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

**Implementation of chapters III (Criminalization and law
enforcement) of the United Nations Convention against
Corruption and IV (International cooperation): thematic
overview of recommendations**

Report prepared by the Secretariat

Summary

The present report provides an overview of the recommendations made in the individual country reviews conducted under the Mechanism for the Review of Implementation of the United Nations Convention against Corruption concerning the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the Convention.

* CAC/COSP/IRG/2014/1.



I. Introduction, scope and structure of the report

1. At the resumed fourth session of the Implementation Review Group, held in Panama City on 26 and 27 November 2013 during the fifth session of the Conference of the States Parties to the United Nations Convention against Corruption, it was noted that, in addition to the thematic reports prepared in accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism for the Review of Implementation of the Convention, a thematic overview of the recommendations made in the reviews could inform the Group's substantive deliberations, including in the context of the follow-up to the reviews and technical assistance (see CAC/COSP/IRG/2013/10/Add.1, para. 13). Accordingly, the present report analyses the recommendations made in individual country reports concerning the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the Convention. The report is based on information included in the review reports of 56 States parties that had been completed, or were close to completion, at the time of drafting.

2. In contrast to the thematic reports, the present report does not focus on an analysis of the gaps and challenges encountered in the reviews but rather on providing an overview of the most frequent types of recommendations made by the reviewing experts for each article. This is preceded by general observations on the use, wording and typology of recommendations and an analysis of cross-cutting (horizontal) recommendations.

II. Analysis of recommendations made in country reports

A. General observations

3. The present section analyses the language used for recommendations in the review reports and seeks to provide a typology of recommendations.

Use and wording of recommendations

4. Not all reports contain explicit recommendations on all the gaps and challenges identified through the Review Mechanism. In fact, on individual articles, the reviewing experts often seem to have limited themselves to describing the state of the law rather than making suggestions on how it could or should be amended. This is especially true for articles of a non-mandatory nature and in particular for article 20 of the Convention, where the reviewing experts often simply note that the State party under review has chosen not to criminalize illicit enrichment. Moreover, the number of challenges identified and recommendations made also varies greatly. While this is to be expected owing to the varying degrees of implementation of the Convention, it also seems to reflect differences in the approaches of the reviewing experts and in the willingness of States parties under review to accept the inclusion of recommendations in the review reports.

5. Where recommendations are made, various terms are used in the review reports to introduce them. In the reports, the reviewing experts often recommend that the State party under review "should", "could", "may wish to" or "is encouraged to" take certain measures; that it "ensure", "consider" or "should consider" doing something; or that it "put in place" certain mechanisms. By

contrast, the words “recommend” and “recommendation” are not used very frequently outside the executive summary. In some cases, the reports conclude that a certain provision has been implemented and a recommendation has been made to “continue” a positive practice.

6. This terminology, while not entirely uniform, reflects the wording of the Convention and the different levels of obligations. As far as mandatory provisions are concerned, recommendations are usually introduced with “should”. Likewise, recommendations on obligations to consider certain measures are often preceded by “should consider”. By contrast, recommendations on non-binding provisions use a multitude of different verbs, most frequently variants of “consider”, “may consider”, “may wish to”, “is encouraged to”, or “could”.

7. Where the reviewing experts conclude that a provision has been largely implemented, but doubts remain as to the exact interpretation or future application of a national law, they sometimes use the words “ensure”, “clarify” (e.g. “clarify the interpretation of existing legislative provisions”), “define more accurately” or “continue to”. However, “ensure” has also been used to recommend the adoption of new laws. Where the interpretation of national law in accordance with the Convention is possible, but has not yet been proven through case law, a recommendation has often been made to monitor the application of the national law and, in case the judiciary has not applied the law accordingly, to take legislative measures to clarify the law. This has been done to allow flexibility with regard to the different possible interpretations of national legislation, and bearing in mind the independence of the judiciary.

8. Sometimes the reviewing experts highlight the urgency of implementation by assigning a particular priority to the recommendation (e.g. “enact, as a matter of priority, legislation for the criminalization of money-laundering”).

9. The formulation of recommendations may sometimes seem slightly vague or unclear, which may also reflect a compromise reached among reviewers and the State party under review. For instance, the recommendations to “streamline measures” and to “explore ways to secure” are not very clear in their meaning. The suggestion to “review” certain provisions is sometimes made, although it is not entirely clear if this entails a recommendation to amend, monitor or examine again (after the country review) the existing legislation. Recommendations to “review” and “clarify” the law were also frequently made in cases where States have applied the Convention and other international instruments directly, placing them, in the hierarchy of norms, above the national legislation. Such countries were in compliance with the Convention through its direct application. However, it was recommended to amend the legislation, in order to ensure the application of the Convention in practice.

Typology of recommendations

Amendment and adoption of laws

10. The most common form of recommendation is to amend or clarify the existing law on a certain issue in order to bring it in line with a mandatory provision of the Convention or to consider taking the measures set out in a non-mandatory provision. Such a recommendation may be generic (e.g. “take such measures as may be

necessary”) or specifically indicate the provision, e.g. the article of the criminal code, that should be amended.

11. The reviewing experts have also recommended the adoption of new provisions and laws, e.g. to consider, in the context of ongoing legal reforms, a stand-alone law on corruption, mostly where there was a need for legislative amendments paired with relevant provisions contained in many relatively old pieces of legislation. Likewise, the need to consider enacting legislation criminalizing bribery in the private sector has been highlighted in several reviews.

12. On a few occasions, the reviewing experts have also made recommendations on “soft law”. This has particularly been the case where the experts have felt that the implementation of a certain provision could benefit from guidelines, in particular relevant sentencing guidelines.

Establishment of agencies, mechanisms and strategies

13. Recommendations can also focus on institutional changes, mechanisms and strategies. Thus, in a number of reports, the establishment of a dedicated agency for the administration of seized and confiscated assets (see art. 31, para. 3) has been suggested. In the context of article 20, several review reports recommended the development or strengthening of a system to review income and asset declarations. One State party was asked to consider mechanisms to facilitate the video testimony of witnesses, and another one to develop a comprehensive national anti-corruption action plan.

Resource allocation, capacity-building and cooperation

14. Particularly in the context of articles 32, 36, 44, 46 and 48, the reviewing experts have made recommendations on resource allocation, e.g. to provide sufficient financial and human resources to the witness protection programme, the anti-corruption agency or the agencies tasked with international cooperation. Such recommendations are often based on the need to ensure the operational independence and effective functioning of the authorities specialized in combating corruption. A related recommendation has been to strengthen the capacities of relevant institutions, including through the provision of sufficient training.

15. A frequent recommendation concerns the cooperation among existing institutions responsible for different aspects of anti-corruption measures. To that end, States parties are sometimes asked to consider enhancing law enforcement cooperation or inter-agency coordination. In one review, the need for better inter-agency coordination was justified by citing the need to minimize the risk that the “plethora of institutional mechanisms” could entail a potential overlap of their competencies. In very few cases a recommendation was made to consider shifting certain responsibilities from one agency to another.

Interpretation, review and monitoring obligations

16. In addition to recommendations to amend the law or take practical measures, several reports also contain obligations to monitor or review the future application of the law by law enforcement agencies and the courts, including recommendations to monitor the interpretation of the term “gift”, the implementation of article 17 or the imposition of sanctions and application of sentencing guidelines by the

judiciary; to periodically review policies and approaches on facilitation payments; and to consider legislative clarification should the judiciary not interpret the law accordingly in future cases. Similarly, it has been suggested that studies be carried out, e.g. to identify enforcement issues and technical assistance requirements.

Recommendations on related issues

17. In the context of some articles, the reviewing experts have in several cases made recommendations on issues that go beyond the specific content of the article but are nonetheless relevant in the context of the review. This has particularly been the case for article 20, on illicit enrichment, where several country reports contained recommendations with regard to systems of asset and income declarations, as well as for article 30, on sanctions, where in many country reports general observations on the sanctions regime for corruption offences are included (for more detail see below).

B. Cross-cutting recommendations

18. Some reports contain, in addition to recommendations on the two chapters under review, either in the introductory part or under the heading of an article, horizontal observations and recommendations the scope of which sometimes goes beyond the articles in the two chapters.

Statistics and case law

19. One such observation that is frequently made pertains to the compilation of statistics and case law. For instance, in one report a need for “more streamlined and coordinated mechanisms for the collection of relevant data and statistics, which are necessary for the design of ad hoc crime prevention and criminal justice strategies”, was noted. Another report noted a lack of statistics in the area of money-laundering and urged the country to keep a record of money-laundering cases. In several reports, recommendations were made for mechanisms for the publication of statistics and case law, and one country was encouraged to adapt its information system to allow it to collect data and provide more nuanced and detailed statistics on corruption offences. In the area of international cooperation, a frequently made recommendation was to create or enhance information systems on cases. Most recommendations focused on case management systems to enable the monitoring of cases and the gathering of statistical information, but some also included suggestions to make information on operational aspects of international cooperation available to officials tasked with the execution of requests.

Definition of “public official”

20. While the definition of “public official” is contained in chapter I, article 2, paragraph (a), it is inextricably linked with provisions in chapter III, most notably articles 15 and 16. Therefore, in a number of reviews, recommendations were made on the comprehensive definition of “public official”.

21. In general, the most frequent recommendation was to ensure that legislative and judicial officials, above all parliamentarians, were included in the definition of “public official”. Further recommendations were made to include in the definition

unpaid persons performing a public function or providing a public service; to include foreign public officials and officials of public international organizations; and to address, for purposes of legal clarity and certainty, the inconsistent use of terminology describing public officials.

22. For example, in one instance, where the definition did not include members of Parliament, the reviewing experts recommended extending the scope of the relevant offences and providing for appropriate sanctions for parliamentarians. In the same case, a recommendation was made to extend the definition of “foreign official” to persons exercising public functions for a public enterprise.

Other issues

23. Apart from the two topics mentioned above, a number of other cross-cutting recommendations were made, including to develop a comprehensive national anti-corruption action plan; to address delays in investigations and judicial proceedings that may frustrate efforts to efficiently curb corruption-related offences; to avoid parallel sanctions under administrative, disciplinary and ethical rules; and to avoid impunity and double jeopardy.

24. In one report, it was noted that the general rate of prosecutions and convictions seemed low and most prosecutions of corruption offences were based on only one section of the criminal code (while other sections were also relevant). Therefore, it was suggested that the operational value of the other offences be monitored and assessed and that regular data collection concerning corruption cases be conducted in order to take necessary measures to strengthen their implementation.

25. Finally, in one report, the reviewing experts made an observation on human rights issues and cautioned the State party under review to amend a section of its anti-corruption act in order to be consistent with its Constitution and adhere to its international human rights obligations by upholding the presumption of innocence.

C. Individual recommendations on the criminalization and law enforcement provisions of chapters III and IV

Articles 15, 16 and 21: bribery of national and foreign public officials and officials of public international organizations; bribery in the private sector

26. As has been noted in the thematic reports, all of the States parties to the Convention have adopted measures to criminalize both active and passive bribery of domestic public officials. However, in one case, it was recommended to clarify the criminalization of the bribery offences. In other cases, it was recommended to extend the scope of the relevant provisions to cover active and passive bribery of members of Parliament and persons exercising a public function for a “public enterprise”. This can be done either by extending the definition of “public official” (see para. 20 above) or by creating specific offences. Both approaches can be found in review reports.

27. Apart from the personal scope of application, the most frequent recommendation by far on article 15 concerns the obligation to cover third-party advantages and beneficiaries, including entities. Where this was not included,

recommendations were made to “define the bribery offences in a way that expressly and unambiguously covers instances where the advantage is not intended for the official him/herself but for a third party (third-party beneficiary)” or to “extend the scope of application of the bribery and embezzlement offences to cover instances where the undue advantage is intended for a third party”.

28. Moreover, recommendations were made to criminalize all facilitation payments; to criminalize the promise of a bribe; to ensure that the term “any valuable thing” has the same scope of application as “undue advantage”; to include both pecuniary and other benefits; to clarify the interpretation of the domestic legislation relating to the inclusion of both material and non-material advantages; to include *expressis verbis* the phrase “directly or indirectly”; to consider removing existing threshold requirements that could prevent corruption-related offences from being defined as corruption; and to cover the solicitation of bribes by a public official.

29. On article 16, the most frequent recommendation was to criminalize the active bribery of foreign public officials and officials of public international organizations, which many States had still not implemented. The same recommendation was made several times with regard to passive bribery, albeit formulated as an obligation to consider criminalization. Otherwise, the recommendations often mirrored those on article 15.

30. Concerning bribery in the private sector (art. 21), which many countries had not criminalized, recommendations were made to consider adopting measures to criminalize its active and passive forms. In addition, recommendations were made to abolish the requirements of a complaint or of damage. Moreover, several States were asked to consider formulating the offence of bribery in the private sector in a way that covers persons who work in any capacity, including employers and directors.

Articles 17 and 22: embezzlement and embezzlement in the private sector

31. As with the bribery offences, the most frequent recommendation on the offence of embezzlement (art. 17) concerned the obligation to include third-party beneficiaries. In one case, it was recommended to the State party under review to address the mental element of the embezzlement offence. In another case, it was recommended to a State party to reduce the value threshold of the criminal offence.

32. Most countries had criminalized embezzlement in the private sector (art. 22), so there were relatively few recommendations with regard to that provision. However, some States were asked to consider expanding the scope of the national law to include any property and all parts of the private sector.

Article 18: trading in influence

33. For article 18, the most frequent recommendation was to consider criminalizing trading in influence. Where trading in influence had been criminalized, the issue of third-party advantages and beneficiaries was the most frequent subject of recommendations. In a few instances, the reviewing experts advised States to include *expressis verbis* the phrase “directly or indirectly” or to also cover merely supposed influence, in line with the wording of article 18.

Article 19: abuse of functions

34. Several States were requested to consider criminalizing the abuse of functions or position. One recommendation was to explore the possibility of addressing instances of abuse of functions by public officials through criminal sanctions and not only through disciplinary measures. In a few cases the reviewing experts advocated considering the elimination of the requirement of “substantial damage” or “damage” in the offence.

Article 20: illicit enrichment

35. Article 20 contains only an obligation to “consider” the criminalization of illicit enrichment, which is further subject to the constitution and the fundamental principles of the legal system of each State party. Accordingly, where States have fulfilled the obligation to consider, and the fulfilment is supported by evidence, usually no recommendation has been made. In one case, however, despite compliance with the obligation to consider, the reviewing experts recommended that the State party under review “continue” to consider the need for legislation to make illicit enrichment a criminal offence.

36. Where the obligation to consider had not been met, a recommendation to consider criminalization was usually made. A few reports went beyond this and made recommendations encouraging the State party under review to establish, for example, “illicit enrichment as a criminal offence, if possible under the constitution, and to that end, make use of technical assistance as available”.

37. For countries that are prevented from criminalizing illicit enrichment because of constitutional obstacles, alternative approaches, in particular asset declaration schemes, were frequently discussed in the reports. Thus, the implementation of a system requiring income and asset declarations from all public officials was suggested. Where such a system already existed, it was often recommended to strengthen the existing asset declaration schemes. Indeed, such schemes, which are sometimes coupled with criminal sanctions for non-compliance, can constitute an effective alternative solution. Therefore, it can be argued that the recommendations in this regard still fall within the scope of the review.

Articles 23 and 24: money-laundering and concealment

38. Almost all States parties had criminalized money-laundering. Indeed, only one was advised to enact, as a matter of priority, legislation for the criminalization of money-laundering. On the other hand, more than half of the reviewed States had shortcomings with regard to the details of this comprehensive provision.

39. Several States were encouraged to extend the list of predicate offences or to criminalize the laundering of the proceeds of all offences established in accordance with the Convention. One recommendation was issued to consider reducing the sanctions threshold of what constituted predicate offences to money-laundering crimes. Moreover, several States were advised to ensure that the money-laundering legislation covered predicate offences committed outside their own jurisdiction.

40. Many States had not furnished copies of their money-laundering legislation to the United Nations and were requested to ensure that such copies and future

amendments of their laws are sent to the Secretary-General of the United Nations, as required by article 23, paragraph 2 (d).

41. Very few recommendations were made on article 24, the most important being to explore the possibility of providing a more precise description of the act of concealment.

Article 25: obstruction of justice

42. Several States were advised to implement this binding obligation and (expressly) criminalize conduct falling within the scope of obstruction of justice. Moreover, in two cases recommendations were made to specifically include the criminalization of the use of physical force against witnesses.

Article 26: liability of legal persons

43. Article 26 contains a binding obligation to establish the liability of legal persons, with States parties having a choice between criminal, civil and administrative law regimes. All States parties to the Convention had established at least one form of liability for legal persons. Therefore, most recommendations, even when they did not explicitly say so, concerned the criminal liability of legal persons.

44. In some cases, the country reports contain explicit recommendations to consider the adoption of criminal corporate liability. Usually, however, recommendations were aimed at strengthening the existing regime for the liability of legal persons or at extending and clarifying the liability of legal persons for participation in all Convention-related offences.

45. With regard to paragraph 4 of article 26, which calls for effective, proportionate and dissuasive criminal or non-criminal sanctions, several reports contain recommendations urging States parties under review to explore the possibility of increasing the level of monetary sanctions against legal persons and/or review their sanctions regime. In two reports it was recommended to provide for sanctions beyond pecuniary sanctions, and in one case a recommendation was made to take into consideration the financial situation of the legal person.

Article 27: participation and attempt

46. All States parties had criminalized some form of participation in and attempt to commit corruption offences. In some instances, however, the provisions did not cover all Convention offences, which led to recommendations to criminalize the attempt to commit any Convention offence. Moreover, at least in civil law countries, preparation was usually not (or not comprehensively) criminalized. This did not always result in recommendations. In a few cases, recommendations were made to change this situation. In one case, owing to the large scope of the corruption provisions, a recommendation was made for the State party under review to ascertain whether the provisions on attempt had — in principle and in court practice — become irrelevant.

Article 28: knowledge, intent and purpose

47. Only one recommendation was made on article 28, an article that is not included in the self-assessment checklist. The recommendation was for the State

party under review to systematize and make best use of information related to the matter of how direct or circumstantial evidence was brought before the court and assessed by the judges.

Article 29: statute of limitations

48. The most frequent recommendation on article 29 was to prolong the statute of limitations or extend reasons for its suspension or interruption. In particular, States were asked to consider amending the statute of limitations so that the period starts only when the crime is discovered, and prescription will be interrupted or suspended in cases where the alleged offender has evaded the administration of justice.

Article 30: prosecution, adjudication and sanctions

49. Article 30 covers a broad range of issues on prosecution, adjudication and sanctions. Consequently, the recommendations, most of which concern paragraphs 1 and 2, will be examined separately for each paragraph.

50. Unlike article 26, article 30, paragraph 1, does not speak of effective, proportionate and dissuasive sanctions but obliges States parties only to establish sanctions that take into account the gravity of the offence. Nevertheless, this provision was used as a basis for a general review of the available sanctions for corruption offences. In some cases, reviewing experts suggested increasing the minimum penalties or issuing relevant sentencing guidelines. While this may go beyond a strict reading of article 30, paragraph 1, it is hard to imagine any sanctions regime that is incapable of taking into account the gravity of the offence. Therefore, in order to preserve the *effet utile* of the provision and not deprive it of meaningful content, a wider interpretation seemed appropriate.

51. Accordingly, the most frequent recommendation on paragraph 1 was to consider adopting more severe sanctions, and in particular to reassess the penalties applicable to the bribery and embezzlement offences and increase the minimum penalties. For example, it was recommended to establish more effective, proportionate and dissuasive fines and sanctions, including for legal persons, as this would allow for a more differentiated approach that takes into account the gravity of the offence and the damage caused. In another case, it was suggested that more severe penalties be provided for the act of receiving a bribe than for giving a bribe, in order to discourage the solicitation of bribes by public officials and to encourage the reporting of bribery.

52. In one case, it was suggested that the State party under review could consider issuing relevant sentencing guidelines. Finally, a recommendation to monitor the imposition of sanctions and application of sentencing guidelines by the judiciary was made.

53. A number of recommendations were made on the procedure for lifting immunities (para. 2). Where the reviewing experts felt that cumbersome procedures could lead to potential delays and the loss of evidence, recommendations were made to simplify those procedures. In several cases, maintaining a greater balance between immunity and investigation or trial was suggested.

54. On the other hand, in one review the experts encouraged the authorities to consider the potential benefits of extending immunity, subject to its being lifted for

involvement in criminal activity or misconduct, to senior management and investigators of the anti-corruption agency acting in the course of official duties.

55. Concerning the exercise of discretionary prosecution (para. 3), a recommendation was made that a law regulating the prosecution service and a prosecution manual be adopted to ensure greater legal certainty in the prosecution of corruption cases. In another review, it was suggested that a study be carried out on the principle of discretionary prosecution in order to avoid political interference in decisions made by public prosecutors.

56. Pursuant to paragraph 5, several States parties were reminded to take into account the gravity of corruption-related offences when considering the eventuality of early release or parole of persons convicted of such offences. In one case, the reviewing experts suggested adopting a written policy on parole. In another case, the State party under review was asked to ensure that grants of executive clemency did not create a situation of impunity.

57. Recommendations on paragraphs 6 and 7 tended to simply restate the provision, i.e. that States shall consider establishing procedures through which a public official accused of an offence established in accordance with the Convention would be suspended at the point of investigation and removed post-conviction.

58. Several States parties were advised to endeavour to promote the reintegration into society of persons convicted of Convention-related offences (para. 10).

Article 31: freezing, seizing and confiscation

59. Several recommendations on article 31 were aimed at easing the formal requirements for obtaining authorization to freeze financial accounts; ensuring that proceeds of crime transformed into other property shall also be liable to freezing and confiscation measures; and permitting value-based confiscation and confiscation of instrumentalities used or intended to be used for criminal offences, as well as property of corresponding value. One report encouraged the State party under review to consider putting in place a comprehensive and solid framework for non-conviction-based asset forfeiture.

60. On paragraph 3, the reviewing experts suggested reinforcing the proper administration of frozen, seized or confiscated property. To that end, several reports advocated the establishment of a dedicated agency to administer confiscated assets.

61. In a few cases recommendations were made to consider legislative measures to allow for the reversal of the burden of proof (para. 8).

62. The adequate protection of bona fide third-party rights in confiscation cases (para. 9) was also the subject of recommendations in a few reports.

Articles 32, 33 and 37: protection of witnesses and reporting persons; cooperation with law enforcement authorities

63. Several States parties were urged to take legislative and other measures to establish effective witness protection procedures in accordance with article 32 and to include corruption-related offences in witness protection programmes. For example, in one case the country under review was advised to extend protection to

all witnesses, experts, victims and whistle-blowers, and to the periods before, during and after proceedings.

64. In many reports, recommendations were made for the adoption of appropriate legislation and measures for the protection of reporting persons (whistle-blowers); for the strengthening of existing schemes for whistle-blower protection; and for Convention offences to be brought clearly within the ambit of the act on the protection of whistle-blowers. In one case, it was suggested that entering into agreements with other States for that purpose be considered.

65. Concerning cooperating offenders (art. 37), on the one hand recommendations were made to consider the adoption or extension of the legislation allowing for the mitigation of punishment and/or exemption from criminal liability of defendants who substantially cooperate with law enforcement authorities. On the other hand, a few States were urged to abolish immunity for officials who report receipt of a bribe within 30 days of receiving it, and to abolish automatic immunity from prosecution in cases of self-denunciation before the investigation starts.

66. In one review it was highlighted that a law on plea bargaining and a policy for the recruitment of informers could be useful.

Articles 34 and 35: consequences of acts of corruption; compensation for damage

67. There were relatively few recommendations on article 34. The most important of those were to consider taking additional measures so that corruption may be considered a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

68. A few reports contained recommendations for States to ensure that entities or persons who suffered damage as a result of an act of corruption had the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation, even in the absence of prior criminal cases. One State party was also asked to ensure that legal persons or entities benefited not only from the status of civil plaintiff but also from the status of victim in criminal proceedings, where such status was afforded only to natural persons.

Articles 36, 38 and 39: specialized authorities and cooperation

69. The most important and most frequent recommendations on article 36 were to strengthen the anti-corruption agency and to safeguard its independence. To that end, it was sometimes highlighted that sufficient resources should be made available in the area of investigation, prosecution and adjudication of cases. States that had not done so were requested to create specialized law enforcement agencies, specialized units in the prosecution service and courts with specialized judges.

70. Other recommendations included strengthening the public prosecution service through the establishment of a national prosecution office for highly complex cases; improving inter-agency coordination and collaboration; and enhancing effective management of corruption cases through the establishment of case management systems.

71. Several States were asked to improve inter-agency coordination (art. 38). In one review, the country was encouraged to consider legal or administrative measures requiring public officials to report bona fide suspicions of corruption.

72. On article 39, recommendations were made to encourage cooperation between national investigating and prosecuting authorities and the private sector and to strengthen the national financial intelligence unit.

Article 40: bank secrecy

73. Several States were urged to consider easing the formal requirements for obtaining authorization to lift bank secrecy; to simplify the process; and to ensure that bank secrecy could be overridden by other agencies effectively.

Article 41: criminal record

74. Many States parties under review had not implemented this optional provision, and recommendations were made for them to consider taking foreign criminal records into account in criminal proceedings.

Article 42: jurisdiction

75. Several States were encouraged to consider establishing additional grounds for jurisdiction, most notably for offences committed on board their vessels and aircraft, and with regard to the active (jurisdiction in cases regarding offences committed abroad by a national) and passive (jurisdiction over offences committed against a national) personality principle.

Article 44: extradition

76. A number of recommendations were made to adopt or amend relevant legislation. Where States had no legislation in place, recommendations to regulate extradition procedures in line with the Convention were made. In other cases, recommendations were made with a view to aligning certain aspects of extradition laws with the Convention, or to include provisions in line with the Convention in ongoing legislative reform efforts. Direct application of the Convention was sometimes mentioned as an alternative to the adoption of new legislation.

77. Extradition in the absence of dual criminality (para. 2) and extradition for accessory offences (para. 3), as non-mandatory requirements of the Convention, were addressed through recommendations to consider or explore the possibility thereof. On the other hand, a significant number of reports contained only the statement that such measures had not been taken. With regard to dual criminality, some recommendations made reference to flexible interpretations of the dual-criminality requirement, or suggested the criminalization of all Convention offences to avoid problems related to dual criminality.

78. Recommendations on the definition of extraditable offences were made under paragraphs 1, 4 and 7 of article 44. In most cases, recommendations were made to amend or review domestic legislation and bilateral treaties to ensure that all corruption offences were considered extraditable. In some reports, recommendations suggested criminalizing all Convention offences or raising the penalties of those offences that did not reach the threshold for extraditable offences in accordance with domestic law. Most review teams requested that all Convention offences be considered extraditable offences; however, some reports deemed it sufficient that extradition should be granted for all mandatory offences. The recommendation to

consider a threshold approach, as opposed to a list approach, in bilateral extradition treaties was also made, as it could provide for more flexibility.

79. Frequent recommendations referred to the political-offence exception. States were urged to ensure that corruption offences were not considered political offences, through direct application of the Convention by legislative clarification, the inclusion of a clause in new extradition treaties or the establishment of guidelines for extradition practice.

80. Most States that could not use the Convention as a legal basis for extradition were encouraged to amend their domestic legislation to enable them to do so. In other States, or as an alternative measure, it was recommended to explore the possibilities for concluding bilateral treaties. For States in which there was no clear information or decision as to whether the Convention could be used as a legal basis, it was recommended to urgently clarify the overall legal basis of extradition. States that required a treaty base for extradition and had not yet notified the Secretary-General whether they could use the Convention as a legal basis in line with paragraph 6 were recommended to do so. For States that did not require a treaty base, many reports did not consider the notification necessary. In others, States parties were encouraged to provide, despite the lack of an obligation, the notification to the Secretary-General.

81. Recommendations on paragraph 9, to expedite extradition proceedings and simplify evidentiary procedures, took the form of general encouragement to provide for expeditious extradition proceedings or to take legislative or other measures to make procedures more agile or lower the burden of proof. In a few cases, recommendations were made either to introduce in the legislation time limits for the execution of requests or to adhere to time limits already provided for in the legislation.

82. Only a few recommendations were made on the provisional arrest of a person sought for extradition (para. 10). Those included recommendations to address provisional arrest in the legislation or to extend its possible duration. Some reports contained recommendations to make the best use of International Criminal Police Organization (INTERPOL) channels or eliminate restrictive practical requirements for provisional arrest.

83. Recommendations on the principle of “extradite or prosecute” addressed mostly legislative amendments with a view to ensuring prosecution if a sought person was not extradited owing to his or her nationality. In a few reports this was also recommended for future treaties. In one report, it was recommended to make prosecution in such cases mandatory and not subject to the discretion of a minister. With regard to the enforcement of a foreign sentence, if extradition was sought for the purpose of enforcing a sentence and the sought person was not extradited owing to his or her nationality, a large number of recommendations addressed the need for legislative amendments. For some countries it was recommended to monitor the practice and amend the law if necessary. In a number of reports, however, despite non-compliance with the provision, no recommendation was made, possibly (but not explicitly) because of the clause “if its domestic law so permits and in conformity with the requirements of such law” (para. 13).

84. For a few countries, general recommendations were made to ensure fair treatment in extradition proceedings. While in some country reports a

recommendation was included to introduce a right to appeal in extradition proceedings, other reports noted the absence of such a right without making a recommendation or did not contain relevant information. For two countries, recommendations on the judicialization of the process were made, namely, to remove a provision that gave the minister the power to prevent a court's decision to extradite, and to ensure that extradition proceedings were carried out before a court. Recommendations were also made to ensure the refusal of extradition when concerns of discrimination would arise, either generally or with specific regard to sex-based discrimination.

85. With regard to not refusing extradition on the ground that the offence also involved fiscal matters (para. 16), two country reports contained recommendations to amend legislation or a treaty because the State was not in compliance with the provision under review. All other recommendations were aimed at a clarification of the law or direct application of the Convention in this regard.

86. Concerning consultations with the requesting State before refusing extradition, a number of recommendations were made to include such an obligation in legislation or treaties, in some cases despite the fact that such consultations were held in practice. Other recommendations were aimed at encouraging implementation in practice, and in some reports the adoption of guidelines was recommended.

87. A very frequent recommendation was to expand the bilateral treaty network of a country, regardless of whether a country made extradition conditional on the existence of a treaty or whether it could use the Convention as a basis for extradition. For two countries the recommendation was made either to apply the Convention directly or to conclude new treaties, and for two countries a related recommendation was made to review the existing treaties to determine whether they were in compliance with the Convention.

Article 45: transfer of sentenced persons

88. Although the non-mandatory provision of article 45 refers to bilateral or multilateral agreements or arrangements, recommendations encouraged States not only to conclude such instruments, but also to enact or monitor the application of legislation.

Article 46: mutual legal assistance

89. Recommendations on mutual legal assistance addressed the development of legislation, the use of the Convention as a legal basis and the ratification of relevant treaties, as well as practical aspects such as proceedings, communication systems, languages and means to reduce delays. States that had established an adequate framework were often encouraged to continue reviewing policies and legal mechanisms to provide the widest measure of mutual legal assistance. Some States were encouraged to improve the national case management system in order to be able to track mutual legal assistance requests, including on the origin of and responses to such requests, the time frames for the execution of requests, the offences involved and possible grounds for refusal.

90. Several reports contained recommendations to ensure that mutual legal assistance was afforded in proceedings related to offences for which a legal person would be considered liable (para. 2). In a number of cases, States parties were

requested to review their current mutual legal assistance framework to ensure that it was broad enough to cover each form of cooperation foreseen in the Convention (para. 3).

91. Spontaneous transmission of information was encouraged (paras. 4 and 5), either through the adoption of legislation or through direct application of the Convention.

92. In most country reports, observations and recommendations on paragraphs 7 and 9 to 29 were discussed paragraph by paragraph, and recommendations for the implementation of each of them were made. However, in exceptional cases, review teams chose to review only the ability of the State to directly apply paragraphs 9 to 29, holding that they did not contain obligations but rather provided a suitable framework for States parties to apply them where possible. An overall recommendation was then made to apply article 46, paragraphs 9 to 29, directly, both in the absence of a treaty and by agreement on their application in lieu of an existing treaty.

93. On paragraph 8, it was recommended that States ensure that mutual legal assistance would not be declined on the grounds of bank secrecy. Specifically, some States were encouraged not to make the lifting of bank secrecy conditional on reciprocity, and to regulate possibilities for spontaneous information-sharing and cooperation involving bank records.

94. A frequent recommendation on paragraph 9 was to consider widening the scope of assistance in the absence of dual criminality, including through direct application of the Convention. Another recommendation was to monitor the application of the dual-criminality principle to ensure that assistance that required non-coercive measures was rendered.

95. Several countries were encouraged to adopt appropriate measures with regard to the transfer of detained persons for the purpose of providing testimony (paras. 10-12). One country was encouraged to establish comprehensive legislation in that regard.

96. With regard to paragraphs 13 and 14, States that had not yet done so were urged to inform the Secretary-General of their designated central authority and the language or languages acceptable for receiving mutual legal assistance requests. States that had not already done so were requested to designate a central authority. When States had designated more than one authority under the Convention, this was generally considered to be in line with paragraph 13. It was also recommended to designate one central authority under all treaties to which a State was a party. In the same vein, some States were encouraged to develop legislation or administrative guidelines to expedite mutual legal assistance, or to reconsider the designation of their central authority. Some States were requested to take measures to allow requests to be made orally in urgent matters (para. 14).

97. With regard to the content of a mutual legal assistance request, recommendations were made to regulate or clarify the requirements in detail, and two States were also requested to continue to ensure that requesting countries were familiar with the content and format of mutual legal assistance requests that were acceptable to them (para. 15).

98. It was recommended that States further increase the effectiveness of mutual legal assistance proceedings by allowing hearings via videoconference (para. 18). In the absence of a domestic legal framework in that regard, the adoption of specific regulations was recommended.

99. With regard to the explicit adherence to the speciality rule (para. 19), States were requested to consider adopting or amending laws to regulate limitations on the use of information received. On paragraph 20, several States were encouraged to monitor the application of confidentiality requirements and to adopt legislation providing for a prompt notification of the requesting State when confidential information would need to be disclosed.

100. A number of reports contained recommendations encouraging States to adopt legislation on grounds for refusal (para. 21), or include relevant regulations in their treaties to ensure that those grounds were not expanded beyond those foreseen in the Convention. Some States were encouraged to include provisions in their national legislation on the indication of reasons for the refusal of requests, in addition to relevant provisions already contained in bilateral treaties (para. 23). Others were encouraged to ensure that it was not considered a ground for refusal that the offence also involved fiscal matters (para. 22). Several States were encouraged to amend their domestic legislation to establish this as a rule, rather than having it as a discretionary ground for refusal or addressing it on a case-by-case basis.

101. Several States were encouraged to make efforts to ensure that mutual legal assistance proceedings were carried out in the shortest possible time (para. 24).

102. Another recommendation was to establish a duty to consult before refusing mutual legal assistance and to postpone rather than refuse (para. 26). In some reports, it was recommended to stipulate this practice in legislation or to monitor the practice and amend the legislation if necessary.

103. Several States were encouraged to establish, in legislation or through direct application of the Convention, safe conduct for persons transferred to give testimony (para. 27).

104. States that had no general provision on costs (para. 28) in the domestic framework were encouraged to consider adopting relevant rules. Where there was currently a presumption that the requesting State party would cover the costs for the execution of a mutual legal assistance request in domestic legislation or agreements, it was recommended to align those with the Convention.

105. Although government documents available to the public and such documents not available to the public had generally been transmitted in practice to requesting States, States were often asked to ensure that such a practice was specified in legislation and future treaties (para. 29).

106. Several States were encouraged to continue exploring opportunities to actively engage in bilateral and multilateral agreements (para. 30) with other countries. Bilateral treaties with non-regional partners were particularly encouraged. A common recommendation was also to update existing bilateral or multilateral treaties to bring them in line with the Convention.

Article 47: transfer of criminal proceedings

107. Most recommendations on ensuring the possibility of transfer of criminal proceedings were aimed at the adoption or amendment of legislation, and in some cases treaties or agreements. Recommendations were also made to fully implement practices or policies.

Article 48: law enforcement cooperation

108. Observations on law enforcement cooperation rarely focused on legislation, although in some cases it was considered necessary to give relevant powers to law enforcement authorities. More often, recommendations addressed practical aspects such as training, the allocation of resources and the creation of systems for case management and statistics. It was further recommended to study the experience of other countries, including on personnel exchange, and to conclude institutional agreements or informal arrangements with foreign law enforcement bodies. With regard to the legal basis of law enforcement cooperation (para. 2), some review teams made recommendations to conclude bilateral or multilateral agreements. Only a few focused on recommending the direct application of the Convention, although a number of recommendations addressed both.

109. Among the recommendations for the allocation of additional resources, sometimes the stepping up of the use of modern technology was recommended. Such recommendations were made partly in response to gaps in the implementation of paragraph 3, possibly indicating an underlying reasoning that offences committed through the use of modern technology were best responded to by the use of the same sort of technology.

Article 49: joint investigations

110. By far the most frequent recommendation for States that had not (or not sufficiently) implemented article 49 was the recommendation to seek to conclude agreements or arrangements with other States, including on the costs of such teams. Only a few countries were asked to introduce legislation or keep statistics on the matter.

Article 50: special investigative techniques

111. Recommendations on paragraph 1 mostly addressed amendments to existing legislation, which sometimes explicitly addressed the admissibility of evidence. In only two country reports was a recommendation made to provide training or build capacity. Those recommendations were supplemented by general recommendations to conclude bilateral treaties. In one country, a specific legislative recommendation on controlled delivery was made (para. 4).

III. Conclusion

112. The present analysis has shown that the number and scope of recommendations made in the country review reports to address identified implementation gaps and challenges varies considerably. For example, the recommendations encompass a variety of remedial measures that States parties

under review are requested to take, and the terminology used, while not entirely uniform, varies in directness or sense of urgency. Moreover, not all reports contain explicit recommendations to address identified gaps, in particular for articles of a non-mandatory nature.

113. While some degree of variance is to be expected, owing to the different degrees of implementation of the Convention and the terms of reference of the Review Mechanism, which in paragraph 8 state that the Mechanism shall take into account differences in legal traditions and the diversity of judicial, legal and political systems, the recommendations made also vary to some extent across comparable situations. In this context, the Group may wish to consider how to best ensure the compatibility and consistency of the country review reports. The Group may also wish to consider how to expand on the present analysis, including perhaps by developing a set of standardized recommendations for issues encountered, which could assist governmental experts in drafting country review reports.
