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## Implementation Review Group

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

## **Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (review of articles 43-50)**

**Thematic report prepared by the Secretariat**

### *Summary*

The present thematic report contains information on the implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption by 123 States parties under review in 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.

## **I. Introduction, scope and structure of the report**

1. In accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, the present thematic report presents information on the implementation of chapter IV of the United Nations Convention against Corruption. It supplements and builds upon the previous thematic report on the implementation of chapter IV of the Convention (CAC/COSP/IRG/2014/8) and the thematic study entitled Summary of the state of implementation of the United Nations Convention against Corruption: criminalization, law enforcement and international cooperation

\* CAC/COSP/IRG/2016/1.



(see CAC/COSP/2015/5), which analysed trends and examples of implementation for 68 States parties under review in the first cycle of the Review Mechanism. To avoid repetition, the present report focuses primarily on the trends and examples of implementation identified in the 55 newly completed country reviews.<sup>1</sup> In addition, as in previous thematic reports, cumulative tables and figures showing the most common challenges and good practices for all countries under analysis are presented.

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

2. As requested by the Implementation Review Group, the present report contains an analysis of the most prevalent challenges and good practices in the implementation of chapter IV, organized according to the relevant article of the Convention. These are further broken down for article 44 on extradition, article 45 on the transfer of sentenced persons, article 46 on mutual legal assistance, article 47 on the transfer of criminal proceedings, article 48 on law enforcement cooperation, article 49 on joint investigations and article 50 on special investigative techniques. The tables and figures below cover the analysis of the completed reviews in 123 States parties.

3. Consistent with the trend identified in previous reports, the analysis below confirmed that the most prevalent challenges to international cooperation are at the legislative, institutional and operational levels (see table 1). Some States parties still lack the basic tools for cooperation, including domestic legislation, the ability to consider the Convention as a legal basis, systems for efficient domestic inter-agency coordination and cooperation, or sufficient human resources, which may hinder their overall ability to cooperate effectively. Many States parties should also consider establishing means, whether through case management or other avenues, for collecting statistical data to be able to assess and strengthen the implementation of the Convention.

Table 1

### Most prevalent challenges in the implementation of chapter IV of the Convention, by article

<i>Article of the Convention</i>	<i>Identified challenges in implementation</i>
Extradition (art. 44)	<ul style="list-style-type: none"> <li>• Limited capacity and resources</li> <li>• Limited inter-agency coordination</li> <li>• Gaps in the domestic legal framework</li> </ul>
Dual criminality (art. 44, para. 2)	<ul style="list-style-type: none"> <li>• Specificities of the legal system and constitutional constraints</li> <li>• Absence of monitoring of the application of the dual criminality principle</li> </ul>

<sup>1</sup> Data used in the preparation of the present report are based on country reviews as at 15 April 2016.

<i>Article of the Convention</i>	<i>Identified challenges in implementation</i>
Offences deemed to be extraditable; political offence exception (art. 44, para. 4)	<ul style="list-style-type: none"> <li>• Not all corruption offences are extraditable by virtue of their minimum period of imprisonment</li> <li>• Lack of clarity regarding the political offence exception</li> <li>• Not all corruption offences are included in treaties</li> </ul>
Expedite proceedings or simplify evidentiary requirements (art. 44, para. 9)	<ul style="list-style-type: none"> <li>• Difficulties with burdensome extradition procedures and high evidentiary requirements</li> </ul>
Extradite or prosecute (art. 44, para. 11)	<ul style="list-style-type: none"> <li>• No application of the principle of “extradite or prosecute”, or extradition of nationals not allowed</li> </ul>
Enforcement of foreign sentences (art. 44, para. 13)	<ul style="list-style-type: none"> <li>• Absence of legislation on the enforcement of foreign sentences</li> <li>• No possibility to directly apply the Convention to allow for the enforcement of a sentence in cases where the extradition is refused on the grounds of nationality</li> </ul>
Discrimination clause (art. 44, para. 15)	<ul style="list-style-type: none"> <li>• Lack of adequate legislation to address the right to refuse extradition on the grounds of a discriminatory purpose of the request</li> </ul>
Consultation before refusing (art. 44, para. 17)	<ul style="list-style-type: none"> <li>• Prior consultation not required before extradition is refused</li> </ul>
Agreements or arrangements (art. 44, para. 18; art. 46, para. 30; arts. 45 and 47 and art. 48, para. 2; art. 50, para. 2)	<ul style="list-style-type: none"> <li>• Inadequate treaties or absence thereof</li> <li>• Inability to apply the Convention directly as a basis for international cooperation</li> </ul>
Transfer of sentenced persons (art. 45)	<ul style="list-style-type: none"> <li>• Limited capacity and resources</li> <li>• Absence of inter-agency coordination</li> <li>• Gaps in the relevant legal and treaty frameworks and specificities thereof</li> </ul>
Mutual legal assistance (art. 46)	<ul style="list-style-type: none"> <li>• Limited capacity and resources</li> <li>• Gaps in the legal framework, or inadequacy of existing normative measures</li> <li>• Lack of case management systems to track and ensure the timely processing of requests for mutual legal assistance</li> </ul>
Legal persons (art. 46, para. 2)	<ul style="list-style-type: none"> <li>• Absence of legislative measures and of harmonization of the legal framework and treaties</li> <li>• Lack of regulation of the requirements for mutual legal assistance in relation to offences for which a legal person may be held liable</li> </ul>
Purposes of mutual legal assistance (art. 46, para. 3)	<ul style="list-style-type: none"> <li>• Lack of harmonization of legal framework to render the execution of freezing orders more flexible</li> <li>• Weak mutual legal assistance provided with a view to identifying, tracing and freezing the proceeds of crime and recovering stolen assets</li> </ul>
Spontaneous information disclosure (art. 46, para. 4)	<ul style="list-style-type: none"> <li>• Lack of formal measures pertaining to the transmission of information to a foreign competent authority, without a prior request, where such information could assist in the investigation and prosecution of corruption offences, and to ensuring the confidentiality of this information upon request</li> </ul>

<i>Article of the Convention</i>	<i>Identified challenges in implementation</i>
Bank secrecy (art. 46, para. 8)	<ul style="list-style-type: none"> <li>Lack of formal measures on spontaneous information-sharing and cooperation involving bank and financial records</li> </ul>
Dual criminality (art. 46, para. 9)	<ul style="list-style-type: none"> <li>Lack of measures to provide a wider scope of assistance pursuant to article 46 in the absence of dual criminality</li> </ul>
Temporary transfer of detained and sentenced persons (art. 46, paras. 9, 10 and 11)	<ul style="list-style-type: none"> <li>Lack of procedures on the transfer and receiving of persons for the purposes of providing assistance in procedures relevant to corruption offences and on their safe conduct</li> </ul>
Central authorities and procedures (art. 46, paras. 13 and 14)	<ul style="list-style-type: none"> <li>Secretary-General not notified of the designated central authority and of the acceptable language for executing requests</li> <li>Weak capacity of the central authority in receiving and processing assistance requests</li> </ul>
Hearing by videoconference (art. 46, para. 18)	<ul style="list-style-type: none"> <li>Absence of domestic measures to regulate hearings by videoconference</li> </ul>
Confidentiality (art. 46, para. 20)	<ul style="list-style-type: none"> <li>Lack of measures to provide for the confidentiality of information and evidence transmitted when executing requests for mutual legal assistance</li> </ul>
Grounds for refusal (art. 46, paras. 21 and 22)	<ul style="list-style-type: none"> <li>Absence of measures to formalize the grounds for refusing assistance in law and treaties and to ensure that consultations are held before refusing or postponing requests</li> </ul>
Consultations (art. 46, para. 26)	<ul style="list-style-type: none"> <li>Absence of measures that specify the duty to consult before refusing assistance requests</li> </ul>
Persons consenting to give evidence (art. 46, para. 27)	<ul style="list-style-type: none"> <li>Lack of measures on the transfer of persons consenting to give evidence and their safe conduct</li> </ul>
Costs (art. 46, para. 28)	<ul style="list-style-type: none"> <li>Absence of measures that address the costs of mutual legal assistance</li> </ul>
Transfer of criminal proceedings (art. 47)	<ul style="list-style-type: none"> <li>Lack of a specific legal framework or inadequate normative measures</li> <li>Limited capacity and resources for implementation</li> </ul>
Law enforcement cooperation (art. 48, paras. 1 and 2)	<ul style="list-style-type: none"> <li>Practical challenges in swift information exchange in time-sensitive cases</li> <li>Lack of adequate agreements and no use of the Convention as the legal basis for mutual law enforcement cooperation</li> <li>Difficulties in establishing effective channels of communication among competent law enforcement authorities</li> <li>Absence of measures to enhance direct law enforcement cooperation, in particular to facilitate communication, information exchange and direct cooperation in investigations</li> </ul>
Joint investigations (art. 49)	<ul style="list-style-type: none"> <li>Limited experience in conducting joint anti-corruption investigations</li> </ul>

<i>Article of the Convention</i>	<i>Identified challenges in implementation</i>
Special investigative techniques (art. 50)	<ul style="list-style-type: none"> <li>• Lack of adequate legislation to regulate the use of special investigative techniques and the admissibility of evidence derived therefrom</li> <li>• Lack of inter-agency coordination</li> <li>• Lack of a specific legal basis for applying special investigative techniques in the investigation of, and international cooperation relating to, corruption offences</li> <li>• Limited capacity</li> <li>• Unclear guidelines on the use of special investigative techniques for the judiciary and investigation agencies</li> </ul>

4. Table 2 below builds on the preliminary list of international good practices contained in the previous reports, including additional information on innovative solutions for the implementation of the Convention. These practices ranged from the facilitation of informal communication and the exchange of personnel to national inter-agency coordination mechanisms and the establishment of case management systems for central authorities. A number of new practical approaches have been identified that could help strengthen implementation of the Convention and contribute to the development of new strategies in the fight against corruption.

Table 2

**Most prevalent good practices in the implementation of chapter IV of the Convention**

<i>Article of the Convention</i>	<i>Identified good practices in implementation</i>
Extradition (art. 44, para. 1) and dual criminality (art. 44, para. 2)	<ul style="list-style-type: none"> <li>• Training on how to use the Convention as a legal basis for extradition</li> <li>• Flexible approach to dual criminality focusing on the underlying conduct rather than on the specific categorization</li> <li>• Development of new legal frameworks to enhance international cooperation</li> <li>• Extradition regimes based on the possibility of granting extradition without a treaty</li> <li>• Efficient use of an electronic database allowing case officers to monitor the progress of requests and identify appropriate follow-up</li> </ul>
Expedition of proceedings or simplification of evidentiary requirements (art. 44, para. 9)	<ul style="list-style-type: none"> <li>• The use of the minimum penalty definition instead of a list of offences approach for the identification of extraditable offences</li> <li>• Use of simplified extradition procedures and ability to handle a high volume of requests involving corruption offences</li> <li>• Expedition of extradition proceedings through channels such as the International Criminal Police Organization (INTERPOL) and through electronic communication</li> </ul>
Extradite or prosecute (art. 44, para. 11)	<ul style="list-style-type: none"> <li>• Possibility to extradite own nationals, which can avoid issues of double jeopardy, jurisdiction and coordination</li> </ul>

<i>Article of the Convention</i>	<i>Identified good practices in implementation</i>
Agreements or arrangements (art. 44, para. 18; art. 46, para. 30; art. 47; and art. 48, para. 2)	<ul style="list-style-type: none"> <li>• Conclusion of a significant number of treaties on extradition and mutual legal assistance, transfer of criminal proceedings and law enforcement cooperation</li> </ul>
Mutual legal assistance (art. 46)	<ul style="list-style-type: none"> <li>• Use of the Convention as a legal basis for mutual legal assistance</li> <li>• Development of tools such as an electronic database on mutual legal assistance allowing the tracking of requests and the identification of appropriate follow-up actions</li> <li>• Development of a comprehensive legal framework on international cooperation in criminal matters</li> </ul>
Bank secrecy (art. 46, para. 8)	<ul style="list-style-type: none"> <li>• Providing the agency entrusted with the investigation of corruption offences with legal authority to require financial institutions, through judicial order, to provide relevant information as follow-up to a request</li> </ul>
Dual criminality (art. 46, para. 9)	<ul style="list-style-type: none"> <li>• Affording mutual legal assistance in the absence of dual criminality</li> <li>• Interpretation of the dual criminality requirement focusing on the underlying conduct and not the legal denomination of the offence</li> </ul>
Central authorities (art. 46, para. 13)	<ul style="list-style-type: none"> <li>• Proactive role of the central authority in engaging in formal and informal communication with relevant foreign counterparts</li> <li>• Development of guidelines on receiving and processing mutual legal assistance requests and training practitioners on these procedures</li> </ul>
Form of a request (art. 46, para. 14)	<ul style="list-style-type: none"> <li>• Ability to accept requests submitted by fax and e-mail and orally</li> <li>• Ability to receive requests in languages other than the national language of the requested country</li> </ul>
Expeditious execution of requests for mutual legal assistance (art. 46, para. 24)	<ul style="list-style-type: none"> <li>• Informal consultations with foreign authorities before making formal requests</li> <li>• Review of draft requests before their formal submission</li> <li>• Short time frame for executing requests for mutual legal assistance as a result of the judicial workflow process</li> <li>• Use of channels such as INTERPOL or regional bodies to expedite the provision of assistance with counterparts of the same region</li> </ul>
Consultations (art. 46, para. 26)	<ul style="list-style-type: none"> <li>• Frequent informal consultations with foreign authorities before refusing an international cooperation request</li> </ul>
Law enforcement cooperation (art. 48, paras. 1 and 2)	<ul style="list-style-type: none"> <li>• Flexible approach conducive to effective cooperation with other national law enforcement authorities, particularly regarding the tracing and freezing of assets</li> <li>• Membership in international groups, regional bodies or networks to facilitate cooperation</li> <li>• Domestic cooperation among the police, customs and border authorities to exchange information</li> </ul>

<i>Article of the Convention</i>	<i>Identified good practices in implementation</i>
Special investigative techniques (art. 50)	<ul style="list-style-type: none"> <li>• The acceptance, posting or exchange by individual governments of foreign experts to assist in law enforcement cooperation</li> <li>• Setting up a network of liaison officers around the world and allowing the liaison officers to act on behalf of the police of any other regional partner</li> <li>• Establishment of cooperation measures at both the national and international levels, combined with the exchange of expertise in the investigation of corruption cases, to assist law enforcement counterparts</li> <li>• A comprehensive range of investigative tools for international law enforcement cooperation</li> <li>• The practice of decentralizing incoming requests for law enforcement cooperation to ensure expeditious responsiveness</li> <li>• Capacity-building assistance provided to law enforcement authorities in developing countries</li> <li>• Enhancing channels for subregional cooperation</li> <li>• Adoption of guidance on the application of special investigative techniques in the framework of international cooperation</li> </ul>

5. The 55 newly completed country reviews showed that, as noted in previous reports, the challenges and good practices identified tended to apply to the same few articles (see figures I and II below). Therefore, in their efforts to address challenges, States may wish to draw on the good practices of other countries.

Figure I  
**Challenges in the implementation of chapter IV of the Convention, by article**

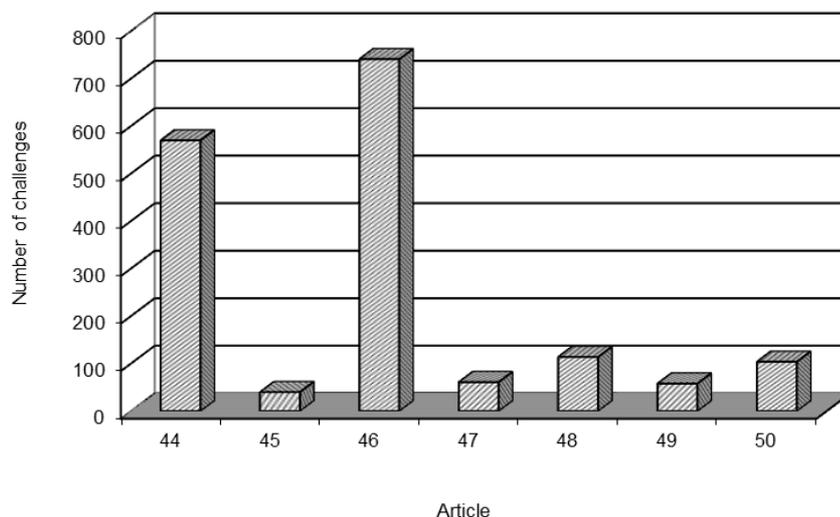
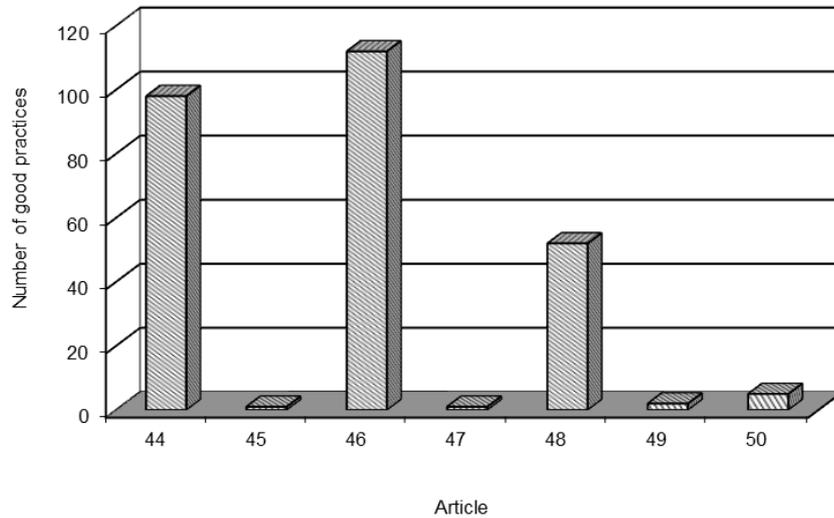


Figure II  
**Good practices in the implementation of chapter IV of the Convention, by article**



### III. Implementation of chapter IV of the Convention

#### A. Extradition

6. Figures III and IV below show the challenges and good practices in the implementation of the provisions of article 44.

Figure III  
**Challenges in the implementation of article 44 of the Convention, by paragraph**

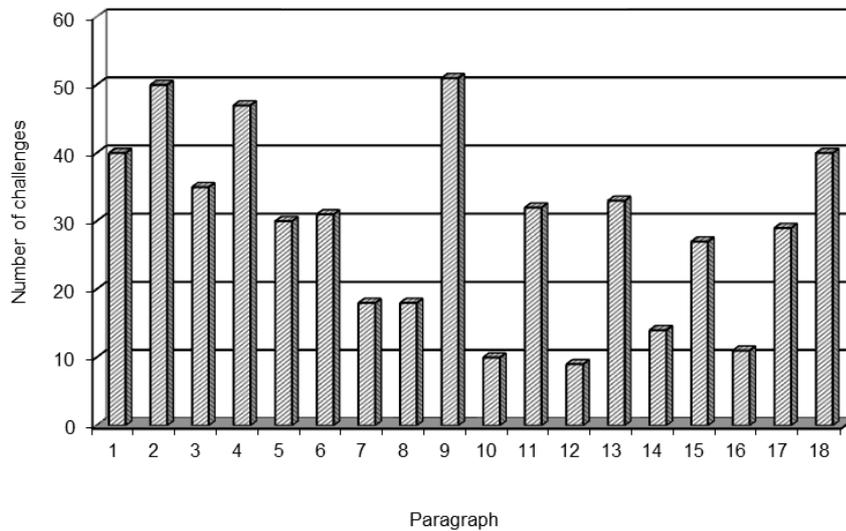
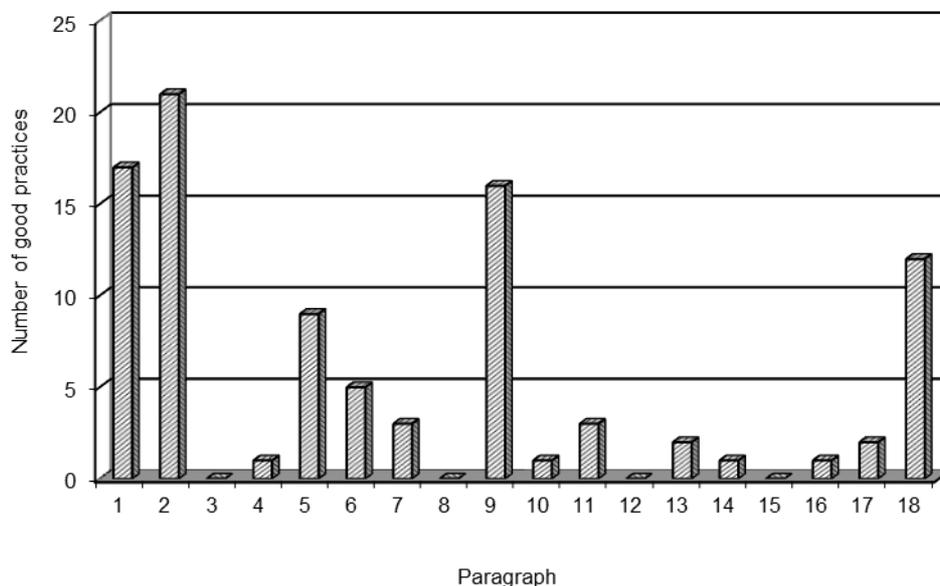


Figure IV  
**Good practices in the implementation of article 44 of the Convention, by paragraph**



7. The majority of States parties under review regulated extradition in either the Constitution, laws on extradition or international cooperation, or the code of criminal procedure. In some cases, two or more of these sources would be applicable to extradition. In common-law States, the extradition legislation often contained a schedule of States to which extradition could be granted, such as Commonwealth or treaty States. According to the statutes of some countries, extradition was conditional on the existence of an agreement or treaty with the foreign State. Other countries provided that the statute applied in the absence of bilateral or multilateral agreements or, where extradition was not conditional on the existence of a treaty, that assistance could be provided based on a declaration of reciprocity. A less prevalent approach was that the Convention against Corruption applied to extradition requests based on the Convention, provided the dual criminality requirement was satisfied.

8. With regard to non-binding and regional arrangements, countries of the current sample made reference to the London Scheme on Extradition within the Commonwealth, the Council of the European Union framework decision 2002/584/JHA on the European arrest warrant, the Southern African Development Community (SADC) Protocol on Mutual Legal Assistance in Criminal Matters, the Central American Convention on Extradition, the Central American Treaty on Arrest Warrants and Simplified Extradition, the Inter-American Convention on Extradition signed at Montevideo in 1933, the Inter-American Convention on Extradition, the Inter-American Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, the European Convention on Extradition and the Extradition Treaty of the Community of Portuguese-speaking Countries, as well as ad hoc multilateral treaties, such as the multilateral agreement on simplified

extradition between Argentina, Brazil, Portugal and Spain, the Extradition Treaty between the Southern Common Market (MERCOSUR) and associate countries (Argentina, Bolivia (Plurinational State of), Brazil, Paraguay and Uruguay), the Agreement on Extradition between Bolivia (Plurinational State of), Colombia, Ecuador, Peru and Venezuela (Bolivarian Republic of) and the Treaty on International Penal Law between Argentina, Bolivia (Plurinational State of), Paraguay, Peru and Uruguay.

9. The majority of States parties in this sample used, in their legislation or treaties, a threshold approach to the definition of “extraditable offences”, in which extraditable offences were those punishable by deprivation of liberty for a period of at least one year. In most States, all corruption offences were therefore generally extraditable; in some States, recommendations were given to ensure that such offences were extraditable. Other States diverged slightly and applied a different threshold to the extradition of nationals and non-nationals. Some States parties reported a low extradition rate in their countries, with two States noting that, in the past five years, no extradition requests had been received.

10. Some States used a list-based approach to define extraditable offences in their legislation or treaties, although offences that were not included in the lists could, in some cases, be considered to be extraditable offences as long as the element of dual criminality was fulfilled. Insofar as not all corruption offences were covered in those lists, it was recommended that those States should include all offences covered by the Convention against Corruption as extraditable offences in new treaties to ensure that the treaties were applied in line with the Convention, that they should add offences to existing treaties or that they should consider the introduction of a threshold approach.

11. Very few countries could confirm that each of the offences to which the Convention applied was deemed to be included as an extraditable offence in all extradition treaties to which that State was a party, as foreseen in article 44, paragraph 4, of the Convention. In exceptional instances, money-laundering was deemed to be included in any extradition treaty by virtue of relevant legislation. Some States parties confirmed that they had included offences covered by the Convention as extraditable offences when concluding new treaties on extradition subsequent to becoming a State party to the Convention.

12. A majority of States parties made “accessory offences” extraditable through an express provision in domestic law or the direct application of the Convention.

13. Dual criminality was reported as being a standard condition for extradition for the majority of States. However, some States could waive the requirement if the requesting State guaranteed reciprocity on the same issue. Other States parties could achieve the same aim through direct application of the Convention, and some did so when the conduct was deemed extraditable under an extradition treaty or when an extradition treaty excluded the application of the dual criminality principle. In four countries from the current sample, concerns were expressed over the lack of full criminalization of corruption offences, and as a result, possible problems with the dual criminality requirement.

14. Most States parties would not reject a request on the sole ground that the offence involved fiscal matters. Only in some countries was it explicitly stated that offences involving fiscal matters were also extraditable. In one country, the relevant legislation explicitly excluded the possibility to grant extradition for offences on

issues of taxes and levies, customs and foreign exchange, but the authorities clarified that extradition would not be refused if such offences were also related to other extraditable offences (accessory extradition), since the respective provision would be read in conjunction with the treaty obligations of that country under the Convention. In a few countries, no specific measures had been taken for the implementation of the provision. In such cases, recommendations were made to encourage those States to adopt specific measures.

15. The majority of States parties would not grant extradition if there were concerns of discrimination related to the request. This was deemed to be the result of either general constitutional clauses prohibiting discrimination or specific regulations to that effect in extradition laws, criminal procedure codes or extradition treaties. Only two countries did not have such a provision.

16. With four exceptions, nearly all States parties in the current sample included the commission of a political offence or political motives among the grounds for refusing a request for extradition. In the majority of extradition treaties presented by States parties, the definition of a political offence was not included. In such cases, the notion of “political offence” was decided on a case-by-case basis, often relying on criteria elaborated in jurisprudence. While in the majority of States no corruption offence would be treated as a political offence, in others recommendations were made to clarify the law in this sense, including recommendations to define political offences in legislation or to monitor the application of the exception.

17. Among the newly completed country reviews, most States parties could not extradite their nationals under any circumstances, or could only do so if it was explicitly envisaged in applicable treaties. In some States, extradition of nationals was possible if a treaty allowed so, provided they would subsequently be allowed to serve the sentence in their country, or if the person sought for extradition gave his or her consent. In other States, extradition of nationals was only possible within the same region. However, a number of States could extradite their nationals. In one State of the current sample, citizens could not be extradited if the requesting Government was either authoritarian in nature or non-democratic in form.

18. In most States parties, any refusal to grant extradition based on the grounds of nationality would trigger domestic prosecution, as envisaged in article 44, paragraph 11. In some States, the principle of “extradite or prosecute” was regulated in the legislation or the Constitution; in others, it was applied based on treaties or as a general principle of law. Whether dual criminality was satisfied was one of the considerations that determined the obligation to initiate proceedings. Several countries of the current sample, had not established any obligation to submit such cases to their authorities, and recommendations were made to that effect.

Box 1

**Example of the implementation of article 44 of the Convention**

One State party confirmed that it did not consider corruption offences to be political offences, because political corruption offences were not usually defined in treaties. At the regional level, it was advocating for a declaration underscoring the principle of article 44, paragraph 4, that corruption offences should not be considered to be political offences.

19. Several States parties made reference to the possibility of temporary surrender of nationals on condition that they be returned after trial to serve the sentence imposed in the requesting State (art. 44, para. 12). Some of them addressed it in the context of regional treaties or arrangements.
20. Many States parties were not able to enforce a foreign sentence in cases where they rejected a request for extradition (made for enforcement purposes) on the grounds of nationality. Of the current sample, approximately half of the States parties either did not have any regulation on the enforcement of a foreign judgement or had only provisions in some bilateral treaties.
21. Many States parties did not use the Convention as a basis for extradition. Of those countries that could use the Convention as a legal basis, one had done so in at least two extradition cases, while most had not yet received or sent a request on the basis of the Convention. A few of the countries in the current sample did not require a treaty basis and applied the principle of reciprocity in extradition cases. Some common-law countries did not require a treaty base for extradition between Commonwealth countries, while for extradition to countries not belonging to the Commonwealth a treaty base was required. A few States parties had enabled their competent authorities to make an ad hoc declaration of other countries as “extradition countries” or “comity countries”. Most States parties had concluded between 10 and 100 extradition treaties. However, some States parties reported that they had not yet concluded any bilateral treaties or had concluded less than 10 treaties.
22. A number of States indicated that they were in the process of negotiating new bilateral treaties to enhance the effectiveness of extradition.
23. There were substantial divergences regarding the average duration of extradition proceedings, which ranged from 2 to 18 months. Several countries had time frames in their legislation, providing strict time limits for detention, appeals and proceedings as a whole. One State confirmed that currently a reform was under consideration that would expedite the procedure further.
24. About half of the States parties under review envisaged simplified proceedings, based on the consent of the person to be extradited or on privileged cooperation with specific countries. In such a case, applications for waiver of extradition and consent to surrender could be made in oral or written form to a judge, were final and could not be withdrawn. Several States members of the European Union mentioned that extradition requests in execution of the European arrest warrant could be resolved within three months, while requests from States not belonging to the European Union took approximately one year to be processed. Similar figures were given for countries adhering to the Schengen Agreement. The Nordic arrest warrant foresaw a simplified proceeding on the basis of consent in three days and, in all other cases, in three weeks.
25. Some States parties did not require any evidence about the commission of the offence, while many others set standards such as “probable cause” or “prima facie case”. There was little variation with regard to due process guarantees. Most countries deemed it sufficient if such guarantees were provided for in any part of the local framework as long as they were applicable to extradition proceedings. Some countries also had relevant regulations in their extradition laws. Great differences were found with regard to the right to appeal against the extradition decision. In

some countries such a right existed, while in many others it did not. Almost all States parties had measures in place to ensure the presence of the sought person, either through the criminal procedure laws or in the international cooperation laws or extradition treaties.

26. The requirement to engage in consultations with the requesting State before refusing extradition was regulated in legislation or treaties or was applied as a matter of practice. In a number of countries of the current sample, only the request for additional information was regulated, not consultations before refusal, and a few countries did not have any relevant regulations on either aspect.

27. Only a few States of the current sample presented statistics on extradition cases, while some cited case examples. The former trend that the majority of countries did not have specific statistics for extradition for corruption offences was confirmed. A number of countries stated that no extradition cases on corruption offences had been recorded yet.

## **B. Transfer of sentenced persons**

28. Most States parties had a legal framework for the transfer of sentenced persons in bilateral and regional agreements. Some countries had enacted transfer of prisoners acts or provisions within other laws. In earlier reports, it was found that the number of treaties on this matter varied considerably, with some countries having entered into up to 28 bilateral agreements. Countries of the current sample had only between 1 and 10 bilateral agreements. Two States were not yet parties to any such agreement. Among the regional agreements, the Inter-American Convention on Serving Criminal Sentences Abroad, the Council of Europe Convention on the Transfer of Sentenced Persons and the Scheme for the Transfer of Convicted Offenders within the Commonwealth were mentioned. Some countries could also transfer sentenced persons in the absence of a treaty: generally, no statistics were provided in that regard, but several country reports contained case examples.

## **C. Mutual legal assistance**

29. Figures V and VI below show the challenges and good practices in the implementation of the provisions of article 46.

Figure V  
**Challenges in the implementation of article 46 of the Convention, by paragraph**

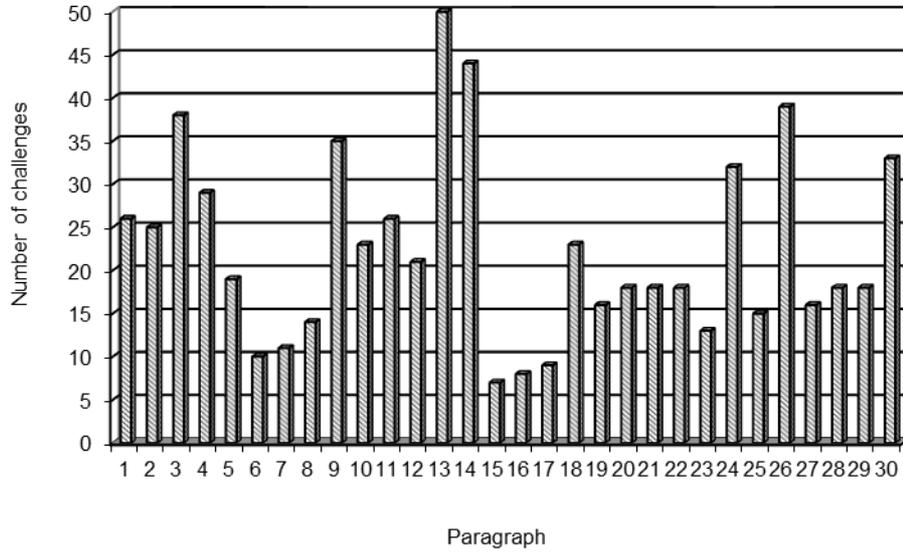
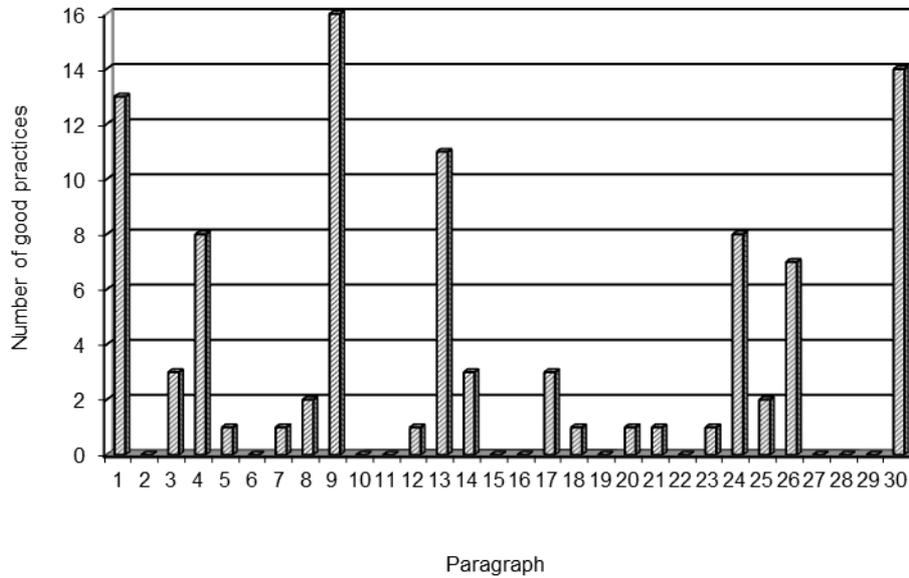


Figure VI  
**Good practices in the implementation of article 46 of the Convention, by paragraph**



30. The trends in similarities and differences in the implementation of article 46 remained largely the same compared with previous thematic reports. Forty-six States parties from the current sample had adopted legislation regulating the procedures and requirements of mutual legal assistance to different degrees of detail. In many cases, it was difficult to assess the effectiveness of the implementation of article 46 by States parties owing to an absence of relevant data and case examples.

31. Most States did not require a treaty base for mutual legal assistance, but could afford assistance based on the principle of reciprocity. Six States parties of the current sample facilitated mutual legal assistance primarily through multilateral and bilateral treaties or on a case-by-case basis. Only a few States required both reciprocity and a treaty basis to provide assistance. Some States could provide assistance based on existing multilateral instruments and apply domestic legislation based on the principle of reciprocity in the absence of any treaties between them and the requesting countries. Thirty-nine States parties of the current sample confirmed their ability to use the Convention as a legal basis for mutual legal assistance.

Box 2

**Example of the implementation of article 46, paragraph 1**

One State did not limit the application of article 46 exclusively to international cooperation in criminal matters, but extended its application to international cooperation in administrative matters.

32. Thirty-two States parties of the current sample could grant mutual legal assistance in relation to alleged offences involving legal persons. A few States could provide only limited types of assistance in that regard.

33. The spontaneous transmission of information to foreign authorities, envisaged in article 46, paragraphs 4 and 5, of the Convention, has repeatedly been considered a good practice. The procedures in place for the exchange of information without prior request were in most cases not specifically regulated. Yet, five States addressed the right to exchange information spontaneously in detail in their domestic legislation, and many others indicated that they had used this practice on the basis of direct application of the Convention.

34. Bank secrecy did not impede the provision of assistance in most States parties of the current sample. However, in some States there were procedural problems in providing original banking documents.

35. In 22 States parties, dual criminality was a requirement for granting mutual legal assistance, although a flexible approach was used by some of them, allowing for some types of assistance to be provided in the absence of dual criminality.

36. In two States, the dual criminality requirement could be waived at the discretion of the Attorney General. In another State, the dual criminality requirement applied only to requests based on the principle of reciprocity. One State reported that it required dual criminality as a matter of practice, although, in the absence of dual criminality, mutual legal assistance could be afforded on the basis of the Convention. For several States, mutual legal assistance requests involving coercive measures were subject to the principle of dual criminality, while non-coercive measures could be taken even in the absence of dual criminality.

37. Regarding the transfer of detainees for the purpose of assisting with investigations and in the absence of a regulation in bilateral or multilateral treaties, many States directly applied the provisions of article 46, paragraphs 10-12, of the Convention. Fourteen States from the current sample had domestic legal provisions establishing a safe conduct guarantee. The procedural requirements and protective measures regarding the transfer of prisoners were adequately covered in most cases.

38. Central authorities continued to play a crucial role in the cooperation between requesting and requested States. In general, central authorities were responsible for providing their counterparts with updated guidelines, contact information and follow-up procedures. The Ministry of Justice was the most frequently designated central authority, followed closely by the office of the Attorney General. In one State, a special committee had been established to execute mutual legal assistance requests. In another State, the national anti-corruption authority was the designated central authority for mutual legal assistance under the Convention. In one State, both the Ministry of Justice and the national anti-corruption authority had been afforded functions of the central authority. In a few States, the office of the Attorney General was the designated central authority for pretrial requests and the Ministry of Justice was the central authority for legal assistance requests during the trial period and with regard to the execution of court judgements. However, only 28 States of the current sample had notified the Secretary-General of their designated central authorities for mutual legal assistance.

39. Regarding the channels for the submission of mutual legal assistance requests, most States parties allowed direct communication between central authorities, while some required the use of diplomatic channels. Twenty-three States indicated their ability to accept urgent requests through the International Criminal Police Organization (INTERPOL).

40. With regard to language and format of mutual legal assistance requests, most States parties required that requests for cooperation be accompanied by a translation into the official language of the requested State. Some States agreed to receive requests in English, while a few States parties accepted requests if submitted in the official language of the requested country, in English or in another official language of the United Nations.

Box 3

**Examples of the implementation of article 46, paragraph 14, of the Convention (on languages)**

In one State, requests received in the national language were normally acceptable, while English could be used in exceptional circumstances.

One State reported accepting requests submitted in English, French and the official languages of its neighbouring countries.

41. Generally, States would accept requests only in writing. However, 19 States parties from the current sample would accept oral requests, followed by written confirmation. Many confirmed that requests submitted electronically would also be accepted.

42. The majority of States would endeavour to execute a request in accordance with the procedures specified in the request. In that regard, procedures were characterized by flexibility as long as such requirements from the requesting State were not in conflict with domestic legislation or constitutional principles. The decision on the execution of such procedures was normally taken on a case-by-case basis. However, some countries reported that they were only able to execute requests in accordance with the procedures established under domestic law.

43. Hearing witnesses by videoconference could be used under the domestic law of 19 States parties, thereby enabling speedy procedures while ensuring the protection of witnesses. Some States indicated that the use of videoconferencing was not prohibited in domestic legislation. Three States reported that videoconferencing could be used in the context of mutual legal assistance if requested, but that evidence given by videoconferencing could not be accepted in domestic trials. In two States, hearing witnesses by videoconferencing was explicitly prohibited by domestic legislation.

44. Domestic law, treaties or the direct application of the Convention ensured respect of the speciality rule (i.e. the use of information and evidence only for the investigation or proceedings stated in the request) and the confidentiality of requests in the vast majority of States.

45. The grounds for refusing assistance foreseen in the majority of States parties were in line with the Convention. States distinguished between mandatory or optional grounds for refusal in their applicable treaties or laws, keeping the mandatory ones as limited as possible.

46. In the majority of States, assistance would not be refused on the sole ground that the offence also involved fiscal matters. Most countries would also provide reasons for refusal or postponement. Although they had not included specific provisions in their legislation or treaties, they would apply the Convention directly or comply with the provision as a matter of practice. Nevertheless, specific recommendations were issued to some States to include such provisions in the domestic legislation.

Box 4

**Example of the implementation of article 46, paragraph 22, of the Convention**

One country would generally refuse requests involving fiscal matters, but that principle would not be applicable to requests based on the Convention.

47. While in most States the timely execution of mutual legal assistance requests and responses to status updates did not appear to be addressed in internal legislation or guidelines, the provision appeared to be implemented largely in practice.

48. The length of time between the receipt and execution of a request depended on its nature or complexity. The average time needed to respond to a request was up to six months and the maximum time needed was one year. Given many States' scarce resources and capacity, some of them gave priority to cases involving serious criminal offences or those involving evidence that was at risk of being concealed or destroyed or where the safety of witnesses or the public was at risk. Some States also prioritized requests whose urgency was indicated by the requesting State at the

time of the submission of the request. Similarities in the legal systems involved had a positive impact on the expeditious processing of the request.

49. While most States did not have specific legislation on the conduct of consultations prior to the refusal or postponement of requests, some States could carry out these consultations by direct application of the Convention. Other States could also carry them out as a matter of practice.

50. Safe conduct of witnesses was addressed in the vast majority of States in domestic legislation or treaties, but these provisions were not always applied in practice. In some States, it was recommended to amend the relevant legislation in line with the Convention regarding the period after which safe conduct would cease.

51. The general rule was that ordinary costs related to the execution of a mutual legal assistance request were incurred by the requested State with the possibility of other arrangements for extraordinary costs. At times, arrangements were made on a case-by-case basis. Mutual legal assistance treaties, legislation and some networks foresaw consultations in case of extraordinary expenses incurred by the requested State.

Box 5

**Examples of the implementation of article 46, paragraph 28, of the Convention**

One State bore the ordinary costs of executing requests, but did not bear the costs relevant to the summoning of witnesses to the territory of the requesting States.

One State reported the practice of covering the costs of providing assistance even when they were very high (e.g. judicial fees).

52. With regard to providing the requesting States parties with copies of government records, documents or information, most States indicated that documents available to the general public would be provided. Some States reported that special provisions on records of government agencies existed in their mutual legal assistance treaties. Variations were found in the ways and means of obtaining information and providing it to the requesting State. One State could provide confidential information to the requesting State where the requesting State provided guarantees to respect confidentiality. Another State reported that a court order would be required in order to provide information that was not available to the general public.

Box 6

**Example of the implementation of article 46, paragraph 29, of the Convention**

In one State, information that was not publicly available and was held by a public authority could be provided to the requesting country if such information could, under its domestic law, be transmitted to another public authority in that State.

53. As observed in previous thematic reports, it was difficult for some States to provide statistics or examples of how mutual legal assistance was implemented in practice. A centralized system of tracking and collating such statistics was recommended to some States.

54. The number of bilateral and regional treaties ratified by countries in the current sample varied between 0 and 48 treaties. Challenges were still present at both the legislative and practical levels. In that regard, using the Convention as a basis for legal assistance and the direct application of its self-executing provisions were often reported as good practices.

#### **D. Transfer of criminal proceedings**

55. The majority of States parties noted that their legal systems did not contain any provision regulating the international transfer of criminal proceedings. Other countries had specific provisions in their legislation or noted that the possibility of transferring proceedings was foreseen in bilateral or multilateral treaties. Some countries mentioned that the European Convention on the Transfer of Proceedings in Criminal Matters was a key instrument in facilitating the transfer of proceedings between States.

#### **E. Law enforcement cooperation**

56. Figures VII and VIII below show the number of challenges and good practices in the implementation of the provisions of article 48.

Figure VII

#### **Challenges in the implementation of article 48 of the Convention, by paragraph**

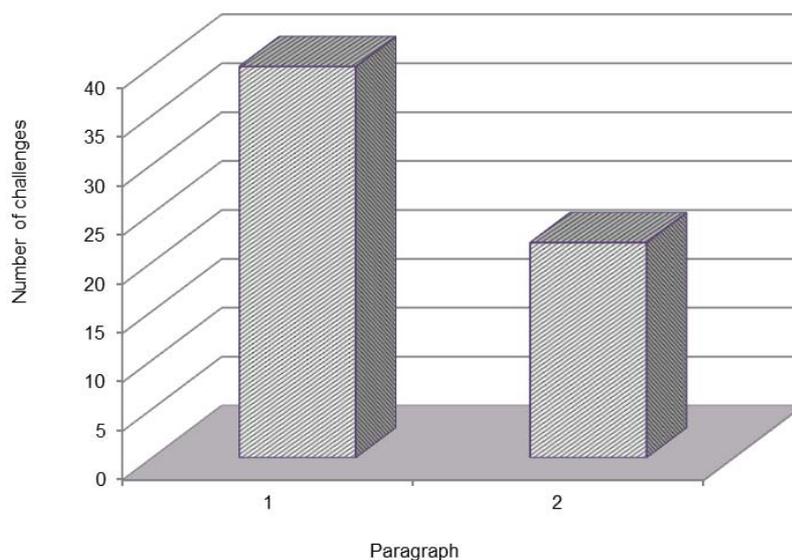
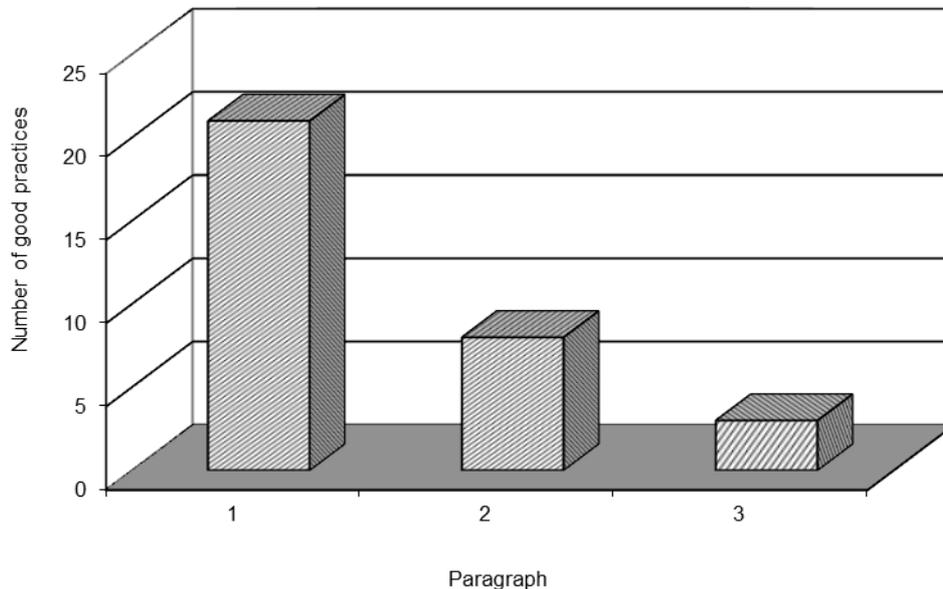


Figure VIII  
**Good practices in the implementation of article 48 of the Convention, by paragraph**



57. Law enforcement cooperation was not necessarily based on national legislation. It was generally carried out through agreements, through networking arrangements or on a case-by-case or ad hoc basis. In the current sample, a number of law enforcement institutions had concluded memorandums of understanding or service-level agreements. The majority of financial intelligence units were either members of or had applied for membership in the Egmont Group of Financial Intelligence Units and all used INTERPOL. Some countries had concluded bilateral agreements, while others based their law enforcement cooperation on their mutual legal assistance treaties. Although some States parties could use the Convention as a legal basis for law enforcement cooperation, many had not done so. In addition to the regional networks and organizations mentioned in earlier reports, States mentioned the Association of Caribbean Commissioners of Police, the Caribbean Community and its Intelligence Committee, the Joint Regional Communications Centre, the Regional Intelligence Fusion Centre, the Southern African Forum against Corruption, the Southern African Development Community Police, the Indian Ocean Commission, the International Association of Chiefs of Police, Eurojust, the European Judicial Network, the Task Force on Organized Crime in the Baltic Sea Region, COMIFROM (Colombia, Costa Rica and Panama), the Network of International Legal and Judiciary Cooperation of the Community of Portuguese-speaking Countries, the European Partners against Corruption and European contact-point network against corruption, the South-East European Law Enforcement Centre and the Eastern African Police Chiefs Cooperation Organization. Some States were actively engaged in the Asset Recovery Inter-agency Network for Asia and the Pacific, the Pacific Islands Chiefs of Police,

the Schengen Information System, the Bureau de Cooperation Policière (including some Schengen member countries) and the Association of Pacific Island Financial Intelligence Units.

58. Some States parties provided information on inquiries that had been effectively conducted in cooperation with other States.

59. A third of States parties reported the posting of liaison officers of the police or prosecution to other countries or international organizations. In the current sample, six countries had posted legal and police attachés in a number of countries.

Box 7

**Legislative and other institutional arrangements for the implementation of article 49 of the Convention**

One State party had specific legislation establishing the possibility of creating joint investigation teams with foreign States. It had also established a protocol for the exchange of evidence and the sharing of forensics to facilitate cooperation. In addition, a guidance manual for police and prosecution services for bilateral cooperation had been issued to streamline cooperation.

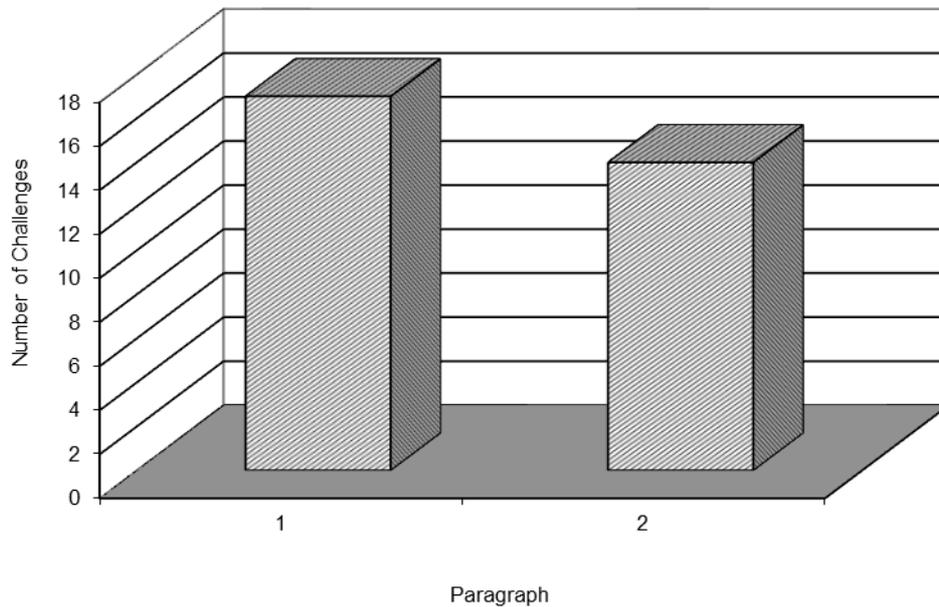
## **F. Joint investigations**

60. Approximately half of the States parties had provisions in their domestic law, had adopted agreements or could directly apply the provisions of the Convention for the purpose of conducting joint investigations. In other States, joint investigations could be conducted on a case-by-case basis, and a few of them had experience in conducting joint investigations in corruption cases. Some States mentioned that they had no such experience in the context of corruption investigations. In one of the States, joint investigative teams were frequently established in the framework of Eurojust and the system of Nordic joint investigations.

## **G. Special investigative techniques**

61. Figure IX below shows the number of challenges in the implementation of article 50.

Figure IX  
**Challenges in the implementation of article 50 of the Convention, by paragraph**



62. Special investigative techniques were regulated in the legislation of the majority of the States of the current sample, but to different degrees of detail. Some States had comprehensive provisions on the use of such techniques, while others covered only some limited aspects. Many States permitted the use of special investigative techniques as a matter of practice. In a number of States parties from the current sample, the techniques were authorized solely with respect to specific criminal offences. In some States, only a limited number of special investigative techniques were available. In a few States, only some law enforcement bodies were permitted to use special investigative techniques, and these did not, in all cases, include the bodies mandated to investigate corruption offences.

63. International agreements or arrangements on the use of such techniques were required by some States. In other States, the techniques could be used at the international level in the absence of relevant international agreements and on a case-by-case basis, and, in a number of States parties, only on condition of reciprocity.

64. A lack of resources and technological capacities, a lack of awareness and problems in inter-agency coordination were frequently reported as obstacles to the successful use of special investigative techniques.

65. Recommendations were generally made to develop legislation to address special investigate techniques and the admissibility of evidence derived therefrom and to conclude more agreements to enhance their use in the context of international cooperation.