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to the United Nations
Convention against Corruption**

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

**Regional implementation of chapter IV (International
cooperation) of the United Nations Convention against
Corruption**

Report prepared by the Secretariat

Summary

The present report contains supplemental information to the thematic reports on the implementation of chapters III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption (CAC/COSP/IRG/2013/6-9).

* CAC/COSP/IRG/2013/1.



I. Introduction, scope and structure of the report

1. In its resolution 3/1, the Conference adopted the terms of reference of the Review Mechanism (contained in the annex to that resolution), as well as the draft guidelines for governmental experts and the secretariat in the conduct of country reviews and the draft blueprint for country review reports (contained in the appendix to the annex to resolution 3/1), which were finalized by the Implementation Review Group at its first session, held in Vienna from 28 June to 2 July 2010.
2. In accordance with paragraphs 35 and 44 of the terms of reference of the Review Mechanism, thematic implementation reports have been prepared in order to compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the country review reports, organized by theme, for submission to the Implementation Review Group, to serve as the basis for its analytical work.
3. The present report contains supplemental information to the thematic reports on the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the Convention, contained in documents CAC/COSP/IRG/2013/6 to 9, specifically on the implementation of selected provisions of chapter IV on international cooperation.
4. This regional report is based on information included in the review reports of thirty-four States parties under review in the first and second years of the first cycle of the Review Mechanism whose review reports had been completed, or were close to completion, at the time of drafting.¹ The analysis of the notifications received on the designation of central authorities for mutual legal assistance (below II.B.I) is based on the official notifications sent to the Secretary-General of the United Nations by the States Parties to the Convention, pursuant to article 46, paragraph 13, of the Convention.

II. Implementation of selected provisions of chapter IV (International cooperation), by region

5. Based on an assessment of the available information, two topics were initially selected from the thematic implementation report for further analysis on a regional basis: The legal basis for international cooperation, with regard to extradition and mutual legal assistance (article 44, paragraph 5-7 and article 46, paragraphs 1 and 7 of the Convention) and the nomination and role of central authorities for mutual legal assistance (article 46, paragraph 13, of the Convention). Further topics will be included in the regional reports as more reviews are concluded and additional data becomes available.
6. The sample of 34 reports used for this regional analysis consisted of six African States, ten Asia-Pacific States, nine Eastern European States, two Latin American and Caribbean States and seven Western European and Other States.

¹ The present data are based on country reviews as on 4 March 2013.

7. Following the country distribution, the sample was at the time of reporting not balanced with regards to the legal systems represented. It was roughly, leaving aside regional and historical differences, composed of 23 civil law jurisdictions, nine common law jurisdictions and two mixed systems. The trends presented in this document represent therefore initial observations that may change in later years when a more balanced sample of country reports is available.

A. Implementation of paragraphs 5-7 of article 44 and paragraphs 1 and 7 of article 46: the legal basis for international cooperation

8. Article 44 of the Convention addresses the legal basis for extradition for Convention offences and contains a number of provisions to ensure that Convention offences are extraditable. Under paragraph 4, all States parties are required, *inter alia*, to deem Convention offences to be included in extradition treaties between States parties. In practice, this means that the Convention may be used in combination with any bilateral or regional extradition treaty to allow for extradition for Convention offences. Under paragraphs 5 and 6 (a), States parties that make extradition conditional on the existence of a treaty may consider the Convention as the legal basis for extradition for Convention offences and are required to notify the Secretary-General of the United Nations of this at the time of ratification or accession. States parties that do not make extradition conditional on the existence of a treaty are required to recognize Convention offences as extraditable between them pursuant to paragraph 7.

9. Although article 46 of the Convention on mutual legal assistance does not contain equivalent provisions or requirements, a number of country reports discussed the legal basis for mutual legal assistance, especially in relation to the need for a treaty basis and the use of the Convention as a legal basis for mutual legal assistance. Further, States made reference to the “mini-treaty” contained in article 46, in its paragraphs 9 to 29. Paragraph 7 foresees that these provisions shall apply to requests pursuant to article 46 if States parties are not bound by a treaty of mutual legal assistance, and States parties are strongly encouraged to agree to apply those paragraphs in lieu of those provisions in a bilateral treaty between two States Parties.

1. The requirement for a treaty base for international cooperation

(a) Extradition

10. Only nine out of 34 countries made extradition conditional on the existence of a treaty.

11. At the time of reporting, no regional trend could be observed as to whether or not a treaty basis was required. The nine countries that required a treaty basis included two African States, three Eastern European States, three States from Asia-Pacific, and one country from Western European and Other States. Those countries that are Member States of the European Union that made extradition conditional of the existence of a treaty generally only did so for requests outside the European Union; within the European Union, the Framework Decision on the European Arrest Warrant was applied, obviating the need for a treaty basis. In the current sample, no country from Latin America and the Caribbean required a treaty

basis. One of the three countries from Eastern Europe that made extradition conditional on the existence of a treaty indicated that a draft law was under consideration at the time of the finalization of the country report that would allow for extradition on the basis of reciprocity. One further State party from Asia-Pacific indicated that while it generally required a treaty for extradition, the Government could decide that the Extradition Act had effect in relation to non-treaty States through notification in the Official Gazette.

12. The expectation that it was generally common law countries that made extradition conditional on the existence of a treaty was not confirmed through the present sample. Out of the nine countries making extradition conditional on a treaty, five countries belonged to the civil law tradition, three had a common law system, and one had a mixed system. It remained to be seen if this distribution continued to be confirmed through the growing sample of countries, particularly in relation to common law countries.

13. Of the countries that did not make extradition conditional on the existence of a treaty, some countries, largely civil law countries from Eastern Europe and Latin America and the Caribbean, indicated that they provided extradition on the basis of the principle of reciprocity. Some countries allowed for extradition on the basis of case-by-case arrangements and one country applied the criteria of good relationship and national interest, while others did not include in the report any specific requirements to be used in the absence of a treaty.

(b) Mutual legal assistance

14. In contrast to extradition, nearly all States parties provided mutual legal assistance in the absence of a treaty. By far the most frequent legal basis in the absence of a treaty was the principle of reciprocity, which was applied by approximately half of the States reviewed, including civil law countries, common law countries and those with a mixed system, from all regions. One country indicated that reciprocity was very frequently applied. Other bases that were applied included the comity of nations, good relationships, or arrangements on a case-by-case basis.

15. Only one country stated that in practice it always required a treaty for mutual legal assistance. Despite this, this country did not require a treaty basis for extradition, thus applying a stricter standard to mutual legal assistance than to extradition. Some countries reported that they had not yet reached a clear position on the question.

2. The Convention against Corruption as a legal basis and the direct application of the Convention in international cooperation requests

(a) Extradition

16. For those countries that make extradition conditional upon a treaty, it is important to know whether the Convention can be used as a legal basis for extradition. These countries are also bound by the notification requirement under article 44, paragraph 6. Out of the nine countries that indicated that they required a treaty basis for extradition, five States Parties took the Convention as a legal basis for cooperation on extradition, among them three civil law countries, one common law country and one with a mixed system, from three regions. Two States parties

reported that they did not take the Convention as a legal basis for extradition (one common law country and one civil law country, from different regions). All but one of these seven States had notified the Secretary-General of their decision. In the two remaining countries (one common law country and one civil law country, from different regions), discussions as to whether the Convention could be taken as a legal basis for extradition were ongoing.

17. While the Convention does not specifically refer to States parties that do not require a treaty basis in this context, many of these countries considered it relevant to report on whether they would accept the Convention as a legal basis for extradition. 17 of the 25 countries that did not require a treaty base indicated they could take the Convention as a legal basis for extradition. Only five of them had notified the Secretary-General accordingly, the others stated that the notification requirement in paragraph 6 did not apply to them. Two of these countries stated they only accepted the Convention as a legal basis when reciprocity was guaranteed on the use of the Convention. One country indicated that the Convention could not be taken as a legal basis for extradition. In two countries, no decision as to whether the Convention could be taken as the legal basis had been taken. Five countries that did not require a treaty base considered that the question of whether the Convention could be taken as a legal basis was not relevant for them.

18. Although most countries indicated that they could use the Convention as a legal basis for extradition, this did not appear to occur frequently in practice. One of the countries indicated that while it could take the Convention as the legal basis for extradition, in practice it decided whether to cooperate on a case-by-case basis because no treaty basis was required. Some countries indicated that bilateral extradition treaties were generally applied before resorting to multilateral treaties. One country from Eastern Europe noted that it had not yet used the Convention as a legal basis, but had used the United Nations Convention against Transnational Organized Crime as a legal basis for extradition. In one Asian country, while the Convention could be considered as the treaty basis for extradition and the Secretary-General had been so informed, there seems to be limited awareness of the possibility of using the Convention, without resorting to an extradition treaty. The Government of this country held preliminary trainings on the use of the Convention as a legal basis for extradition. In one country from Africa that can use the Convention as a legal basis, a recommendation was made that the State party use the Convention in practice in order to address challenges stemming from the low number of extradition treaties the country had concluded.

(b) Mutual legal assistance

19. The situation was different with regard to mutual legal assistance. Although only one country required a treaty basis for mutual legal assistance, approximately 20 countries indicated they could use the Convention as a legal basis for mutual legal assistance. These countries were from all regions and all legal systems, and included the country that indicated it required a treaty basis for mutual legal assistance. A number of reports did not contain any information about the issue. Only one country from Asia indicated it could not use the Convention as a legal basis as it considers all its provisions to be non-self-executing, while another country from the same region received a recommendation to examine the possibility of using article 46 of the Convention as a legal basis for mutual legal assistance.

20. In practice, the use of the Convention as a legal basis for mutual legal assistance seemed to have become a well-known practice. Five countries reported that they had either made and/or received requests on the basis of the Convention. These included one country from Eastern Europe, one from Africa and three Western European and Other States. One Eastern European country that had received requests on the basis of the Convention indicated that these requests were made in the context of the “Arab Spring”. One country from the Western European and other States also stated that the requests received on the basis of the Convention originated from outside of Europe. One country indicated that since its ratification of the Convention, it had received six mutual legal assistance requests on the basis of the Convention from four different countries; all of them countries with which it had no bilateral mutual legal assistance treaties. It seemed, therefore, that the Convention was used between countries that were not bound by a bilateral mutual legal assistance treaty or with which cooperation had not previously existed. The Convention, in these cases, fulfilled one of its primary functions: to provide a framework to facilitate international cooperation in the absence of a bilateral treaty or to bridge the differences between legal systems.

21. The role of article 46 to provide a framework for mutual legal assistance is specifically addressed in paragraph 7 of article 46, which obliges countries to directly apply the “mini-treaty” contained in paragraphs 9 to 29 when no bilateral treaty binds the parties, and encourages them to apply these provisions in a complementary manner to existing mutual legal assistance treaties. Paragraphs 9 to 29 apply in relation to those requests made taking the Convention as legal basis. However, the reports on the requests mentioned above did not touch this question explicitly. Furthermore, the significance of paragraph 7 of article 46 goes beyond these cases. It makes the provisions of paragraphs 9 to 29 applicable to mutual legal assistance requests when States cooperate on a different legal basis, such as reciprocity or case-by-case arrangements. In this case, paragraphs 9-29 apply as if they were a bilateral treaty. Further, paragraphs 9-29 offer a framework that States parties can use, if they agree so, when they cooperate on the basis of their mutual legal assistance treaties in lieu of those treaties. Less than half of the countries specifically confirmed that they could apply paragraphs 9 to 29 to their mutual legal assistance requests in such situations, among them countries both from common law and civil law countries from all regions. Two countries indicated they could not do so. Around half of the country reports did not contain specific information on this issue. No example of the application of these provisions in practice has been presented through the reviews conducted to date.

B. Implementation of paragraph 13 of article 46, on central authorities for mutual legal assistance

1. Designation of central authorities

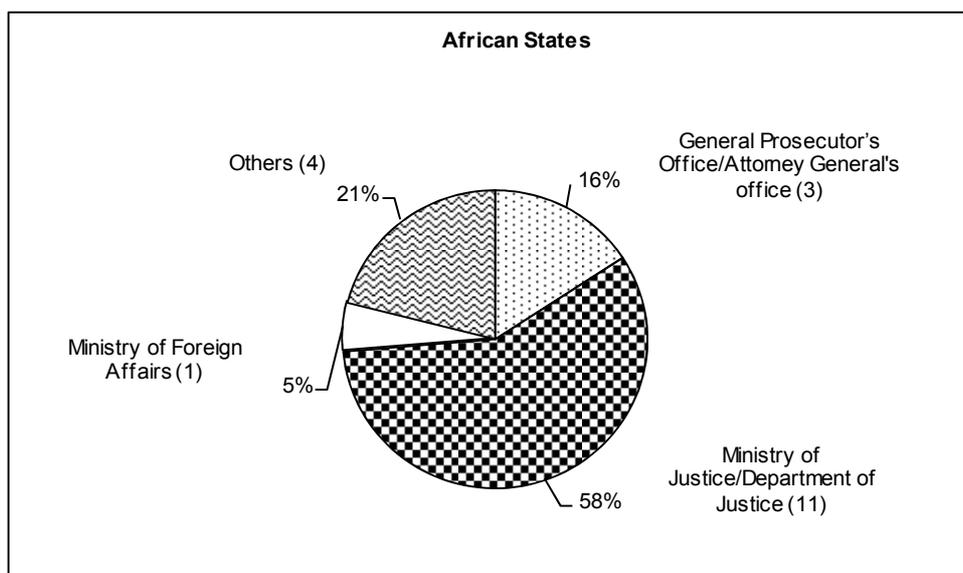
22. The following analysis is based on the official notifications sent by States parties to the United Nations Convention against Corruption, pursuant to article 46, paragraph 13, of the Convention. The directory of all notifications received can be accessed at: www.unodc.org/unodc/en/legal-tools/directories-of-competent-national-authorities.html.

23. 102² States parties had notified officially the Secretariat of their central authorities responsible for receiving requests for mutual legal assistance. This includes 26 Asia-Pacific States, 23 Western European and other States, 18 Latin American and Caribbean States, 18 African States, and 17 Eastern European States. There was no notable disparity between regions with regards to the number of notifications received.

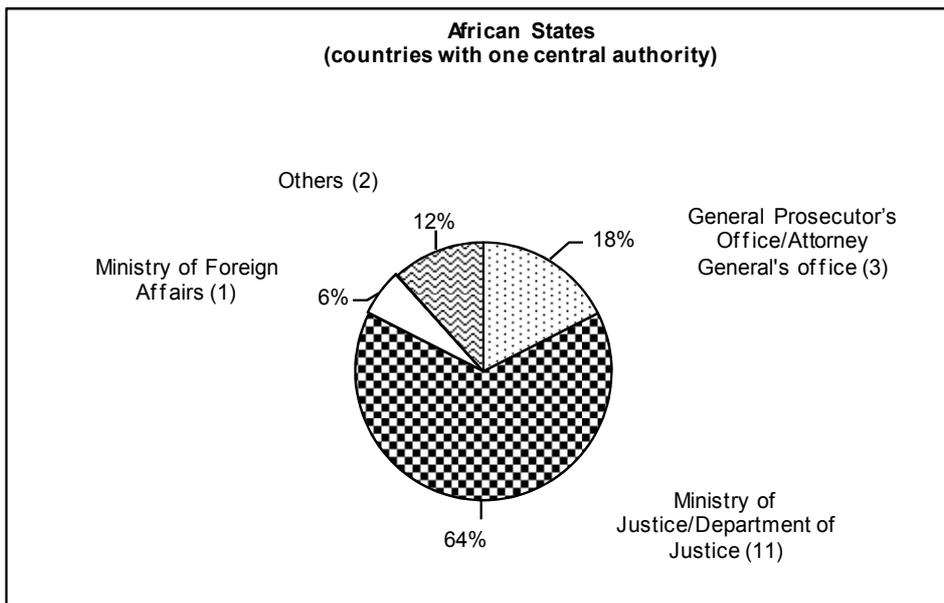
24. Half of the States parties designated the Ministry of Justice as central authority. This is followed by the General Prosecutor's Office. Some States parties made use of the possibility foreseen by the Convention to designate more than one central authority, either for a special region or territory with a separate system of mutual legal assistance, or for other reasons (for more detail on the criteria used please see CAC/COSP/IRG/2013/9).

(a) African States

25. Of the 18 African States parties who had notified the Secretariat of the designation of their central authority, 17 countries nominated only one central authority which was in 58 per cent the Ministry of Justice. Only one country decided to nominate two. This is significantly lower than the overall average for the 102 State parties.



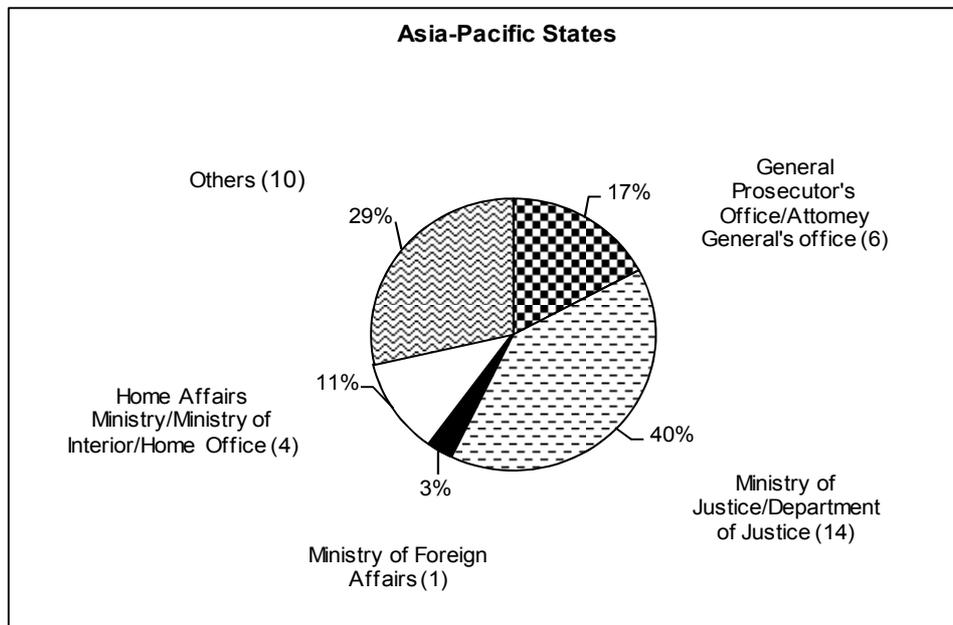
² As on the 5 March 2013.

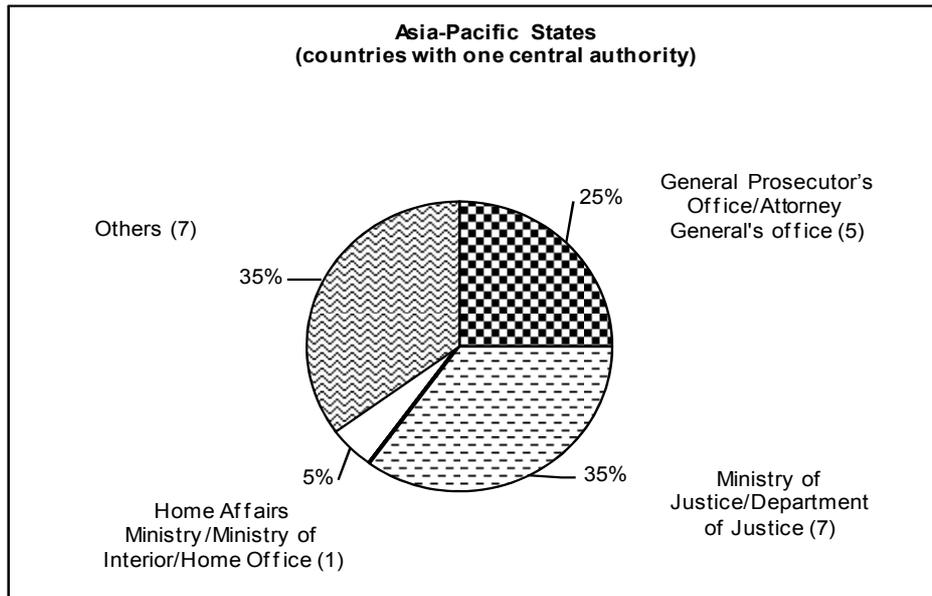


(b) Asia-Pacific States

26. Of the 26 Asia-Pacific States parties who had notified the Secretariat of the designation of their central authority, 20 nominated one central authority, while six nominated more than one. The proportion of States parties having nominated more than one central authority was nearly twice as high as the overall average.

27. The proportion of States parties having designated the Ministry of Justice was significantly lower than the overall average while the proportion of “Others” was significantly higher than the overall average. The Ministry of Foreign Affairs was only designated as central authority in one State party.

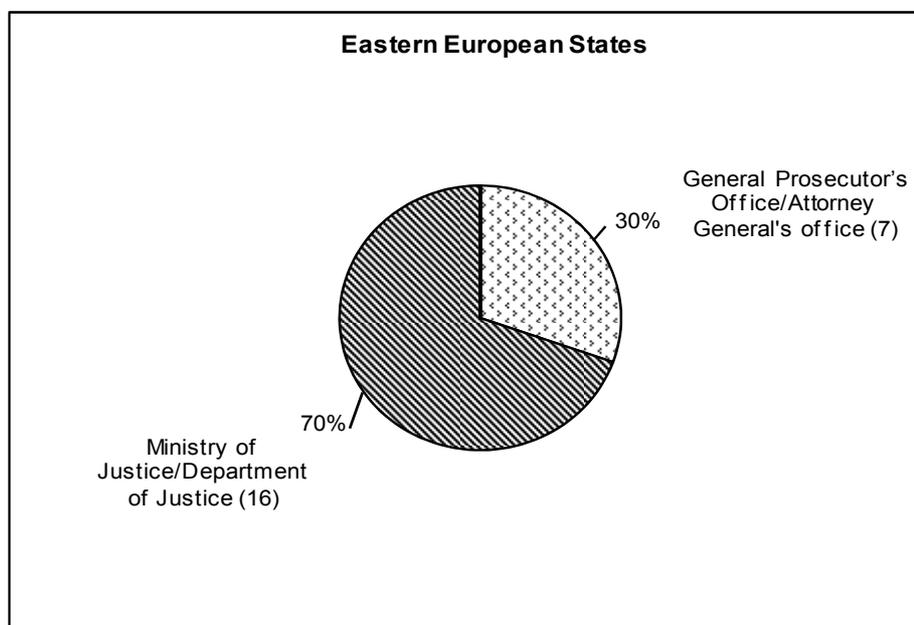


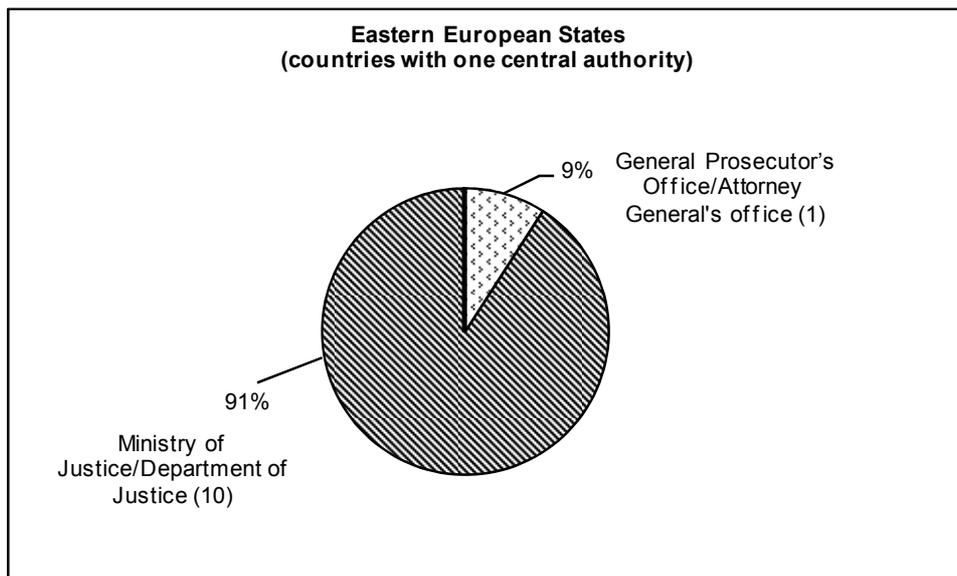


(c) Eastern European States

28. Of the 17 Eastern European States parties who had notified the Secretariat of the designation of their central authority, 11 nominated one central authority while six nominated more than one. The proportion of countries having nominated more than one central authority was three times as high as the overall average.

29. Only two types of bodies had been nominated as central authorities in the region, the Ministry of Justice and the Prosecutor General's Office. There was furthermore a clear preference for the first one, representing in a much higher proportion than the overall average.



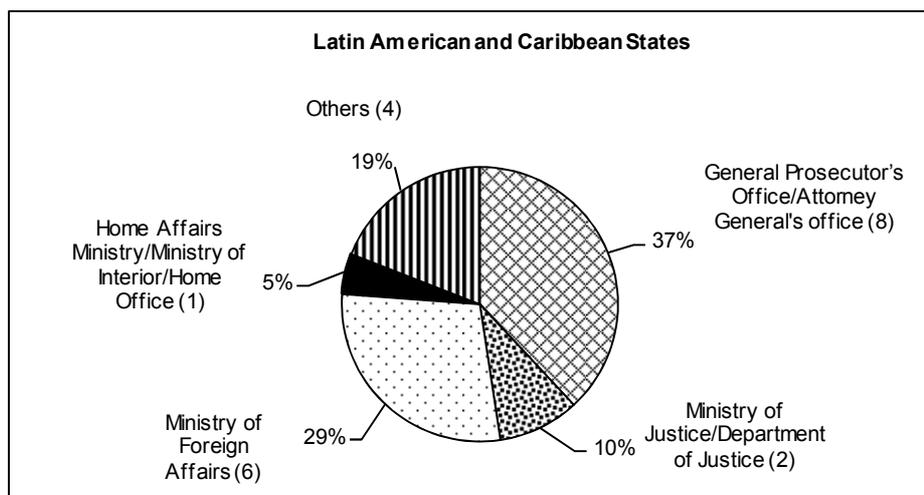


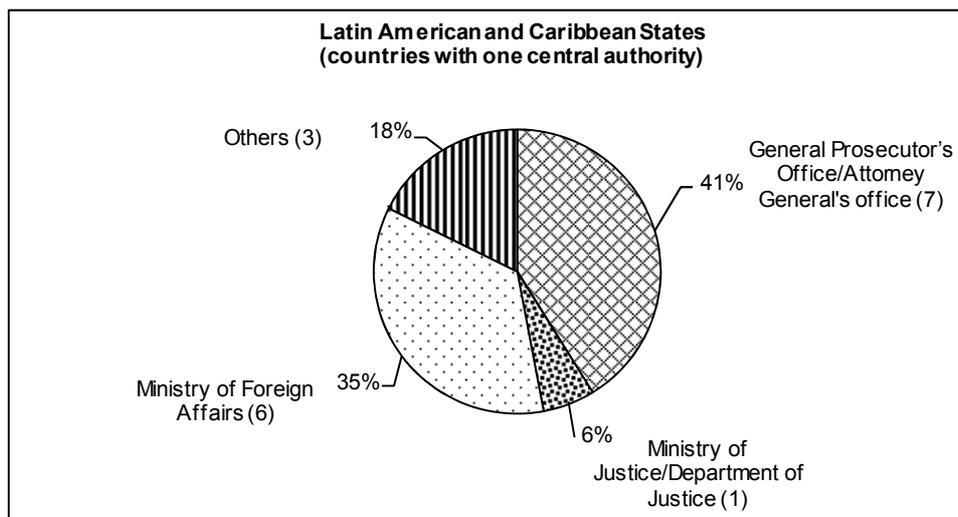
(d) Latin American and Caribbean States

30. Of the 18 Latin American and Caribbean States parties who had notified the Secretariat of the designation of their central authority, 17 countries nominated only one central authority. Only one country nominated two. This was a significantly lower rate than the overall average.

31. This was the only region where the Ministry of Justice was not the body most often designated as central authority, on the contrary, only two States designated the Ministry of Justice as the central authority (in one State this was done along with another institution).

32. The Prosecutor's Office was the body that was most often designated as the central authority in the region, followed by the Foreign Affairs Ministry. Latin America and the Caribbean was the only region in which the Foreign Affairs Ministry reached such a high number of nominations. From all other regions, only two countries nominated the Foreign Affairs Ministries as the central authority (one within the African States, and one within the Asia-Pacific States, which was nominated along with another institution).





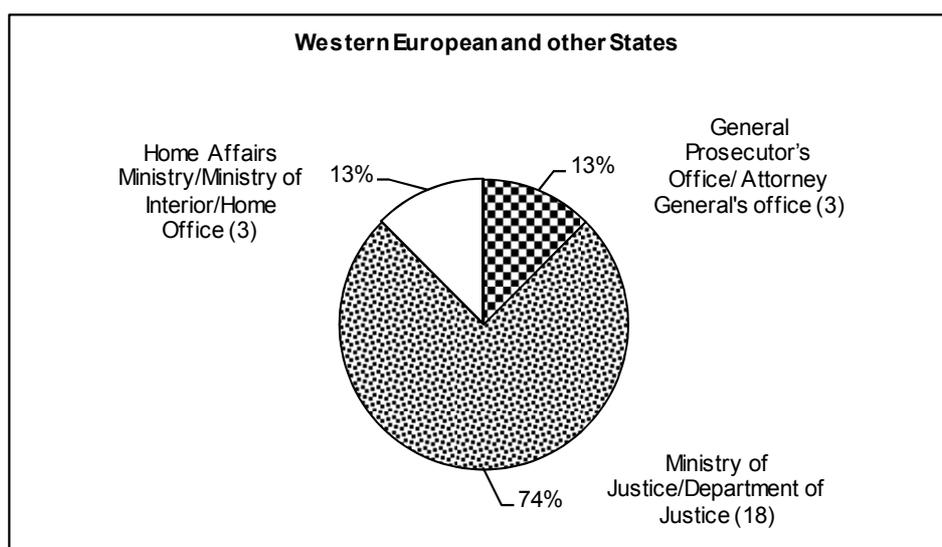
(e) Western European and other States

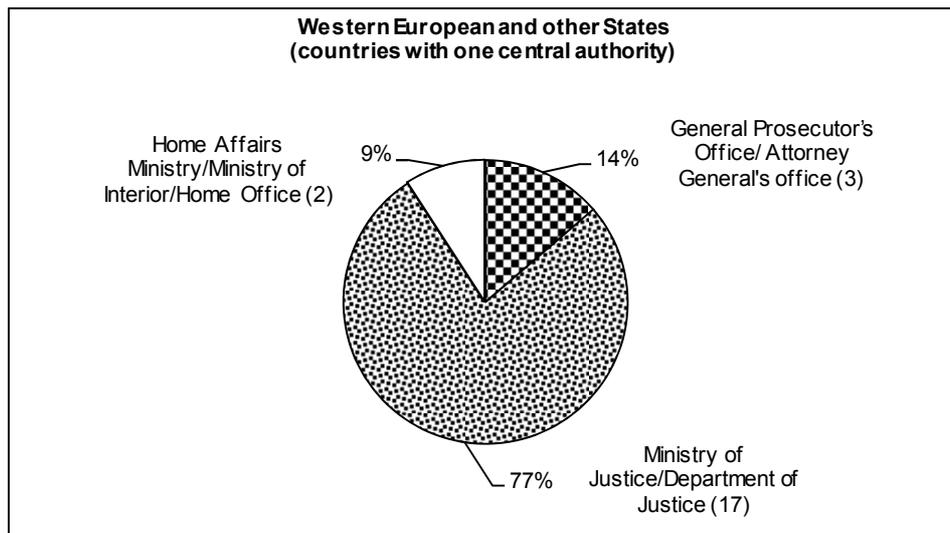
33. Of the 23 Western European and other States parties who had notified the Secretariat of the designation of their central authority, 22 countries nominated only one central authority. Only one country decided to nominate two, which was a significantly lower number than in the overall average.

34. A large majority, and a significantly higher rate than the overall average, had opted for the Ministry of Justice to be the central authority.

35. The General Prosecutor's Office and the Office for Home Affairs each represented 13 per cent of the central authorities of the region. Home Affairs is only designated in 9 per cent of States in the region if only those States parties with one central authority are included. This was however still above the overall average of 3 per cent.

36. None of the Western European and other States parties nominated the Ministry of Foreign Affairs or any institution in the category "other" to be the central authority.





2. The role and functions of central authorities in facilitating mutual legal assistance pursuant to article 46, paragraph 13, of the Convention against Corruption

37. Analysing the information on central authorities based on the thirty-four country reports, particularly on the implementation of article 46, paragraph 13, of the Convention, did not only provide information on the designation of central authorities but also on their role and function, and on their relations with the judicial cooperation networks established in some regions.

38. Although several governmental agencies were normally involved in the mutual legal assistance process, the existence of a central authority greatly facilitated the communication between the State parties, because it ensured that the request was rapidly conveyed to the appropriate authority. The actual role and responsibilities of the central authority varied from one country to the other. Procedures, legal systems and conditions governing the admissibility of a request differed from State to State.

39. Examining by region the different scenarios applied will help to identify good practices that allow central authorities to improve mechanisms to facilitate mutual legal assistance and reduce delays in procedures.

40. Particular attention was given to the structure and role of the central authority. Some countries gave their central authority a formal role, in which it was only in charge of receiving and sending mutual legal assistance requests, while other central authorities were responsible for the execution of requests, the substantive coordination or the follow-up on the request among national institutions. These different roles also have an impact on the communication of the central authorities with their foreign counterparts, and on their participation in regional or international cooperation networks that might help to facilitate the mutual legal assistance process.

(a) African States

41. As described above, most African countries designated the Ministry of Justice as the central authority responsible for the reception and transmission of mutual legal assistance requests. There were some variations regarding the actual execution of the requests and the substantive mandate of the designated central authority. In one State the purpose of the central authority had been specified in all bilateral agreements i.e. to enhance the importance of good networking on the international cooperation field. Although this State allowed that requests for mutual legal assistance and any related communications be transmitted to the central authorities designated by States Parties directly, it provided that such requests and communications could also be submitted through diplomatic channels. In another State, the work flow specified that the Ministry of Foreign Affairs will receive the request and transmit it to the Ministry of Justice, the designated central authority, who would be in charge of sending it to the Prosecutor General. The executive branch held the final decision whether the request would be executed.

42. One State designated the Director-General of the Department of Justice and Constitutional Development as the central authority to which requests for assistance were to be forwarded. After approval had been granted in terms of the domestic law in mutual legal assistance matters, requests were forwarded to the competent authorities to be executed. The role of the central authority, as defined in this country, was to encourage the speedy and proper execution of requests.

(b) Asia-Pacific States

43. Several States parties established that the Ministry of Justice was the central authority, and processed requests in conformity with established procedures and evidentiary requirements. The majority of countries in the region did not require that requests and related communications be addressed to them through diplomatic channels.

44. It should be noted that the ASEAN Treaty on mutual legal assistance in criminal matters had an impact on the designation of the central authorities of the States that are parties to the Treaty.

45. In one State the Ministry of Foreign Affairs was first designated as the central authority prior to a legislative amendment, which designated the Office of the Prosecutor General as the central authority for all forms of international cooperation. The role of this office was to forward the requests to the Ministry of Justice who would decide on the admissibility.

46. One State party established the Commission of Integrity as the central authority in cases pertaining to corruption.

47. Another State party provided a division of central authorities based on the subject of the request: while the Ministry of Justice was given the overall responsibility over mutual legal assistance in general, it also was responsible for international cooperation in civil matters. The Ministry of Public Security was designated for extradition and transfer of sentenced persons and the Procurator's Office in criminal matters.

48. The Attorney-General was the central authority for matters pertaining to Mutual Legal Assistance in several countries. In one of them, the Director of Public

Prosecutions was the office which acted on instructions of the Attorney-General with regard to requests for mutual legal assistance in criminal matters pursuant to the provisions of the domestic law. The Attorney-General received incoming requests and transmitted outgoing requests for mutual legal assistance while not undertaking any substantive review of the requests.

(c) Eastern European States

49. This region saw a plurality of offices designated as central authorities. The Ministry of Justice was designated in several cases. In one of them, the substantive work was effectively conducted by the courts and the State prosecutors' offices was responsible for provision of international legal assistance. In another State the Ministry of Justice was the designated authority and actively collaborated with the Ministry of Foreign Affairs. In another country where the Ministry of Justice was the designated central authority, incoming requests were handled by the General Prosecutor's Office (now part of the Ministry of Justice), which determined the authority competent to execute them and monitored progress on the execution of the requests. It was reported that the competent officials of the General Prosecutor's Office, which initiated criminal proceedings or verified the legality and justification of commencement of the criminal proceedings, were to be immediately informed thereof, to monitor progress in the execution of requests through a database.

50. Several State parties designated more than one central authority. Some of them established the division of labour based on the status of the case. The Ministry of Justice dealt with mutual legal assistance requests concerning requests of courts, and the Prosecutor General's Office with requests of pretrial investigation agencies. Another country established the division based on the subject of the request: the Ministry of Justice as the central authority for dealing with requests on civil matters, including civil law aspects of criminal cases, and the General Prosecutor's Office for requests revolving around criminal matters.

51. One State established that the Prosecutor General's Office was the central authority for incoming requests based on the Convention. All corruption-related requests were handled by the Anti-Corruption Department. Under other conventions, other institutions were designated while the relevant authority under the domestic legislation on Legal Assistance in Criminal Matters is the Ministry of Justice. The Prosecutor General's Office was the responsible authority for any investigation and detective search activity, also for the activities of the police. In cases in which the Ministry of Justice was the central authority, it limited its role to the formal aspects of the request and overarching policy considerations.

(d) Latin American and Caribbean States

52. Both States had designated the Ministry of Foreign Affairs as central authority and identified the specific department in charge of processing the requests. Those departments were designated as the central authority for the majority of treaties in legal assistance to which these countries were parties, thus allowing them to have an overview of incoming and outgoing requests and to identify weaknesses in the system. The competence of the central authorities was limited to a formal role, of channelling requests to the responsible authorities and contribute to process the requests.

(e) Western European and other States

53. The majority of countries from this region designated a responsible unit in the Ministry of Justice. The central authorities received and submitted requests directly from and to other central authorities. In one country, there were three ways of submitting a request. It could be either sent from the central authority directly to another central authority, or, where necessary, through the Ministry for Foreign Affairs; or, if foreseen in the applicable treaties, the request could also be sent directly by the court or the competent prosecutorial or investigative authority which was seeking assistance. In this country, the role of the central authority was defined in a formal manner and the Ministry of Justice did not take into account the substance of the request but was limited to transmit this request promptly to the authority which was competent to execute the request, unless the execution fell within the competence of the Ministry of Justice, when the country was acting as the requested State.

54. One country stated that the Attorney-General's Department was the central authority for mutual assistance in criminal matters and was also identified in the bilateral mutual legal assistance treaties. This authority ensured the speedy and proper transmission and execution of incoming mutual legal assistance requests showing a flexibility in terms of means of communication (via regular post, fax, e-mail, or via diplomatic or INTERPOL channels) that allowed a foreign country to determine the most appropriate channel depending on the urgency of the request. The Attorney-General's website provided detailed information about how to contact and how foreign countries could be assisted in providing mutual assistance, links to domestic mutual assistance legislation and information about bilateral and multilateral treaties. This central authority transmitted foreign requests to the appropriate law enforcement authorities or the Directorate of Public Prosecutions for execution, and encouraged expeditious and thorough execution of the request by the competent authority. The case officers remained responsible for requests through to completion and followed up regularly with the competent authority about the execution of each request and provided regular updates to the foreign country. The role of the authority in cases where the country was a requesting State consisted in liaising with the foreign central authority about the progress of the request. Once the request had been sent, the central authority would liaise with the foreign country to respond to any queries that might arise in executing the request or seek updates within a reasonable time period.

55. A number of central authorities participated in regional or international networks and organizations (such as Eurojust, the European Judicial Network or IberRed) to facilitate mutual legal assistance and to speed up the process in an informal manner. There was still a need to subsequently formalize the request through official channels on the basis of information established by the regional or international network. Based on these organizations and networks, direct correspondence between judicial authorities (tribunals, prosecutors' offices, investigating magistrates, etc.) was a common practice in the region.

56. In one State the Assistant Attorney General was designated specifically for matters related to the National Security Division's activities. In urgent situations, for formal legal assistance requests, direct communication with the central authority was encouraged, as was the use of the law enforcement channels for informal assistance.