



# Conference of the States Parties to the United Nations Convention against Corruption

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## Implementation Review Group

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

## Explanatory note on good practices in relation to the set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption

Note by the Secretariat

### *Summary*

The present explanatory note contains additional information on the good practices included in the set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption. It has been prepared pursuant to a request made to the secretariat during the second resumed ninth session of the Implementation Review Group, held in November 2018, to elaborate on the conclusions reached, which would help to further clarify the information and, in particular, the good practices identified in the first-cycle country reviews, in line with the corresponding provisions of the Convention. The present document should be read in conjunction with the note by the Secretariat entitled “Set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption” ([CAC/COSP/IRG/2019/3](#)), which is before the Implementation Review Group for its consideration, and the updated set of non-binding recommendations and conclusions contained in conference room paper CAC/COSP/IRG/2019/CRP.3, which was issued for the purpose of inviting additional comments from States parties.

\* [CAC/COSP/IRG/2019/1](#).



## I. Introduction

1. The set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption has been prepared in accordance with resolution 6/1 of the Conference of the States Parties to the Convention, in which the Conference requested the Implementation Review Group to analyse the outcomes of the first-cycle country reviews in terms of identified successes, good practices, challenges, observations and technical assistance needs, and to submit a set of non-binding recommendations and conclusions based on lessons learned to the Conference for its consideration and approval.
2. In its decision 7/1, the Conference took note of the set of non-binding recommendations and conclusions, as reviewed by the Implementation Review Group at its resumed eighth session ([CAC/COSP/2017/5](#)).
3. The set of non-binding recommendations and conclusions, incorporating the comments received, was subsequently made available to the Group at its second resumed ninth session in document [CAC/COSP/IRG/2018/9](#), where it was in principle approved for transmission to the Conference, on the understanding that the document would be further reviewed and amended, as necessary, in the light of the newly completed country reviews and again be circulated to States parties for further comment and made available to the Group at its tenth session.
4. Accordingly, the updated set of non-binding recommendations and conclusions was circulated in a conference room paper for the purpose of inviting additional comments from States parties and was brought to the attention of States parties for their further consideration through a note verbale, which was circulated to States parties on 7 January 2019.
5. The present explanatory note contains additional information on the good practices included in the set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption. It has been prepared pursuant to a request made to the secretariat during the second resumed ninth session of the Implementation Review Group, held in November 2018, to elaborate on the conclusions reached, which would assist in further clarifying the information and, in particular, the good practices identified in the first-cycle country reviews, in line with the corresponding provisions of the Convention.
6. The present document should be read in conjunction with the note by the Secretariat entitled “Set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption” ([CAC/COSP/IRG/2019/3](#)), which is before the Implementation Review Group for its consideration, and the updated set of non-binding recommendations and conclusions, as contained in the aforementioned conference room paper ([CAC/COSP/IRG/2019/CRP.3](#)).

## II. Analysis of good practices identified regarding the implementation of chapters III and IV of the Convention

7. Set forth in sections III and IV below are the good practices identified in the first-cycle country reviews regarding the implementation of, respectively, chapters III and IV of the Convention, as contained in the updated set of non-binding recommendations and conclusions ([CAC/COSP/IRG/2019/CRP.3](#)). Under the good practices, as identified in the reviews, are explanatory comments elaborating on them, taking into account the levels of obligation of the relevant articles of the Convention.

### III. Elaboration on the good practices identified regarding chapter III

#### A. Bribery offences and trading in influence (articles 15, 16, 18, 21)

##### **Wide scope of application of anti-bribery legislation to national and foreign public officials and officials of public international organizations, as well as to the private sector**

8. *Level of obligation.* It should be noted that the relevant articles of the Convention carry different levels of obligation. While article 15 and article 16, paragraph 1, contain binding obligations for States parties, the requirements under article 16, paragraph 2, and articles 18 and 21 are only for States to “consider” adopting the relevant offences.

9. While States parties use different approaches to define “public official”, in a number of States the reviews positively noted the comprehensive and far-reaching definition of that term, which went beyond the category of national officials subject to the bribery offences and also included foreign public officials and officials of public international organizations, as well officials in the private sector. These broad definitions were considered to eliminate any ambiguity as to the coverage of the different categories of officials under the Convention. In particular, this approach eliminated narrower or more restrictive enumerations adopted by some States parties of the categories of officials or their respective functions, as well as, in the case of bribery in the private sector, any prerequisite of an inherent link to conduct, acts or omissions in the public sector. The above-mentioned approach was considered to cover more clearly the different bribery offences established under the Convention, while allowing some degree of flexibility owing to the broad nature of the approach and wide scope of officials falling within its ambit.

10. For example, in some States all persons performing public functions in a foreign State or international organization were considered equivalent to civil servants within the meaning of the criminal code, and this broad wording was used to expand the circle of persons falling within the list of public officials, thus subjecting them to all the elements of the domestic bribery offence.

11. Likewise, some States parties made no distinction between public officials and private employees for the purposes of corruption offences. Among those, a few had adopted laws that use the terms “official” or “functionary” (*personne chargée d’une fonction*) as encompassing public officials as well as private sector managers, employees, representatives, or anyone employed or performing a private sector function. In several reviews this approach was found to ensure coverage of the widest scope of private sector officials, thus avoiding issues encountered in several States where the national law covers an incomplete range of legal entities, regulates the conduct of only selected categories of potential receivers of bribes or uses narrower definitions of the persons concerned.

#### B. Laundering of proceeds of crime (article 23)

##### **Comprehensive legal framework and “all crimes approach”, despite not being specified by the Convention; anti-money-laundering regulations in place and enforced**

12. *Level of obligation.* Article 23 contains different levels of obligation. While most of the provisions of the article are mandatory – that is, paragraph 1 and paragraph 2 (a) to (d) contain binding obligations for States parties, in accordance with the fundamental principles of domestic law and subject to the basic concepts of legal systems – the exception for self-laundering in paragraph 2 (e) is optional; it applies if required by the fundamental principles of domestic law.

13. There are different methods of determining the predicate offences of money-laundering, some of which fall short of meeting the Convention requirements. A significant number of States parties have adopted an “all crimes approach” that does not restrict the application of the money-laundering offence to specific predicate offences or categories of predicate offences. Pursuant to this approach, the money-laundering offence is applicable to all offences that are criminalized under the relevant national law and generate some sort of proceeds, including corruption offences established in accordance with the Convention. This method, despite not being specified by the Convention, was considered the one that best served the purposes of article 23, paragraph 2 (a) and (b), namely, to apply the money-laundering provisions to the widest range of predicate offences and include, at a minimum, a comprehensive range of offences established in accordance with the Convention. The approach assumes that States parties have fully complied with their criminalization obligations, although that is not always the case, for example, regarding the bribery of foreign public officials or embezzlement. It avoids situations, encountered in a number of States parties, where national legislation does not include all offences under the Convention as predicate crimes, or where the list of offences includes offences such as bribery, but not other Convention offences.

### **C. Statute of limitations (article 29)**

#### **Sufficiently long limitations period to allow for investigations and prosecutions of offences under the Convention; interruption or suspension mechanisms**

14. *Level of obligation.* Article 29 sets forth mandatory obligations for States parties.

15. There was considerable variation among States parties with regard to the length and application of the statute of limitations for beginning criminal proceedings for offences established in accordance with the Convention. Although the concept of a “long” period of limitations, in article 29, is not fixed, the existence of a sufficiently long period of limitations in the context of the individual State was generally considered conducive to the full prosecution of corruption cases, even if the period did not specifically target corruption offences. The adequacy of the period of limitations was assessed, generally, taking into account the number of criminal cases and law enforcement capacities of each individual State and ensuring a fair balance between the interests of swift justice, closure and fairness, and the time required to finalize often complex corruption cases that may involve multiple jurisdictions.

16. While the absence of a limitations period for corruption offences was positively noted, good practices were also identified in countries that had adopted interruption or suspension mechanisms (for example, by an action of the relevant prosecution bodies) or extended the limitations period in circumstances where the offender had fled the jurisdiction or could not be located, in line with the second part of article 29, which requires States to “establish a longer statute of limitations period or provide for suspension of the statute of limitations where the alleged offender has evaded the administration of justice.” Innovative practices were also recognized in States where the statute of limitations period for offences established in accordance with the Convention was not calculated from the date of commission of the crime, but from the date when the substantive effect of the offence came about, or where successive acts of bribery in the context of the same corrupt relationship were committed, which served as points of renewal of the limitations period. Other examples included not counting as part of the limitations period the time during which the implicated official still occupied his or her post, or considering the starting point for the limitations period to be the date of discovery of the offence and not the date of its commission.

## D. Prosecution, adjudication and sanctions (article 30)

**Innovative mechanisms to calculate fines and sentences (such as calculating fines based on the benefits obtained and intended), and the existence of guidelines or practice directives for prosecutors and judges providing instructions on the application of penalties depending, inter alia, on the gravity of the corresponding offence, with due respect for the independence of the judiciary (paragraph 1)**

17. *Level of obligation.* Paragraph 1 of article 30 sets forth a binding obligation for States parties.

18. Paragraph 1 of article 30 is a mandatory provision requiring States parties to give serious consideration to the gravity of the offence when deciding on the appropriate punishment.

19. While there is no definite standard against which the appropriateness of sanctions was measured during the reviews, the internal consistency and coherence of sanctions, effectiveness and proportionality were considered in the light of each State's legal framework and overall criminal justice system, taking into account paragraph 9 of article 30, which affirms the primacy of national law in respect of the determination of the nature and severity of punishment. Thus, States were given considerable discretion in determining sanctions and recommendations were not standardized, given the different needs and conditions of each State party.

20. While States parties were generally found to have strong sanctioning regimes in place for corruption and penalties were commended as adequate and sufficiently dissuasive, in several States parties good practices were identified with respect to innovative mechanisms to calculate fines and sentences. For example, an innovative approach followed by some States involves the application of a fine as a sanction for bribery and commercial corruption calculated on the basis of either the value of the gratification offered or received or of the proceeds of the offence or the intended benefit therefrom. Another example involves the determination of aggravated punishment for bribery depending on the amount of the benefit promised or received. In other States, pecuniary fines were regularly reviewed, updated or adjusted on the basis of different factors, depending on the severity of the crimes and prevailing economic conditions. Thus, the approaches for determining what would be considered a good practice were generally flexible, taking into account the impact of sanctions as deterrents in the context of the national systems.

21. In several States parties, measures to enhance consistency in sentencing and to encourage more uniform approaches to prosecution decisions were positively noted, taking into account the independence of the judiciary. Thus, the criminal law or jurisprudence of several countries established sentencing principles and specific criteria that courts were obliged to take into account, such as the nature and gravity of the offence and any mitigating or aggravating circumstances. The establishment of such criteria through sentencing guidelines or benchmark court decisions was generally welcomed as a measure promoting consistency and safeguarding against the possible arbitrary exercise of discretionary powers by the courts. Likewise, the use of prosecution guidelines, manuals, procedures and internal practice directives for prosecutors was generally considered a good practice aimed at enhancing consistency in prosecution decisions and eliminating any potential abuse of prosecutorial discretion.

**Appropriate balance concerning criminal immunities for offences under the Convention and the successful investigation or prosecution of public officials (paragraph 2)**

22. *Level of obligation.* Paragraph 2 of article 30 sets forth a binding obligation for States parties, in accordance with legal systems and constitutional principles.

23. Paragraph 2 of article 30 sets forth a mandatory obligation for States parties to establish or maintain, in accordance with legal systems and constitutional principles,

an appropriate balance between immunities or jurisdictional privileges accorded to public officials and the need to effectively investigate, prosecute and adjudicate Convention offences. The critical question regarding the application of article 30, paragraph 2, was whether the State party had achieved such an appropriate balance.

24. Good practices in this area were identified in a number of States parties that either accorded no relevant immunities or jurisdictional privileges to any individuals or public officials, that had abolished the relevant provisions (e.g., for high-ranking officials, including parliamentarians) or significantly limited the scope of immunities, for example by extending the relevant protections only to the Head of State during his or her tenure in office or to parliamentarians. Several good practices were also identified with respect to the procedure for lifting immunities in appropriate cases, for example, the possibility of taking investigative steps before the lifting of immunity, or the fact that relevant immunities had been lifted in previous cases, evidencing that the procedure could be administered without undue delay or hindrance in appropriate cases and that the relevant protections did not pose any obstacles to the effective investigation and prosecution of officials. A good practice could also be to establish guidelines and specific, objective criteria on the lifting of immunities in order to limit unjustified denials, as well as inconsistent and arbitrary decisions.

## **E. Freezing, seizure and confiscation (article 31)**

### **Comprehensive legislation for the confiscation of proceeds of crime, including value-based and non-conviction-based confiscation, and effective application of the legal framework in practice**

#### **Confiscation may be ordered even if the offender cannot be convicted; shifting evidentiary standards or presumptions facilitating confiscation**

25. *Level of obligation.* Article 31 sets forth binding obligations for States parties to take, to the greatest extent possible within domestic legal systems (para. 1) and in accordance with the domestic law (para. 3), measures to enable confiscation, identification, tracing, freezing or seizure of proceeds and instrumentalities of crime, and to regulate the administration of frozen, seized or confiscated property. While paragraphs 2, 4 to 7, 9 and 10 set forth mandatory obligations, the aspect of shifting evidentiary standards or presumptions facilitating confiscation (para. 8) is optional.

26. Article 31 of the Convention contains important provisions to prevent offenders from profiting from their crimes and to remove the incentive for corrupt practices. Although it is for States parties to determine the form of legislative compliance with the Convention, as confirmed in paragraph 10 of article 31, the need for clear and coherent legal frameworks on the confiscation, seizure and freezing of criminal proceeds and instrumentalities was pointed out in the reviews. Complex and fragmented legislation may hinder the effective implementation of anti-corruption measures.

27. Accordingly, it was positively noted during the reviews that several States had adopted comprehensive legislation for the confiscation of proceeds of crime that included broad definitions of property and proceeds subject to confiscation and interim measures leading to confiscation, and also provided for measures such as value-based confiscation (one element of art. 31, para. 1 (a) in lieu of property-based confiscation), non-conviction-based confiscation (a measure States parties are required to consider taking in the context of international cooperation under art. 54, para. 1 (c)) and extended confiscation. Examples of such measures included those allowing the court to extend confiscation to all unexplained assets belonging to a perpetrator, unless he or she proved the legal origin of the property (and further, in some countries these measures applied where the person was convicted of a criminal offence and sentenced to more than three years' imprisonment).

28. In respect of non-conviction-based confiscation and shifting evidentiary standards or presumptions facilitating confiscation, States parties exhibited a number of good practices, such as provisions targeting wealth that a person could not demonstrate to have lawfully acquired. These “unexplained wealth” provisions allowed a court, once satisfied that reasonable grounds existed to suspect that a person’s total wealth exceeded the value of that person’s lawfully acquired wealth, to compel the person to prove, on the balance of probabilities, that the wealth was not derived from criminal offences. If a person could not demonstrate this, the court could order the person to pay the difference between his or her wealth and “legitimate” wealth. In other cases, comprehensive forfeiture mechanisms containing discretionary legal presumptions against so-called “lifestyle criminals” with unexplained wealth had been established. Evidentiary presumptions also related to the scope of property subject to confiscation, such as property acquired within a certain period of time from the commission of the offence, the possession of which could not otherwise reasonably be explained. In other more limited cases, confiscation was allowed when the criminal procedure could not proceed or had been suspended, for example, because the perpetrator had died or absconded or was exempt from criminal liability, or because the statute of limitations had expired. In some States, the standard of proof as to whether a person had benefited from an offence or the amount to be recovered by confiscation was that applicable in civil proceedings.

29. The effective application of the legal framework on freezing, seizure and confiscation in relevant cases was commended in several States parties, such as specialized financial investigation techniques and measures for the identification and tracing of assets.

**Institutional arrangements, including coordination and the exchange of information among authorities, leading to successful confiscation cases, and the existence of specialized authorities dedicated to the administration of seized and confiscated assets**

30. In a number of States parties, institutional arrangements, operational measures or legal mandates of national authorities were recognized as leading to successful cases of asset tracing, seizure and confiscation, often of substantial amounts. While the arrangements varied among States, some examples included effective inter-agency coordination mechanisms and the exchange of information among national authorities. These measures were sometimes carried out not only through traditional prosecutorial and law enforcement channels but also by specialized authorities, such as asset recovery offices or anti-corruption bodies, adding considerably to their practical effectiveness. In this context, the important role and effective functioning of national financial intelligence units, and their mandates and authority to access financial accounts and banking records and to cooperate domestically and internationally, were recognized.

31. Thus, for example, in one State it was noted that successful asset confiscation cases had been developed from the ground up, as a result of, among other things, the effective cooperation of all relevant institutions. In another State, a direct electronic link had been established between the relevant supervisory authority responsible for anti-money-laundering, the courts and the private sector, which facilitated the obtainment of information and the prompt seizure of property and freezing of financial accounts.

32. Other institutional arrangements that contributed to the effectiveness of asset recovery were measures to manage and administer seized and confiscated assets, in particular the existence of specialized authorities dedicated to that purpose. Particular importance was attached to the development of clear and comprehensive rules to ensure the safety and cost-effective conservation of property and to address all types of assets and cases, no matter how complex or substantial. Country reviews were generally positive with regard to systems that provided for the possibility of entrusting property on a case-by-case basis – for example, when in risk of depreciation or deterioration – to a custodian, *curator bonis*, receiver, asset manager

or other administrator, or to an agency such as the tax authority, prosecution or ministry of finance for safekeeping and administration. Centralized asset management offices capable of handling all relevant cases were also positively recognized. These institutions were found to alleviate challenges encountered by local authorities, such as police departments, in determining appropriate measures or conditions for preserving and administering seized assets, as well as the need to consider financially sound solutions, given that the management of frozen assets was often costly and could offset any benefits from the eventual confiscation. Thus, in several countries, the existence of a solid institutional framework for the management of seized and confiscated assets, especially complex assets requiring effective management, was positively recognized, in particular where States had established specialized asset management offices, whose operations were sometimes self-financed from the sale of confiscated property.

33. Good practices also emerged with regard to the disposition and use of confiscated assets, although there was generally no uniformity in this area, as States pursued different goals and priorities. Often the existence of specialized funds for preventing or combating crime, for compensating victims or for general social or development purposes was noted. Moreover, a number of States parties had given consideration to establishing frameworks whereby recovered proceeds could be used to finance the operations of relevant law enforcement agencies, based on an equitable distribution of proceeds among institutions.

## F. Specialized authorities (article 36)

**The establishment, where feasible and consistent with national priorities, of a specialized anti-corruption authority, a specialized anti-corruption unit within the police force and the prosecution service, and/or a specialized anti-corruption court**

34. *Level of obligation.* Article 36 sets forth mandatory obligations for States parties, in accordance with the fundamental principles of national legal systems.

35. Article 36 calls upon States parties to ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. While all but a few States parties had established specialized departments for this purpose, in a number of countries the establishment and operations of a specialized anti-corruption authority or a specialized anti-corruption unit within the police force or the prosecution service was specifically recognized. Regarding the establishment of centralized offices for this purpose, although not required by the Convention, the reviews tended to favour the more centralized approaches or integrated models that minimized the possibility of overlapping functions in multi-agency systems.

36. For example, in one State party, the success of national anti-corruption efforts was specifically attributed to the establishment and operation of a dedicated agency, which had brought cases against former ministers, members of parliament, senior officials, mayors, company directors and its own staff.

37. Generally, the reviews noted that it was not the name or breadth of competence but rather the specialization of the law enforcement body and its members that was important and contributed to its effectiveness, particularly in smaller countries. Thus, of particular importance was the focused mandate and degree of specialization of the relevant institutions on corruption, as distinguished from other criminal matters pursued by police departments or other law enforcement bodies (e.g., money-laundering, drugs, organized crime). Thus, States were commended for having created, despite their small size, specialized economic or financial crime units in the criminal police, or specialized prosecution units consisting of prosecutors that had undergone specific training and obtained practical experience in prosecuting corruption and economic crime matters. In States that had adopted specialized systems, the reviews noted that the members of those bodies were highly motivated,



as evidenced by statistics showing a significant increase in the number of corruption cases brought before the courts following the introduction of the structures.

38. Most countries had opted for a single or central specialized anti-corruption agency, commission, bureau, directorate, department, office or task force operating either as an independent structure or within the institutional framework of the national ministry of justice, prosecutor general's office or national police service.

39. In terms of specialized prosecution bodies, in one State party public prosecutors could seek the support and assistance of a dedicated anti-corruption unit that provided legal support in investigations and employed financial and accounting analysts who evaluated information gathered in economic crime cases. Similarly, in another State party, a number of prosecutors formed a "centre of expertise" on economic crime and corruption, which worked closely with accountants and financial analysts.

40. A further measure recognized in the reviews was the appointment of judges specialized in handling corruption and economic crime and the establishment of special anti-corruption courts, which were credited with having helped prioritize corruption cases, which by nature were often complex, time-consuming and resource-intensive, thus significantly contributing to reducing the backlog of cases and minimizing delays in the administration of justice.

**Specific mandate and independence mechanisms, as well as adequate capacity and resources for the specialized authorities, including through practical training programmes**

**Operational measures to enhance effectiveness (e.g. information-sharing, inter-agency coordination and access to information, collection and use of relevant data, clear policy guidance, inter-agency task forces to address corruption in certain sectors) leading to increased investigations and prosecutions**

41. Various operational measures were recognized as contributing to the effectiveness of anti-corruption bodies in the context of national legal systems.

42. For example, measures to enhance the legal, operational and financial independence of the bodies were noted, such as clear mandates or policy guidance, security of tenure, functional immunities, specific oversight or monitoring mechanisms and systems of checks and balances (for example, through external committees or the participation of non-governmental organizations). Equally important were accountability and reporting mechanisms, the results of periodic internal or external assessments, and measures to ensure budgetary independence. For instance, the national laws in some States contained provisions guaranteeing a certain level of financial resources or prohibiting a decrease in agencies' budgets from previous years. Effectiveness was also enhanced through considerable investigative powers allocated to the agencies, such as measures ensuring broad access to information or information-sharing, as well as legal provisions requiring their corruption-related recommendations to public institutions to be implemented. The specialized capacity of staff, achieved through training and professional development, particularly in corruption-related matters, was also acknowledged. In a number of country reviews these measures were found to have contributed to successful (and high-profile) investigations, prosecutions or cases of asset recovery.

43. In recognition of the fact that institutional fragmentation reduces efficiency in combating corruption, States parties were commended for having established clear lines of responsibility between the various law enforcement authorities, which helped to reduce overlap of functions and duplication of efforts, thus enhancing effective inter-agency coordination. In the same context, the need to develop statistical indicators and establish benchmarks, develop strategies and measure the progress of the anti-corruption bodies was noted in a number of country reviews.

## G. Cooperation between national authorities (article 38)

### **Effective cooperation mechanisms among the investigating and prosecuting institutions and public authorities, including through the exchange of personnel and information, where feasible and consistent with national practices**

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

44. *Level of obligation.* Article 38 sets forth a mandatory obligation for States parties, in accordance with domestic law, and provides for optional measures towards that end.

45. Most States parties had taken measures to encourage the collaboration of public officials and authorities with the agencies or authorities in charge of investigating and prosecuting criminal offences. Thus, States parties were encouraged, under article 38 of the Convention, to ensure that public officials and institutions spontaneously and proactively notified law enforcement authorities when there were reasonable grounds to believe that an offence of bribery or money-laundering had occurred, and to provide all necessary information for the investigation.

46. It was positively recognized that a number of States had established direct and definite obligations for public officials to report, on their own initiative, to law enforcement authorities information on any crimes and irregularities they had become aware of in the course of their duties, including corruption and financial or administrative violations related to public funds. Some States had established a specific duty, anchored in law, for public servants to cooperate and provide all necessary information to the prosecution or national anti-corruption agencies, while others had adopted specific procedures for reporting and information referral, such as in ethical codes and civil service laws. In this context, the important role of specialized inspectorates responsible for collecting, analysing and checking for signs of corruption, for receiving reports from public servants and for informing the prosecuting authorities of evidence concerning criminal activities was acknowledged. Reporting guidelines for certain categories of public officials, such as tax authorities or finance officials, and disciplinary measures for failure to report, further supported such cooperation. The functions of the national financial intelligence units in disseminating evidence of corruption or money-laundering to the appropriate State authorities for further investigation were often noted in this context. Particular importance was attached in some countries to the existence of electronic registers, databases and other ways in which information could be shared. Another important way to encourage cooperation and reporting was through the existence of adequate measures to protect reporting persons from any adverse consequences.

47. To further enhance cooperation, several States parties had adopted inter-agency agreements, memorandums of understanding, joint instructions or networks of cooperation and interaction, aimed at sharing intelligence on the fight against crime and corruption. Other countries had launched formal, centralized inter-agency implementation committees or information-exchange systems or held regular coordination meetings, which were noted as positive developments or good practices.

48. Further positive measures acknowledged in the reviews were staff secondments among different government and law enforcement agencies with anti-corruption mandates, including national financial intelligence units, and the placement of inspection personnel from anti-corruption authorities in different ministries and at the regional level. Such exchanges of personnel were deemed to foster cooperation and inter-agency coordination and to contribute to the efficient functioning of the agencies involved, especially regarding communication and data-sharing, and also to enhance the skills and capacity of investigative personnel and prosecutors.

## H. Cooperation between national authorities and the private sector (article 39)

**Active engagement of public authorities with the private sector, in particular through efficient information transfer mechanisms between investigative authorities and financial institutions, and through training of private sector entities on prevention measures and awareness-raising**

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

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

49. *Level of obligation.* Article 39, paragraph 1, sets forth a mandatory obligation for States parties, in accordance with domestic law, while paragraph 2 requires States parties to consider adopting measures to encourage reporting.

50. Article 39 requires States parties to foster a cooperative relationship between their investigating and prosecuting authorities and the private sector in matters pertaining to corruption offences. Indeed, several States parties reported strong regulatory frameworks governing the relationship between the private sector and law enforcement authorities. A range of measures had been established to encourage such cooperation, including legal frameworks empowering the prosecution services or national anti-corruption agencies to request reports and evidence from private entities and individuals and providing for punishment in cases of failure to comply. States had also adopted measures to encourage cooperation and promote internal controls, ranging from corporate governance principles and codes of conduct to memorandums of understanding, integrity pacts, corporate integrity pledges and other official or unofficial partnerships with the private sector.

51. Specific examples of effective cooperation with the private sector were highlighted in some countries. These included, for example, the active cooperation of anti-corruption agencies with civil society and the private sector through the signing of memorandums of understanding to combat corruption, regular participation in events organized by non-governmental organizations, activities to raise public awareness, television and radio advertisements, round tables and other public events. Other outreach and networking activities were positively noted, as they contributed to raising awareness and encouraged the reporting of corruption incidents.

52. The measures highlighted in the reviews often related to financial institutions and the activities of national financial intelligence units. Thus, measures noted as good practices in some States included training courses and workshops for financial intermediaries and auditors, initiatives aimed at raising awareness within the competent national authorities and the private sector, and structured collaboration policies and practices. It was acknowledged that in some countries information-sharing functioned effectively, thus overcoming any obstacles posed by bank secrecy and confidentiality restrictions.

## IV. Elaboration on the good practices identified regarding chapter IV

### A. All articles: general and cross-cutting recommendations

**Provision of training to practitioners, in particular law enforcement, prosecutors, judges and judicial officers, as well as public officials abroad, regarding applicable laws, procedures and time frames to be followed in international cooperation cases, including the determination of dual criminality**

53. Article 60 of the Convention, although not under review, requires that States parties shall, to the extent necessary, initiate, develop or improve specific training

programmes for personnel responsible for preventing and combating corruption. One of the general challenges observed in the reviews was the lack of relevant capacities among personnel responsible for international cooperation.

54. The reviews highlighted the need to enhance training for practitioners engaged in international cooperation. In a number of reviews, States' efforts aimed at capacity-building, the organization of dedicated training sessions on international cooperation and the establishment of training centres were highlighted as good practices.

55. In several reviews, States parties were also commended for providing training on international cooperation matters to foreign counterparts.

#### **Active participation in international and regional networks, platforms and forums aimed at promoting international cooperation**

56. Active participation in various regional and global practitioners' forums and networks was often highlighted as a good practice in the country reviews.

57. With regard to extradition, about half of the States parties under review had taken concrete measures to establish more effective cooperation networks in order to exchange information with foreign authorities in real time, either before a formal extradition request is submitted or during the submission process.

58. With regard to mutual legal assistance, a significant number of States reported the usefulness of police cooperation channels,<sup>1</sup> networks of central authorities for mutual legal assistance and informal contacts through officials posted in overseas missions and appointed liaison officers. In some cases, national authorities referred to the effective exchange of information between national financial intelligence units.

59. With regard to law enforcement cooperation, channels of communication were reported to be frequent at the bilateral and regional levels or within regional operational and liaison networks.<sup>2</sup> Membership of the International Criminal Police Organization (INTERPOL) was generally regarded as an important condition for effective cross-border law enforcement cooperation.

60. A number of countries had taken steps to join the Egmont Group of Financial Intelligence Units. Those measures and the conclusion of a large number of agreements among national financial intelligence units were considered good practices in some reviews.

61. Some national police and prosecution agencies had established further informal networks of contacts focused on depriving criminals of their illicit profits through cooperative inter-agency coordination and information-sharing.<sup>3</sup>

#### **Efficient use of technology and electronic databases to track, monitor and follow up on international cooperation requests**

62. A number of innovative practices were recognized during the reviews as contributing to the effectiveness of international cooperation. Highlighted good practices included the development of electronic databases and information management systems, as well as case-tracking databases.

<sup>1</sup> Such as the Inter-American Cooperation Network, Eurojust, the Ibero-American Network for International Legal Cooperation, INTERPOL, the Association of Southeast Asian Nations Chiefs of Police (ASEANAPOL) and the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO).

<sup>2</sup> Such as the Southeast European Law Enforcement Centre, ASEANAPOL, the European Police Office, Eurojust, the Pacific Transnational Crime Coordination Centre, SARPCCO, the Eastern Africa Police Chiefs Cooperation Organization, the Association of Caribbean Commissioners of Police and the regional justice platform of the States members of the Indian Ocean Commission.

<sup>3</sup> Such as the Global Focal Point Network on Asset Recovery, the Camden Asset Recovery Inter-Agency Network and other regional asset recovery networks.

63. By using those innovative solutions, specific timelines for the handling and execution of requests for mutual legal assistance and extradition could be met and incoming requests could be more efficiently tracked. Such systems also allowed the central authorities to respond quickly to requests for status updates and take into account the time frames requested by foreign countries.

64. The usefulness of secure databases for the sharing of information among law enforcement authorities was also highlighted in the context of the review of article 48 of the Convention, on law enforcement cooperation.

## **B. Extradition (article 44)**

### **No minimum penalty requirements for extradition involving Convention offences**

#### **Interpretation of the dual criminality requirement in extradition cases, focusing on the underlying conduct and not the legal denomination of the offence; the dual criminality requirement may be waived on the basis of reciprocity**

65. *Level of obligation.* Article 44, paragraph 1, stipulates that extradition under the Convention is subject to dual criminality, while article 43, paragraph 2, states that the dual criminality principle shall be deemed fulfilled regardless of the terminology used to denominate the offence in question or the category of offences to which the offence is considered to belong.

66. In line with article 43, paragraph 2, of the Convention, the dual criminality principle has almost always been deemed fulfilled during the review process, regardless of the terminology used to denominate the offence in question or the category to which the offence is considered to belong.

67. States thus need to establish only that an equivalent conduct to the one for which extradition is sought is criminalized in their domestic law. In some cases, this interpretative approach was highlighted as a success and good practice by the experts conducting the reviews. For example, this “conduct-based” approach could be established in the domestic legislation by referring to the notion of “dual punishability” rather than dual criminality. Some States even went beyond these formal requirements and allowed for the waiver of the dual criminality requirement on the basis of reciprocity, or dispensed with dual criminality requirements for extradition involving Convention offences altogether.

68. Some international instruments foresee an easing of dual criminality restrictions among participating States. A prominent example is the European arrest warrant, under which States members of the European Union have removed this requirement in their relations with each other for a wide range of offences, including corruption and money-laundering, as long as the offences are punished in the issuing country with deprivation of liberty of at least three years.

#### **Expedition of extradition proceedings, consistent with treaty requirements and domestic law, through direct contacts between central and competent authorities and use of electronic or other communication channels and networks**

69. *Level of obligation.* Article 44, paragraph 9, sets forth a mandatory obligation for States parties, subject to their domestic law, to endeavour to expedite extradition procedures and to simplify evidentiary requirements.

70. The use of direct contacts between central and competent authorities and the use of electronic or other communication channels and networks to expedite extradition proceedings were often highlighted as good practices in the country reviews.

71. About half of the States parties under review have taken concrete measures to streamline the extradition process and establish more effective cooperation networks in order to exchange information with foreign authorities in real time, either before a formal extradition request is submitted or during the submission process. For example, one State’s law, in order to facilitate and accelerate extradition with

civil-law countries, provided that the magistrate holding an extradition inquiry must accept as conclusive proof a certificate issued by an appropriate authority in charge of the prosecution in the foreign State stating that it had sufficient evidence at its disposal to warrant the prosecution of the person concerned.

### C. Extradition and mutual legal assistance (articles 44 and 46)

#### **Development or effective use of manuals, guidelines, checklists, dedicated communication platforms and mechanisms such as email boxes or model requests for extradition and mutual legal assistance, with a view to providing administrative and legal certainty for making, processing and executing requests**

72. Manuals, guidelines, checklists, dedicated communication platforms, and mechanisms such as email boxes or model requests for extradition have been recognized in the review exercise as useful ways to enhance the effectiveness of international cooperation.

73. Notable examples included the development of model mutual legal assistance requests or templates and sharing them with requesting countries or uploading them on the websites of central authorities. Such templates contained the explanation of necessary procedures that the requesting countries were required to follow.

74. In several reviews, the importance of giving careful consideration to the collection of data, making best use of statistics and putting in place workflow processes and case management systems within the central authority for mutual legal assistance was highlighted. Such approaches facilitate, inter alia, the regular monitoring of the length of mutual legal assistance proceedings and improve standard practice. Moreover, in some reviews, the development of internal guidelines, procedural manuals, written standard operating procedures or practice papers was encouraged. Such documents could set timelines for executing requests and contain guidance as to how to handle problems that may arise, including modalities for follow-up action with a requesting State.

#### **Use of the Convention either as a legal basis for extradition and mutual legal assistance or as a tool to facilitate extradition and mutual legal assistance**

75. *Level of obligation.* Article 44, paragraph 5, provides an option for States parties to consider the Convention a legal basis if they make extradition conditional on the existence of a treaty. According to article 46, paragraph 7, if States parties are not bound by a mutual legal assistance treaty, paragraphs 9 to 29 shall apply to all mutual legal assistance requests pursuant to article 46; if States parties are bound by a mutual legal assistance treaty, the corresponding provisions of that treaty shall apply unless the States parties agree to apply article 46 in lieu thereof.

76. Despite the fact that the majority of States parties do not require a treaty as a basis for extradition, in practice most of them use treaty-based processes to a great extent, in implicit acknowledgement of the formal character of the extradition procedure. The ability to use the Convention as a legal basis for extradition was also recognized as a good practice in the reviews. Such examples included a case in which a State produced a useful clarification whereby, for the purposes of extradition, any multilateral treaty to which it is a party and that contains a provision on extradition is considered an extradition treaty. Another State party applied the so-called “principle of favourable treatment”, whereby the provisions of international treaties are interpreted in a manner that is favourable to the granting of international cooperation in judicial matters.

77. More States confirmed the possibility of relying on the Convention as a legal basis for mutual legal assistance than is the case for extradition. Article 46 itself has been invoked and has served as the legal basis for providing assistance on numerous occasions. Many States parties reported having made and/or received at least one request using the Convention as a legal basis; that was often commended as a good

practice by the reviewers. For example, one State party reported that its legislation on mutual legal assistance was complemented by special regulations facilitating the submission and receipt of mutual legal assistance requests to and from States parties to the Convention for Convention offences. The central authority of another party may be contacted by requesting countries and may suggest, if need be, the most appropriate legal basis to ensure the most efficient execution of the request.

**The designation of competent or central authorities for extradition and the identification of focal points for specialized areas of cooperation, such as money-laundering or asset recovery, and notification of whether the State party takes the Convention as the legal basis for cooperation on mutual legal assistance**

78. *Level of obligation.* Article 46, paragraph 13, sets forth a mandatory obligation for States parties to designate a central authority; article 48, paragraph 2, provides an option for States parties to consider the Convention to be the basis for mutual law enforcement cooperation.

79. The majority of States have designated the same governmental department as a central authority for all international treaties on cooperation in criminal matters, including the ones relating to combating corruption. This allows for the streamlining of handling international cooperation requests.

80. In some countries, the websites of the central authorities provide detailed information on how the authority can assist foreign countries in the provision of mutual legal assistance, as well as links to domestic legislation and information about applicable bilateral and multilateral agreements. In some reviews, this was regarded as a good practice.

81. Several countries have identified a specific department, or even a specific official, within the designated central authority for specific areas of international cooperation.

82. A large number of States parties confirmed that they could use the Convention as a basis for law enforcement cooperation in respect of corruption-related offences. Parties were generally encouraged to continue to engage in regional and bilateral dialogue by signing, if appropriate, agreements to facilitate the exchange of information for law enforcement purposes, and to consider using the Convention as the legal basis in the absence of such arrangements. In that regard, the possibility of using the Convention as a legal basis for law enforcement cooperation was highlighted as a good practice in many cases.

**D. Consultations with requesting States parties (article 44, paragraph 17, and article 46, paragraph 26)**

**Consultations and communication with requesting States on a continuing basis, throughout the mutual legal assistance and extradition process, and involving central and competent authorities, as applicable, including the possibility of the requested authority accepting and reviewing requests before submission of a formal request**

83. *Level of obligation.* Article 44, paragraph 17, sets forth a mandatory obligation for States parties to consult, where appropriate, before refusing extradition; article 46, paragraph 26, establishes a mandatory obligation to consult with the requesting State party before refusing a request pursuant to paragraph 21 or postponing its execution pursuant to paragraph 25 of article 46.

84. With regard to extradition, the vast majority of States parties did not require implementing legislation for consultations to be held, either because they regarded the duty of consultation as part of international comity or practice, or they considered article 44, paragraph 17, of the Convention to be directly applicable and self-executing in their legal systems. In some cases, a lack of both legislation and practice has resulted in the non-implementation of the requirement, and

recommendations were issued for the States parties involved to consult with the requesting party before refusing extradition.

85. A number of countries noted their efforts to consult with requesting jurisdictions to address deficiencies in extradition requests. Such consultations, which can also take place via formal and informal cooperation networks, were highlighted as good practices.

86. Similar examples were reported with regard to mutual legal assistance. The usefulness of practitioner networks, maintaining close contacts with foreign counterparts and the practice of reviewing draft requests before the submission of formal ones were highlighted. For example, one party reported holding case-coordination meetings for the preparation of mutual legal assistance requests, especially in cases involving multiple jurisdictions or possible conflicts of jurisdiction.

87. Another State's central authority frequently carries out informal consultations before formal mutual legal assistance requests are received, and it is a common practice to accept and review draft requests before the submission of a formal request. One State party reported that the staff of its central authority engaged in constant, near-daily communication with counterparts in countries that had submitted a large number of requests for mutual legal assistance. The central authority also seeks to have regular annual consultations with its main partners in the areas of extradition and mutual legal assistance.

## **E. Mutual legal assistance (article 46)**

### **Provision of mutual legal assistance in the absence of dual criminality, consistent with treaty requirements and domestic law**

88. *Level of obligation.* Article 46, paragraph 9 (b), stipulates that, even in the absence of dual criminality, States parties are required to render assistance that does not involve coercive action, provided it is consistent with the basic concepts of their legal systems and the offence is not of a trivial nature.

89. In contrast to their approach to extradition, the vast majority of States parties take a more flexible stance on the dual criminality requirement when it comes to mutual legal assistance. Consequently, for a substantial number of countries, dual criminality does not constitute a requirement for granting mutual legal assistance, which was commended in several country reviews, consistent with existing treaty obligations.

90. In some cases, however, the dual criminality requirement remains in place for coercive measures requested by foreign authorities (e.g., taking a person into custody, conducting electronic surveillance, conducting a search of premises, seizing items or confiscating assets). One country defined the concept of "coercive measures" as action likely to place an irreparable burden on the rights and freedoms of those affected. Requests involving coercive measures may be executed, in principle, on the condition of dual criminality. However, even in the absence of dual criminality, mutual legal assistance involving coercive measures may be granted in some countries, if the request is aimed at, among other things, the exoneration of a person from criminal responsibility.

### **Application of requirements for the execution of mutual legal assistance requests (such as applying seals on translated documents, translation, et cetera) in such a manner as to afford the widest measure of assistance**

91. Article 46, paragraph 1, requires States parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences established in accordance with the Convention. Each State party must therefore ensure that its mutual legal assistance laws and treaties are broad enough to fulfil this obligation.



92. Those cases where requested States were making clear efforts to minimize applicable formalities, such as by accepting requests in foreign languages and providing translation of documents in their national languages, were highlighted in the reviews as good practices. Some States even reported legislative provisions allowing for evidence and documents received from requesting States to be admitted as evidence.

## **F. Law enforcement cooperation, joint investigations (articles 48 and 49)**

### **Specialized capacities for cross-border law enforcement cooperation, in particular through the organization of joint anti-corruption training workshops and capacity-building exchange programmes and participation in international anti-corruption law enforcement networks (article 48)**

93. *Level of obligation.* Article 48, paragraph 8 (e), sets forth a mandatory obligation to facilitate effective coordination between competent authorities and promote the exchange of personnel and other experts.

94. Many States reported that their law enforcement agencies frequently participate in joint training activities with international counterparts.

95. Many such activities are organized on the basis of interdepartmental agreements or memorandums that, besides specifying the modalities of cooperation in personnel management and training, also determine the authorities responsible for cooperation; oblige the parties to exchange contact points to ensure rapid and effective communication; foresee methods and means of cooperation, such as data exchange; establish the possibility of informal consultations before the submission of international cooperation requests; and provide for cooperation in personnel management and training.

96. Some States organize periodic training and capacity-building activities for foreign counterparts at training facilities located in the operational or educational institutions of their law enforcement authorities, which was highlighted as a good practice.

### **Active use of joint investigation teams in transnational corruption cases, where feasible and consistent with national priorities (article 49)**

97. *Level of obligation.* Article 49 of the Convention encourages States parties to enter into agreements or arrangements allowing the establishment of joint investigative bodies.

98. Many States reported being parties to agreements or arrangements allowing for the establishment of joint investigative bodies.

99. More than half of the States mentioned that their legislation and practice (including the direct application of the Convention) enabled them to conduct joint investigations on a case-by-case basis, and a substantial number confirmed that they had done so on a number of occasions. Some States also mentioned the creation of a dedicated body in relation to a particular Convention offence.

100. For example, two neighbouring countries had entered into a bilateral agreement on joint investigations and had established an operational working group to allow for joint investigative bodies to be set up. Several such teams had been set up, which was considered to be a good practice.

## **G. Special investigative techniques (article 50)**

### **Wide use and application of special investigative techniques in corruption cases both domestically and internationally, in accordance with the protection of fundamental rights**

101. *Level of obligation.* Article 50, paragraph 1, of the Convention establishes a mandatory obligation to the extent permitted by the basic principles of domestic legal systems and in accordance with the conditions prescribed by domestic law, while paragraph 2 encourages States parties to conclude, when necessary, appropriate agreements or arrangements.

102. Article 50 of the Convention endorses the use of special investigative techniques in the fight against corruption at both the national and international levels. Such techniques include controlled delivery, electronic or other forms of surveillance and undercover operations. Cases where the use of special investigative techniques in transnational cases was adequately addressed in the domestic legislation of States, as well their actual use in transnational corruption cases, were highlighted in the reviews as good practices.

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