted in boxes 1-10.

* CAC/COSP/IRG/2014/1.



I. Implementation of the criminalization provisions of chapter III

Measures to enhance criminal justice

1. Prosecution, adjudication and sanctions

1. As in previous versions of the thematic report, 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 made concerning the proportionality or dissuasiveness of sanctions. In one State party, recommendations were issued to review the penalties for corruption and money-laundering to ensure congruence and adequate deterrence for persons and legal entities and to monitor the imposition of sanctions in the light of sentencing guidelines for the judiciary. In another State party, the adoption of sentencing guidelines was recommended, as sanctions in corruption cases were found to be too discretionary due to the absence of legally specified minimum sentences and the broad discretion accorded to judges. In one State party where administrative and disciplinary sanctions could be imposed, a duplication of penalties that created a risk of impunity was observed, and a recommendation was issued accordingly.

2. There were also issues concerning paragraph 2 of article 30, on immunities and privileges, largely a continuation of the trends identified in previous thematic reports. For example, in several States parties, immunities were granted at the constitutional level to certain categories of officials, most frequently the Head of State but also members of Parliament, the Government and the judiciary. Frequently, the immunities applied to acts committed in the exercise of official duties, but did not, with some exceptions, protect acts outside the scope of such duties. For example, functional immunities were granted to parliamentarians, judicial officers and members of anti-corruption bodies in a number of jurisdictions. The parliamentary privilege typically covered opinions expressed in Parliament or to conduct in the consideration of a parliamentary matter. However, issues regarding immunity from investigation of members of Parliament and judges were noted in several States parties where those persons could not be arrested, searched or detained without the approval of Parliament or a judicial council except in cases of *in flagrante delicto*. A relaxation of the relevant standards and procedures for lifting immunities was recommended accordingly. In several States, public officials did not enjoy immunities or jurisdictional privileges. A recommendation to ensure that granting executive clemency did not create a situation of impunity was issued in one State party where a relatively high threshold of impeachment for officials who had been convicted of corruption-related offences was observed. A more detailed analysis of the implementation of paragraph 2 of article 30 of the Convention is provided in a previous report on the regional implementation of chapter III (CAC/COSP/IRG/2013/10).

3. Common issues were also encountered with regard to paragraph 3 of article 30, on discretionary legal powers relating to the prosecution of offences under the Convention. These are presented in more detail in a previous report on the regional implementation of chapter III (CAC/COSP/2013/11). In this regard, several

States followed discretionary prosecution models, which were typically subject to codes, principles or prosecution policies that governed the exercise of prosecutorial discretion. Moreover, in some cases, the law granted certain rights to complainants and others to seek the review of a decision not to prosecute. For example, one State party's law allowed appeals, re-appeals and petitions for adjudication of non-prosecution dispositions, and persons who reported a crime could also file a constitutional complaint against a decision not to prosecute. As noted in paragraphs 19 and 20 below, on article 37 of the Convention, prosecutorial discretion was frequently exercised in order to encourage cooperating defendants to provide relevant information by dismissing or reducing charges or making recommendations to judges concerning sentencing. The criminal justice system of some States parties was based on the principle of legality, and no discretionary legal powers were foreseen. However, one of those States applied the principle of opportunity in limited cases, taking into account the impact on the protected legal interest. The anti-corruption agencies in several States parties held delegated powers to prosecute corruption-related offences, and the importance of having appropriate oversight mechanisms in place was noted in that context in one case. Recommendations were issued in several cases, including the recommendation to adopt legislation and guidelines to ensure greater legal certainty in the prosecution of corruption cases.

4. Continuing the trends identified in previous thematic reports, most 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. For example, in one State party, any public official, with the exception of members of Parliament, could be suspended or dismissed if accused of a corruption offence. In a number of cases, the legislation provided for the suspension of accused public officials but did not permit — or was silent on — removal or reassignment. A recommendation was issued for one State party to consider broadening the scope of the public service regulations to cover all public officials.

5. Disqualification from holding public office continued to be possible or mandatory in most States parties. In several cases, disqualification was available as an additional penalty for criminal offences. However, in some jurisdictions, the concept of a publicly owned enterprise was not defined in the legislation, or there were no measures providing for disqualification from holding office in such enterprises. The possibility of disqualification did not always extend to all offences under the Convention.

Box 1

Examples of the implementation of article 30

One State party's law determined sentences for bribery offences based on the value of the bribes involved. The gravity of offences was considered on the basis of enumerated factors for imposing aggravated and mitigated punishment, taking into consideration the sentencing guidelines suggested by a sentencing committee. It was noted that this structure, prima facie, had the potential to reduce the arbitrary application of discretionary powers, if any, by the courts and that the effective use and implementation of sentencing guidelines would set an example of good practice. Detailed statistics on conviction rates for corruption-related cases were provided by the judiciary.

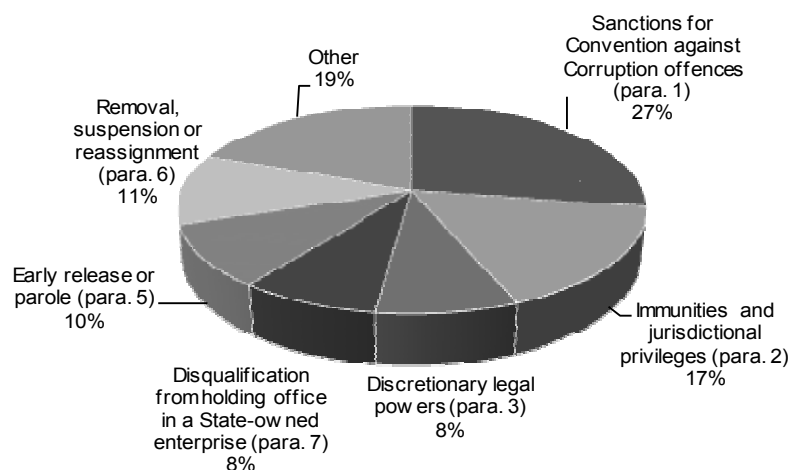
The incentives and rewards granted to public officials who had demonstrated exemplary service on the basis of their observance of the norms of conduct laid down in the code of conduct were noted as a good practice in one State party.

In one State party, a memorandum of understanding between the prosecutor's office and the anti-corruption agency allowed for prosecutorial decisions not to investigate to be reconsidered by the prosecutor general based on information collected by the agency.

Challenges related to article 30

6. The most common challenges in the implementation of article 30 related to the levels of monetary and other sanctions, especially against legal persons, and the harmonization of existing penalties for corruption-related offences (27 per cent of cases), the balance between privileges and jurisdictional immunities afforded to public officials and the possibility of effectively investigating, prosecuting and adjudicating offences under the Convention (17 per cent of cases), the removal, suspension or reassignment of accused persons (11 per cent of cases), early release or parole (10 per cent of cases), discretionary legal powers (8 per cent of cases) and considering the adoption of measures for the disqualification of convicted persons from holding office in State-owned enterprises (8 per cent of cases) (see figure I).

Figure I

Challenges related to article 30 (Prosecution, adjudication and sanctions)

2. Freezing, seizure and confiscation

7. A number of common issues were observed regarding the implementation of article 31, as identified in previous thematic reports. In several cases, measures to enable the confiscation of instrumentalities, as opposed to proceeds, of crime (and of property “destined for use” in corruption offences) were not provided for. In several other cases, measures to enable the tracing, freezing or seizure of proceeds or instrumentalities of crime for purposes of eventual confiscation (para. 2 of art. 31) were also lacking or deficient. In a few States parties, the law on forfeiture of criminal proceeds applied only to “serious offences”, which excluded certain offences under the Convention. In several States parties, the temporary administrative freezing of assets by the financial intelligence unit was possible. Some States parties permitted or encouraged the use of special investigative techniques in the identification and tracing of property suspected of being proceeds of crime. Laws on the extended confiscation of assets not directly linked to a specific crime but clearly resulting from similar criminal activities had been established in some countries. A lack of human and technical capacity to trace, seize and confiscate criminal proceeds and limited resources were also reported. In one State party, a recommendation was issued to pursue criminal cases to the fullest extent under existing legislation, while exploring the adoption of non-conviction-based forfeiture provisions.

8. In most jurisdictions, confiscation continued to extend to proceeds of crime that had been transformed or converted (para. 4) or intermingled with property from legitimate sources (para. 5), as well as income or other benefits derived therefrom (para. 6). However, in several cases, the confiscation of property corresponding to the value of proceeds of crime was not addressed or was limited. In a number of cases, it was recommended that intermingled property be liable to confiscation up to the assessed value of the intermingled proceeds (para. 5), and income or other benefits derived from such proceeds be liable to the measures referred to in article 31 (para. 6).

9. Several States parties faced issues with regard to the administration of frozen, seized and confiscated property, which is a continuation of previously identified trends. For example, in several cases recommendations were issued to consider strengthening measures for the management of frozen, seized and confiscated property in order to regulate the process more methodically. A recommendation to adopt relevant regulations was issued to one State party that had no general rules covering the administration of seized and confiscated assets in corruption cases; and for two States parties in which seized items were administered either by the agencies that confiscated or seized them or by the police, recommendations were issued to consider the establishment of a dedicated body to administer frozen, seized or confiscated property. The reviewing experts reiterated the importance of having in place appropriate mechanisms to regulate the administration of such property.

10. 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 approximately half of the jurisdictions, although relevant measures that partially addressed the matter were established in a number of States. The finding is generally consistent with the trend identified in previous thematic reports. The relevant evidentiary measure was considered either 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. For example, in one State party the constitution enshrined a presumption of the licit acquisition of wealth, and the relevant measure had not been adopted. In several States, a rebuttable presumption was established only for certain offences, such as money-laundering and illicit enrichment. Common challenges related to limited capacity, the inadequacy of existing normative measures and specificities in national legal systems. In one State party where relevant legislation had been adopted, the reviewers encouraged training and capacity-building on the applicable evidentiary standard, as well as a review of the legislation to ensure that there were no legal obstacles to the investigation and prosecution of such cases.

Box 2

Examples of the implementation of article 31

Conviction

Under one State party's newly enacted asset recovery law, confiscation was possible for corruption offences both on the basis of a conviction and in its absence.

A draft law on non-conviction-based forfeiture was pending in one State party.

Protective measures prior to judicial proceedings

Beyond the basic investigative tools available in one State party in corruption cases punishable by up to three years' imprisonment, the full range of investigative tools, including wiretapping and communication control could be applied in cases of aggravated corruption punishable by up to 10 years' imprisonment. Furthermore, a court order was not required for the prosecuting authority to seize bank and financial records.

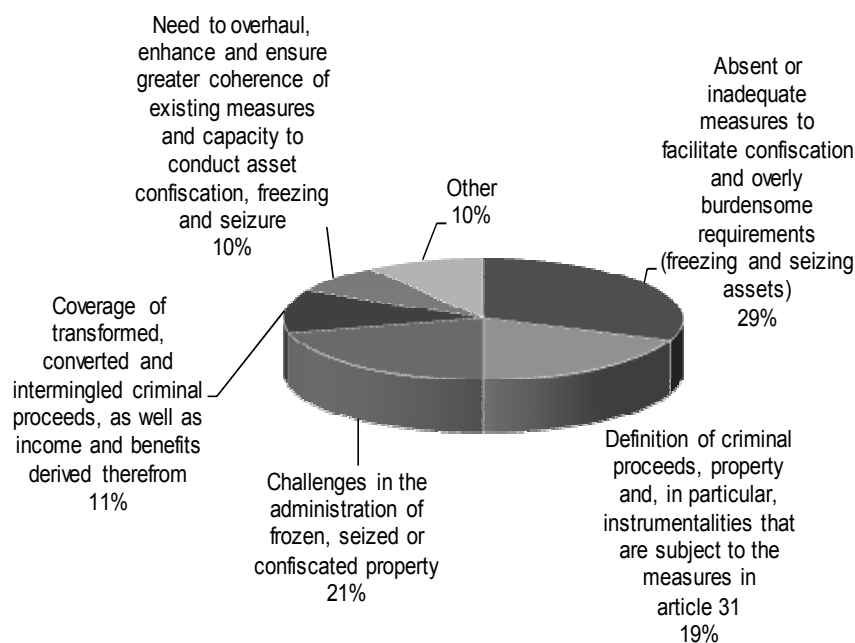
Management of assets

In one State party, a financial investigations department under the Ministry of Finance had been charged with administering confiscated property through its asset management unit, which kept a central registry of managed property.

Challenges related to article 31

11. The most common challenges in the implementation of article 31 related to the absence or inadequacy of measures to facilitate confiscation, in particular for identifying, freezing and seizing assets, as well as excessively burdensome formal requirements for freezing financial accounts, and challenges in establishing non-mandatory measures providing that an offender must demonstrate the lawful origin of alleged proceeds of crime (29 per cent of cases), challenges in the administration of frozen, seized or confiscated property (21 per cent of cases), the definition of criminal proceeds, property and instrumentalities that are subject to the measures in article 31 (19 per cent of cases), the coverage of transformed, converted and intermingled criminal proceeds, as well as income and benefits derived therefrom (11 per cent of cases), and an identified need to overhaul, enhance and ensure greater coherence of existing measures, frameworks and capacity to conduct asset confiscation, freezing and seizure (10 per cent of cases) (see figure II).

Figure II
Challenges related to article 31 (Freezing, seizure and confiscation)



3. Protection of witnesses, experts and victims

12. As observed in previous thematic reports, there was wide variation among the States parties with regard to the protection of witnesses, experts and victims. In several cases, the protections went beyond the minimal protection of non-disclosure of the identity or whereabouts of witnesses and other persons to also include physical protection measures, such as relocation, surveillance and altered identities, in some cases based on individual risk assessments. On the other hand, in several States no measures had been taken for the effective protection of witnesses and experts. The authorities in several jurisdictions repeatedly noted, as concrete challenges, that the absence of witness protection systems was a major weakness in the fight against corruption, noting also the significant costs of such systems, the inadequacy of existing normative measures, specificities in the legal system and limited capacity. 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 and to give adequate attention to such measures on the ground. In a number of States parties, no comprehensive witness protection or relocation programmes were in place, but practical measures such as separate court rooms or the use of technology for questioning were taken on a case-by-case basis for special categories of persons. Recommendations were issued for two of those countries to adopt, within existing resources, a legal framework for the protection of witnesses, experts and other persons, which would also extend to cooperating defendants (art. 37). A need to adopt and implement relevant measures was noted as a priority for all criminal justice institutions in one State party, for which awareness-raising and the conduct of formal witness vulnerability assessments were also suggested. A

recommendation to strengthen available protections was also issued for another State party that had adopted a programme for the protection of witnesses and vulnerable persons, which, pending a legislative amendment, did not extend to other persons, such as relatives and public officials or law enforcement officers.

13. Regarding the victims of corruption, as noted in previous thematic reports, in a number of States parties the protection of victims and the provision of funding for their protection were not regulated by law, while in other States parties crime victims fully took part in the proceedings if their identity was known. In a number of cases the provisions were applicable to victims only insofar as they were witnesses.

Box 3

Examples of the implementation of article 32

The legal system in one jurisdiction provided for numerous forms of protection of witnesses who could be put at risk due to their participation in criminal proceedings. The criminal code permitted the use of audiovisual tools and voice alteration where the examination of witnesses in court could place them in danger. It also allowed the withholding of the identity or place of residence of witnesses. The State party had entered into 10 bilateral agreements with other States regarding the relocation of witnesses to ensure their protection.

One State party had adopted witness protection measures that included non-disclosure of personal information, personal safety measures and funds for their relocation and change of occupation. Witnesses could be examined via video systems, and a comprehensive master plan for the protection of crime victims was in place. A separate crime victim law and provisions in the criminal procedure code guaranteed the participation of victims in criminal proceedings. Detailed statistics on personal safety measures for crime victims and witnesses were provided.

One State party had established a witness protection and victim support unit in the Ministry of Justice responsible for administering the justice protection programme. The programme was available to witnesses, including persons who had given or were required to give testimony or evidence, and the director of public prosecutions could apply for the admission into the programme of persons “likely” to be witnesses, as well as associates and relatives.

Another State party had adopted a special law for the protection of victims and witnesses and had established a witness and victim protection programme. Evidentiary rules permitted the provision of testimony without jeopardizing the safety of witnesses. Victim participation at appropriate stages of the criminal proceedings was regulated by the criminal code.

4. Protection of reporting persons

14. As with the protection of witnesses, experts and victims, there continued to be considerable variation among the States parties with regard to the implementation of article 33, a non-mandatory provision. A number of States parties had not established comprehensive whistle-blower protections, although legislation was pending in several 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 States parties. In some cases, related measures were found in the labour or civil service codes. Recommendations were issued to enact appropriate legislation and

reporting mechanisms in a number of jurisdictions, including recommendations to devote adequate resources to whistle-blower protection and to ensure that all offences under the Convention are covered in the whistle-blower law. In several cases, only public officials who reported, and not private persons, were afforded protections, and recommendations were issued to consider extending the protections. Conversely, in one State the labour code protected only employees in the private sector, pending a legislative amendment.

Box 4

Examples of the implementation of article 33

One State party's law provided protections against any occupational detriment and established a presumption that a detrimental action that occurred near the time of a protected disclosure was a consequence of the disclosure unless the employer showed otherwise. The act of preventing an employee from making a protected disclosure was criminalized, and the law further penalized breaches of confidentiality.

The protection of civil servants, contractual personnel and other categories of persons working for public authorities, institutions and other units who reported corruption offences was provided by law for all public institutions in one State party. A specialized anti-corruption police unit implemented the regulations and undertook operational action, including maintaining a database of whistle-blowers.

The work of civil society in furtherance of the protection of witnesses and whistle-blowers, including the establishment of a dedicated fund for vulnerable witnesses and whistle-blowers, was positively noted in one State party.

5. Consequences of acts of corruption

15. There continued to be considerable variation among the States parties regarding the implementation of article 34. In a number of States parties, the matter was regulated by contract, administrative or public procurement laws. For example, one State party allowed for the annulment or rescission of contracts in the framework of the criminal procedure, as part of the conviction decided by the court. In another State party, the additional penalty of confiscation and forfeiture under the penal code was available. In some States, the law stipulated the exclusion of candidates who had been convicted of bribery or administratively sanctioned from participation in public procurement. The authority to withdraw corporate licences and blacklist companies, where recognized, was considered to be a useful measure. In some jurisdictions, public management decisions or regulatory acts or resolutions issued as a result of corruption offences could be repealed. A recommendation was issued in one State party to establish a closer working relationship among investigative agencies to address consequences of corruption. A few States parties had not addressed the matter.

6. Compensation for damage

16. Nearly all of the countries had adopted measures to implement the article fully or in part. The implementing legislation was either civil, criminal or procedural, thus continuing previously identified trends.

Box 5

Examples of the implementation of article 35

The criminal procedure code in one jurisdiction provided for the confiscation of criminal proceeds and instrumentalities of persons convicted of corruption offences and allowed for value-based confiscation. Moreover, persons who had suffered damage could participate as civil parties in the proceedings.

One State party had adopted special legal provisions providing for the return of property confiscated from persons convicted of corruption offences to the victims of crime.

Legislation in one jurisdiction provided that, if offences against public property or the public administration caused financial loss, the organization concerned must act as a party to the proceedings to claim compensation, if the existence of an offence was proved and no compensation had been paid.

II. Implementation of the law enforcement provisions of chapter III

Institutional provisions

1. Specialized authorities

17. Among the 12 newly completed country reviews, all of the States parties had established one or more bodies or specialized departments to combat corruption through law enforcement, although often these were newly created and faced common challenges related to limited capacity and resources for implementation as well as competing priorities. The trends identified in previous thematic reports have continued in this regard. Concern was raised in one jurisdiction at the limited mandate of the anti-corruption body with respect to investigating private property or private-sector individuals, except those who conspired with public officials, and to taking disciplinary measures against parliamentarians and the judiciary. Recommendations were issued to extend the mandate accordingly. Recommendations were also issued in a number of cases to increase the manpower and resources for training and capacity-building of the agencies to enable them to effectively implement their mandate given existing caseloads and to strengthen their presence in regions and provinces. A need for effective inter-agency coordination was noted in a number of jurisdictions, in particular between investigative agencies, the prosecution services and disciplinary authorities. In that context, a clearer delineation of responsibilities, procedures for information-sharing and joint training among agencies were considered important. In several cases, observations were made regarding the independence of the specialized bodies. A need to develop statistical indicators to establish benchmarks, develop strategies and measure progress was also noted. Concerns were raised with respect to several States that only a small percentage of completed investigations were prosecuted and that backlogs in the court system constituted a challenge. In that context, several States had taken steps towards creating specialized courts that could also hear corruption matters. The existence of those courts was found to significantly contribute to reducing the backlog and increasing the number of completed corruption cases in the criminal justice system. A recommendation was issued to two States parties to continue to explore the possibility of instituting, within their judicial powers, the

appointment of specialized judges in the field of corruption, economic and financial crimes. In another case, a need to strengthen the judiciary's capacity to hear cases involving corruption offences was identified. Capacity in the public prosecution was also noted as a concern, and a recommendation was issued in one case to consider establishing a specialized unit in the public prosecutor's office with adequate capacity to handle corruption cases. In some cases, legislation had been introduced or prepared that would strengthen or reorganize the functions and authorities of the law enforcement bodies, although these measures were not always considered to address the identified weaknesses. In some cases, the consistent and effective enforcement of existing laws, rather than gaps in the legislation, were identified as priorities. A more detailed analysis of the implementation of article 36 of the Convention is provided in the report on the regional implementation of chapters III and IV (CAC/COSP/IRG/2014/9).

Box 6

Examples of the implementation of article 36

The existence of a structure of specialized authorities to deal specifically with corruption-related offences at each stage of the law enforcement process, supported by relevant enforcement statistics, was found to contribute to a significant increase in the number of corruption prosecutions in one State party.

All regional police districts in another State party had established specialized economic crime teams with dedicated resources. The national anti-corruption body had created two designated teams that specialized in the investigation and prosecution of corruption and economic crime cases. A national centre of expertise in the police focused on the fight against organized and other serious crimes, including corruption, and a high level of police education was noted.

One State party had established a major organized crime and anti-corruption task force to improve inter-agency collaboration in the investigation of corruption offences, specifically high-level cases. The core staff of the task force included members of the police and the financial investigations division in the Ministry of Finance responsible for asset recovery.

In another State party, a parliamentary committee had been established to supervise the operations of the anti-corruption agency.

The requirement that every public institution have an anti-corruption strategy as a condition for receiving public funds, and the existence of ethics committees in all institutions were positively noted in one State party. The regional presence of the anti-corruption agency and extensive outreach in communities contributed to awareness-raising and strengthening anti-corruption measures. The agency's use of lawyers or prosecutors as case controllers for all investigative teams ensured that legal advice was obtained at an early stage of the investigative process.

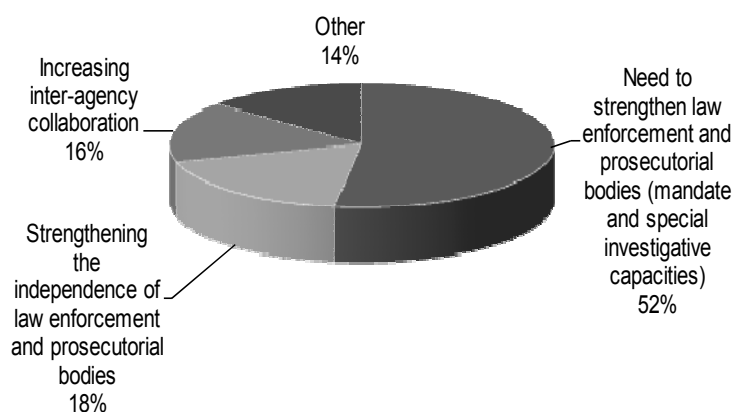
The same State party's anti-corruption agency had developed an independent scheme of service governing the recruitment, selection and training of staff. Regular training programmes included a three-month basic investigation course, a two-month intermediate investigation course, a month-long senior investigation course and a two-week executive management course.

It was noted, as an effective measure, that the specialized anti-corruption court in one State party had jurisdiction to hear matters involving high-ranking public officials so as not to overburden the judicial system.

Challenges related to article 36

18. The most common challenges in the implementation of article 36 related to the strengthening of law enforcement and prosecutorial bodies, in particular enhancing the efficiency, expertise and capabilities of staff and ensuring the existence of specialized law enforcement capacity for offences under the Convention (52 per cent of cases), enhancing the independence of law enforcement and prosecutorial bodies (18 per cent of cases) and increasing inter-agency coordination among relevant institutions, considering reconstituting their functions, and assessing how to make existing systems and operations more effective (16 per cent of cases) (see figure III).

Figure III

Challenges related to article 36 (Specialized authorities)**2. Cooperation with law enforcement authorities**

19. In line with the trends identified in previous thematic reports, a number of States parties had taken measures to encourage cooperation with law enforcement authorities of persons who participated in the commission of corruption offences. These trends are summarized in more detail in the previous report on the regional implementation of chapter III (CAC/COSP/2013/11). Although whistle-blower protections did not always apply to cooperating perpetrators, measures had frequently been implemented to permit collaboration to be considered as a circumstance mitigating criminal liability and taken into account in sentencing. In several cases, no explicit policies or legal provisions were in place to protect or encourage the cooperation of participating offenders or provide for the mitigation of their punishment. Recommendations were issued in several cases to ensure the physical protection of collaborators of justice and to adopt or strengthen measures to encourage their cooperation with law enforcement authorities. A related issue concerned the concept of “spontaneous confessions”, which had been established in several jurisdictions as circumstances warranting mitigation or release from punishment or immunity from prosecution, most commonly for the offences of bribery, trading in influence and money-laundering, but were not always considered

by the reviewing States parties as fully implementing the requirements of the Convention.

20. With regard to the possibility of granting immunity from prosecution to cooperating accused persons, a majority of States parties had adopted relevant measures, thus shifting the balance from the trend identified in previous thematic reports. Typically, immunity could be granted on a discretionary basis by prosecutors or courts, although in some cases only a suspension of the prosecution rather than a full grant of immunity was possible. Concern was raised in several jurisdictions, with respect to chapter III offences (see CAC/COSP/IRG/2014/6), as to the existence of nearly automatic immunity provisions for persons who self-reported the commission of the crime and cooperated in the investigation of corruption-related offences. Laws on plea bargaining were in place or being developed in several States and considered a useful tool. The adoption of relevant guidelines on plea bargaining was recommended in one case.

Box 7

Example of the implementation of article 37

The penal code in one State party required the court to take into account during sentencing an unreserved confession, which was found to facilitate contact and cooperation between the police, prosecution service and offenders.

3. Cooperation between national authorities and the private sector

21. Continuing the trend identified in previous thematic reports, several States parties had established the obligation on the part of public officials and, in some cases, citizens to report corruption incidents, although 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 offences under 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. The measures most often related to financial institutions, and, in a number of cases, recommendations were issued to explore the usefulness of broadening the scope of cooperation and awareness-raising on anti-corruption between national law enforcement authorities and private sector entities, especially non-financial institutions. The important role of financial intelligence units in gathering information and assisting in the investigation of corruption cases was noted and recommendations to improve their operations, capacity, and mandate were issued in a few cases. Frequently, inter-agency memorandums of understanding or 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.

Box 8

Examples of the implementation of articles 38 and 39

Staff secondments among different Government and law enforcement agencies with an anti-corruption mandate were deemed to foster cooperation and inter-agency coordination and contribute to the efficient functioning of these agencies in several jurisdictions.

One State party's integrated database established within the police allowed criminal information to be accessed by the central criminal investigations unit and by public prosecutors. In addition, a database at the Central Bank, accessible to prosecutors and judges, centralized information from financial institutions relating to transactions, names of persons with account access and account histories. Data on criminal cases (e.g., convictions and trials) were sent directly by the courts to an electronic database in the Ministry of Justice and were publicly accessible. Furthermore, an electronic tool was created to facilitate the reporting of corruption to prosecuting authorities.

Investigative authorities in one State party could request reports from public authorities and officials under the criminal procedure law. A national case management system was accessible by all major law enforcement agencies, including public prosecutors, the police and the financial intelligence unit.

In one State party, weekly meetings involving all security institutions were held to ensure due coordination and the exchange of information.

Awareness-raising efforts and training on anti-money-laundering by financial intelligence units or equivalent agencies were positively noted in a number of countries.

The involvement of the private sector and civil society organizations in the implementation and monitoring of the national anti-corruption strategy and the existence of public-private partnerships were positively noted in one jurisdiction.

4. Bank secrecy, criminal record and jurisdiction

22. As noted in previous thematic reports, in most jurisdictions there were no significant issues with respect to bank secrecy, even in jurisdictions where bank secrecy rules were in place, although issues with regard to the lifting of bank secrecy were noted in a few jurisdictions. For example, in one State party, bank secrecy requirements could not be lifted before a criminal investigation was opened. In another State party, a court order was required for the anti-corruption body to obtain financial records, and only the anti-money-laundering agency was authorized to seek such court orders to obtain bank records or deposit information, which was provided through information-sharing agreements with prosecutors and investigators. A recommendation was issued to authorize the anti-corruption body to have access to all relevant tax, custom, financial and bank records. One jurisdiction reported that the lifting of bank secrecy had never been denied to date and that a judicial decision to that effect was usually given within 24 hours. Another State also reported that it took between two and three days to execute a request for financial information by judicial order.

Box 9

Example of the implementation of article 40

In one State party with bank secrecy rules in place, a court order was not required to seize bank and financial records; the prosecuting authority could instruct the bank in these matters pursuant to provisions in the penal code.

23. Several States parties did not take previous convictions into consideration in establishing criminal liability but allowed prior convictions to inform the sentencing process once liability was established. In one State party, foreign criminal records were admissible under common law principles in court proceedings for related offences that occurred within a 10-year period. In a few cases, the verdicts of foreign courts could be taken into account as provided by international agreements. In some cases, the article had not been implemented or there were no laws or practice on criminal record.

24. Issues with regard to jurisdiction were noted in a few States parties. In one case, the jurisdiction over offences under the Convention did not extend to all territories of the State. In a number of cases, the passive personality principle had not been clearly defined, while in others both the active and passive personality principles were limited or had not been established. In several cases, the State protection principle was limited or absent, and recommendations were issued accordingly. Nationals could be prosecuted only for offences committed abroad as permitted by existing treaties, in some cases. Several States parties had established measures that prohibited the extradition of nationals or allowed such extradition only when applying international treaties and in accordance with 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/2014/8).

Box 10

Example of the implementation of article 42

One State party's practice of fully cooperating and exchanging information spontaneously with other States, when it came to its attention that similar proceedings were ongoing, was positively noted.