



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

Distr.: General  
26 March 2013

Original: English

---

**Implementation Review Group**

**Fourth session**

Vienna, 27-31 May 2013

Item 2 of the provisional agenda\*

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

**Implementation of chapters III (Criminalization and law  
enforcement) and IV (International cooperation) of the  
United Nations Convention against Corruption (review of  
articles 40-45)**

**Thematic report prepared by the Secretariat**

*Summary*

The present thematic report contains information on the implementation of articles 40-45 of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the United Nations Convention against Corruption by States parties under review in the first and second years of the first cycle of the Mechanism for the Review of Implementation of the Convention, established by the Conference of the States Parties to the United Nations Convention against Corruption in its resolution 3/1.

---

\* CAC/COSP/IRG/2013/1.



## **I. Review of implementation of chapter III of the Convention**

### **Bank secrecy, criminal record and jurisdiction (arts. 40-42 of the Convention)**

1. In most jurisdictions, bank secrecy did not present significant issues, even in cases where bank secrecy rules were in place, although issues with regard to the lifting of bank secrecy were noted in a few jurisdictions. Most notably, in one case, difficulties for investigators to obtain the lifting of bank secrecy existed due to the particularly high standards of proof required by the supervising judge. In addition, concerns were noted about the lengthy treatment of requests for the lifting of bank secrecy by judges and the subsequent provision of information by concerned banks. A recommendation was issued to adopt suitable measures to facilitate the practical implementation of the standards on the lifting of bank secrecy. Delays in the lifting of bank secrecy were also observed in other cases where the procedure was regulated by court authorization upon request of the prosecutor. Such delays were not noted in one jurisdiction where judicial permission was not required, and additionally the law established an obligation of credit institutions to provide information as required. In another jurisdiction with bank secrecy rules in place, in practice these rules did not pose major difficulties and were limited by the duty to collaborate in accordance with the requirements of the public interest. In practice, this meant that banks and other financial institutions should facilitate access to data and precedents as required. In one case where bank secrecy rules were in place, the prosecutor's office had the authority, in investigations against civil servants for offences committed in the exercise of their functions, to order the disclosure of the suspect's current accounts and balances as a whole, and not only of specific transactions related to the issue under investigation. In one jurisdiction a recommendation was issued to address the requirement that permission of the Chairman of the Central Bank was needed for law enforcement agencies and judges, in practice, to obtain or seize bank, commercial or financial records from banks and other financial institutions. In one jurisdiction, legislation was pending that would establish a financial intelligence unit, a reporting regime for financial institutions, and also address bank secrecy issues.

2. In several jurisdictions previous convictions in another State could not be taken into account with regard to corruption offences, whereas provisions existed in relation to other offences such as money-laundering, in one case, and the offences of human trafficking, drug trafficking, and acts of terrorism, in another. In a few cases the article had been implemented by reference to other international legal instruments, such as the Riyadh Agreement on Juridical Cooperation, the European Convention on the International Validity of Criminal Judgments, and the Convention on Mutual Assistance in Criminal Matters between the Community of Portuguese Speaking Countries. Additionally, in four cases, the verdicts of foreign courts could be taken into account as provided by international agreements. In some cases, the article had not been implemented or there were no laws or practice on criminal record.

3. Issues with regard to jurisdiction were noted in a few States parties that did not provide for extra-territorial jurisdiction in corruption matters. In one case, the requirement of double criminality was applied to offences committed abroad by or

against a national, but this general principle was not applicable in respect of active and passive bribery of national and foreign public officials and members of Parliament and, additionally, the passive personality principle was limited by the requirement that the acts committed abroad be punishable by imprisonment of more than six months. In six cases, the passive personality principle had not been established or was restricted or not clearly defined, while in three other cases, both the active and passive personality principles were limited or had not been established. In seven cases, additionally, the State protection principle was limited or had not been established, and a recommendation was issued accordingly. Nationals could only be prosecuted for offences committed abroad as permitted by existing treaties, in one case, and in another case on the basis of either a complaint by the victim or its legal successors or official denunciation by the authority of the country where the offence was committed. Several States parties had established measures that prohibit the extradition of nationals or allow such extradition only when applying international treaties and according to the principle of reciprocity, as discussed further in the thematic report on the implementation of chapter IV of the Convention (International cooperation) (CAC/COSP/IRG/2013/7).

Box 1

**Examples of the implementation of article 42**

With respect to bribery, in one jurisdiction an extended active nationality principle covered all persons who had “a close connection” with the State party, including not only citizens but also individuals ordinarily resident in the country and bodies incorporated under domestic law (including the domestic subsidiaries of foreign companies).

## II. Review of implementation of chapter IV of the Convention

### A. General observations on challenges in the implementation of chapter IV (International cooperation)

4. As had been previously requested by the Group, this report contains an analysis of the most prevalent challenges in the implementation of chapter IV, organized by article of the Convention. For article 44 (extradition), 46 (mutual legal assistance), 48 (law enforcement cooperation) and 50 (special investigative techniques), which cover a wide range of detail, a further breakdown according to paragraphs of the articles is provided. This report is based on 34 review reports and thus does not purport to be exhaustive regarding overall challenges in implementation. However, it allows for the identification of clear trends.

5. The analysis of challenges highlighted in States reports indicates that challenges to international cooperation exist both at a legislative and at a practical level. State parties should continue their efforts to enact and, where appropriate, review and update extradition and mutual legal assistance laws consistent with the Convention. A recommendation which was made repeatedly in the reports was for States parties to make efforts to ratify relevant bilateral, subregional and regional instruments on extradition and mutual legal assistance.

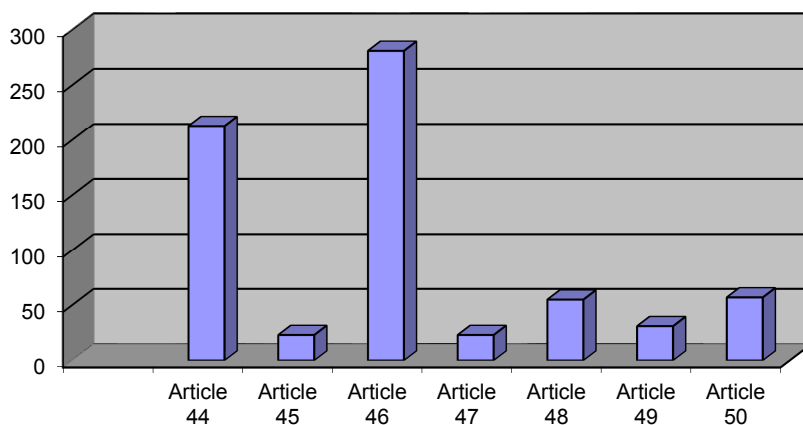
6. At a practical level, some States lacked modern tools, technical equipment and appropriate human resources for successful cooperation. A lack of training and technical skills of the members of the judiciary and law enforcement agencies on mutual legal assistance was noticed, which was reflected in the respective technical assistance needs emerging from the reviews.

7. Bridging the differences between legal systems was considered a challenge. In this regard, some States were recommended to consider the possibility of further relaxing the strict application of the dual criminality requirement with regard to extradition.

8. Fields of practical challenges in mutual legal assistance were the expeditious information exchange and efficient cooperation among central authorities. Further, a number of States faced challenges with regard to joint investigations and the use of special investigation techniques for corruption.

9. Appropriate mechanisms to compile statistics were considered generally as challenging; at the same time the availability of this information is important to allow an assessment of the efficiency and effectiveness of international cooperation systems.

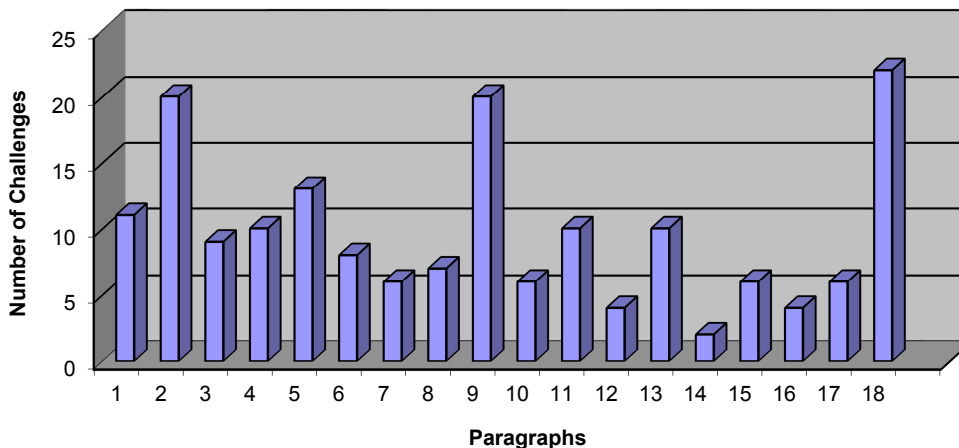
**Number of Challenges by article**



Article of the Convention	Identified challenges in implementation (in order of prevalence, by article of the Convention)
Extradition (article 44)	<ul style="list-style-type: none"> <li>• Limited capacity</li> <li>• Inter-agency coordination</li> <li>• Specificities of the legal system</li> <li>• Lack of specific legal framework</li> <li>• Further development of comprehensive domestic law framework</li> <li>• The need to systematize information on extradition cases and to gather relevant data through the provision of statistics</li> </ul>
Dual criminality (article 44, paragraph 2)	<ul style="list-style-type: none"> <li>• Difficulties in the application of the dual criminality requirement</li> </ul>
Expedite proceedings or simplify evidentiary requirements (article 44, paragraph 9)	<ul style="list-style-type: none"> <li>• The simplification of the proceedings in line with the Convention against Corruption</li> </ul>
Or extradite or prosecute (article 44, paragraph 11)	<ul style="list-style-type: none"> <li>• The reform of the legislation in order to ensure the application of the principle “aut dedere aut judicare” prosecute or extradite. In the cases where extradition was refused, the case must be considered for prosecution before the national authorities.</li> </ul>
Agreements or arrangements (article 44, paragraph 18)	<ul style="list-style-type: none"> <li>• The need to adopt further bilateral and multilateral agreements and the expansion of the existing ones, while ensuring that the instruments are in line with the United Nations Convention against Corruption standards</li> </ul>
Mutual legal assistance (article 46)	<ul style="list-style-type: none"> <li>• Limited capacity and resources</li> <li>• Lack of specific legislation</li> <li>• Gaps in the legal framework</li> <li>• Improvement of case management systems to tack the mutual legal assistance requests</li> <li>• Engage in bilateral and multilateral arrangements with foreign States with the aim to enhance the effectiveness of the mutual legal assistance process</li> </ul>
Purposes of mutual legal assistance (article 46, paragraph 3)	<ul style="list-style-type: none"> <li>• Lack of specific legislation</li> <li>• Gaps in the legal framework</li> </ul>
Enforcement of foreign sentences (article 44, paragraph 13)	<ul style="list-style-type: none"> <li>• The development of legislation in relation to the enforcement of sentences imposed by a requesting State</li> </ul>
Law enforcement cooperation (article 48, paragraphs 1 and 2)	<ul style="list-style-type: none"> <li>• Practical challenges in swift information exchange in time sensitive cases</li> <li>• Challenges in compiling statistics</li> <li>• Expansion of the existing agreements</li> </ul>
Joint investigations (article 49)	<ul style="list-style-type: none"> <li>• Little experience in conducting joint anti-corruption investigations</li> </ul>

## B. Extradition

Challenges of Article 44 by paragraphs



10. States parties regulated extradition in their domestic legal systems, mostly in the Constitution, the code of criminal procedure or special laws on international cooperation. Only one State party did not have national legislation on extradition, but indicated it was currently considering to adopt legislation. Where legislation existed, it did not in all countries regulate the matter with the same level of detail. In one case, no provision existed apart from limited extradition-related articles in the Constitution. In another case, national legislation only referred to money-laundering offences, and the country was planning to adopt an anti-corruption bill which would contain extradition-related provisions limited to the area of corruption. While some States parties relied heavily on treaties, others mentioned the importance that non-binding arrangements had in their extradition practice and arrangements made at the subregional level, which often provided a less formalistic approach to the mutual surrender of fugitives than fully-fledged treaties. For the Member States of the European Union, the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant generally leads to a two-tier system: a simplified system is applied for European Union Member States, while general rules apply to other States. One Member State of the European Union distinguishes between three categories of States: European Union States, designated extradition partners outside the European Union, and all other States, with whom special arrangements have to be made.

11. A key difference among States parties stemmed from their belonging to different legal systems. Countries whose Constitution allowed for the direct application of ratified international treaties did not need to adopt detailed extradition legislation. Other States parties could only enforce treaties by enacting enabling legislation. One State party confirmed compliance with most provisions of the Convention by referring to very similar or equivalent provisions to be found in a regional treaty on corruption to which it was party.

12. In the majority of States parties, “extraditable offences” were those punishable by deprivation of liberty for a period of at least one year or a more severe penalty, as regulated in national legislation or treaties. Some States parties departed from this rule and applied a lower (6 months) or higher (two years) threshold. If extradition was sought for the enforcement of a sentence, the threshold was typically 6 months (4 months in two States parties). It was noted that challenges stemming from these thresholds might be addressed by increasing the applicable penalties to ensure that all conducts criminalized in accordance with the Convention become extraditable. Only very few countries could confirm that each of the offences to which the Convention applied were deemed to be included as an extraditable offence in any extradition treaty existing between States parties, as foreseen in article 44, paragraph (4), phrase (1). However, some States parties confirmed that they had included such offences as extraditable offences when concluding new extradition treaties. Most treaties appeared to identify “extraditable offences” based on a minimum penalty requirement as opposed to a list of offences. In some bilateral treaties, the threshold for making offences extraditable was a period of deprivation of liberty of at least two years. One country highlighted that its increasing reliance on the minimum penalty requirement approach in the negotiation of new international treaties injected an important element of flexibility into the practice of extradition.

13. A majority of States parties made “accessory offences” extraditable if the main offence satisfied the minimum penalty requirement. In one case, sought persons had to express their consent in order to be extradited for accessory offences. In two other countries, accessory offences were considered to be extraditable only if the maximum penalty incurred by all such offences considered together reached the threshold of two years’ imprisonment. In two countries, the reviewers considered that high sanctions for corruption offences alleviated the need for extradition for accessory offences. Five States parties confirmed that extradition for accessory offences was not possible.

14. Dual criminality appeared as a standard condition for granting extradition. Only one State party considered the absence of dual criminality as an optional, as opposed to a compulsory, ground for rejecting an extradition request. Member States of the European Union stated that corruption is included in the Framework Decision on the European arrest warrant as one of the offences that give rise to surrender if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, without verification of the double criminality of the act. The majority of States parties set out the dual criminality principle explicitly in their domestic legislation, with the exception of three, which asserted that it was applied in practice or based on the bilateral treaties to which the country was a party. In one State party, the draft anti-corruption law foresees extradition in the absence of dual criminality. One further State party expressed an interest in modifying its legislation to remove the dual criminality requirement for some or all of the offences set forth in its penal laws. Most States parties had made efforts to apply a flexible approach to the dual criminality principle: the dual criminality principle was usually deemed fulfilled regardless of the terminology used to denominate the offence in question, or for similar types of offences. In one case, the full criminalization of all Convention-based offences was recommended as a way to ensure that the absence of the dual criminality

requirement would no longer constitute an obstacle to the surrender of suspected offenders. Two States parties made specific comments on the application of the dual criminality principle vis-à-vis corruption-related offences. The first one mentioned that it had encountered no obstacle in obtaining or extending cooperation to other States due to the operation of such principle. The second one highlighted that the absence of a definition of “foreign public officials” and “officials of public international organization” in its domestic legislation, coupled with a strict reading of the dual criminality principle, meant that extradition for the offences set forth in article 16 of the Convention was not possible.

15. Most States parties could reject extradition requests based on the same types of grounds. One State party differed from the others in that it could refuse to extradite if there were indications that a domestic prosecution or the execution of the foreign criminal judgment would facilitate the social rehabilitation of the sought person. All States parties had an exhaustive list of grounds for refusal in their legislation except for one, which deduced them from general principles of international law in the absence of an applicable treaty. Only one State party listed the grounds for refusal directly in its Constitution.

16. Most States parties could not reject a request on the sole ground that the offence involved fiscal matters. One country had not taken any specific measures for the implementation of the provision and a recommendation was given to ensure compliance with the Convention. In two cases, lack of legislation or practice left a degree of uncertainty as to whether an extradition request might be denied on these grounds. Under the legislation of one State party, some categories of offences were not extraditable due to their fiscal nature. The authorities of that State party confirmed, however, that if the elements of a given offence were considered to constitute an act of corruption under the Convention, extradition would not be refused.

17. The majority of States parties either could not grant, or could refuse, extradition when grounds existed to believe that the request had been formulated with a view to persecuting the sought person on account of his or her sex, race, religion, nationality, ethnic origin or political opinions. In one State party, a general constitutional clause that prohibits discrimination on account of these characteristics was deemed sufficient for the implementation of this provision. In seven States parties, the risk of sex-based discrimination was not considered, although one State party announced that this particular type of discrimination would be reflected in its new extradition law. In one of these countries, also the discrimination on account of ethnic origin or political opinions was not covered as a ground for refusing extradition. In three countries, domestic legislation did not make any reference to the “non-discrimination” clause. One country reported that extradition to its territory has already been refused on the basis of concern of discrimination.

18. Nearly all States parties included the commission of a political offence among the grounds for rejecting an extradition request. In the experience of one State party, this was the most common cause of rejection of incoming requests (together with the circumstance that the prosecution of the offence is statute-barred). Two States parties noted that some of their extradition treaties also included a definition of a political offence. One country had a definition of political offence in its legislation and also explicitly detailed a list of crimes that cannot be considered political offences, including several corruption-related offences. In all other States parties,



the notion of “political offence” was not defined in legislative terms, but decisions on whether to reject an extradition request on this ground were taken on a case-by-case basis, often relying on criteria elaborated in jurisprudence. In one case, for example, an offence was considered political if, following an evaluation of the motives of the perpetrator, the methods employed to commit the offence and all other circumstances, the political dimension of the act would outweigh its criminal component. The Constitution of one State party mentioned that extradition was not allowed for “political reasons”, an expression that the reviewers found to be ambiguous as to its actual scope of application. The majority of States parties confirmed that under no circumstances would a Convention-based offence be treated as a political offence. Two of them excluded the possibility to invoke the political nature of an offence where an obligation to extradite or prosecute had been undertaken internationally. One State party had no exemption for political offences, while another State party had no exemption for political offences as such, but would not comply with extradition requests that were motivated by intent to punish someone for his or her political opinions.

19. Most States parties could not extradite their own nationals; unless this possibility was explicitly envisaged in applicable treaties. Only three countries could extradite their nationals, and one of them excluded the extradition of nationals unless the concerned person would be “better judged” in the place where the offence had been committed. All States parties except one specified that any refusal to grant extradition based on these grounds would trigger a domestic prosecution, in accordance with article 44 (11) of the Convention. Some States parties reported on domestic criminal procedures that had been initiated when extradition requests had been rejected on the basis of the nationality of the requested person. In one country, the possibility to institute domestic proceedings in lieu of extradition was limited by the need to obtain the victim’s complaint or the official indictment by the authorities of the country where the offence was committed.

**Box 2**

**Example of the implementation of article 44 (11)**

One State party gave its nationals the choice of whether they wished to be extradited or judged domestically. If they chose the second option, the person was judged domestically following consultation with the requesting State on condition that the latter renounced its jurisdiction and transmitted all available evidence.

20. Only three States parties made reference to the possibility of temporary surrender of nationals on condition that they be returned after trial to serve the sentence imposed in the requesting State, as envisaged in article 44 (12). From those three, one applied the conditional surrender in the context of the Framework Decision of the European Union on the European Arrest Warrant; the other was party to two bilateral agreements that regulated conditional surrender (one further bilateral agreement to this effect was not yet in force). Many States parties appear not to be able to enforce a foreign sentence whenever they rejected an extradition request (sought for enforcement purposes) on nationality grounds, as envisaged in article 44 (13) of the Convention. Those States parties that can enforce foreign sentences when they reject an extradition request act on the basis of national legislation, regional treaties or direct application of UNCAC. One State party in particular mentioned that it was not in a position to execute a foreign court order; if

a sentenced person, regardless of nationality, was present in its territory, the competent authorities of that State could only initiate a new criminal proceeding for the same facts.

21. With regard to the legal basis for receiving or sending an extradition request, in the majority of States parties a treaty basis was not necessary. This was also true of some States parties belonging to the so-called “common law” legal tradition, which typically required the existence of a treaty. Four States parties in particular enabled their respective competent authorities to make an ad hoc declaration for the purpose of considering other countries as either “extradition countries” or “comity countries” in the absence of a treaty, or to make other ad hoc arrangements. In many cases where extradition could be granted regardless of a treaty, a condition of reciprocity was set, with one State party subordinating extradition to its own interest and good relationship with the requesting country. Indirectly highlighting the importance of having the proper treaty basis in place, however, that State party reported major problems with offenders fleeing to a country in the region with which it had not concluded an extradition treaty.

Box 3

**Example of the implementation of article 44 (7)**

One State party applied the so-called “principle of favourable treatment”. Originally developed in connection with labour and human rights law, the jurisprudence of that State party had extended its reach to international cooperation. Accordingly, the provisions of international treaties such as the Convention, are interpreted in a manner that is most favourable to the provision of international cooperation.

22. Despite the fact that the majority of States parties did not require a treaty as a basis for extradition, in practice they all relied to a greater or lesser extent on treaties (whether bilateral or multilateral). One country reported having concluded bilateral extradition treaties with 133 States or multilateral organizations, such as the European Union, and that 30 new treaties had entered into force since the entry into force of the Convention. Some countries explicitly stated that its preferred tool for extradition were bilateral treaties. One country had not yet concluded any bilateral extradition agreements. In one State party, a number of bilateral treaties were considered to be valid and applicable although they had been concluded by the former colonial power. Regional treaties usually took the form of fully-fledged extradition treaties, or treaties on mutual legal assistance in general containing some provisions on extradition. In general, bilateral treaties tended to be concluded with countries of the same region or those sharing the same language. In one case, it was recommended that the Convention be extensively used as a legal basis for extradition to compensate for the very limited number of bilateral treaties in place.

Box 4

**Example of the implementation of article 44 (6)**

One State party adopted regulations specifically implementing the extradition-related provisions of the Convention. Such regulations provided, among others, that any country that is a party to the Convention at any given time would be considered as an “extradition country”. This ensured the ability of that State party to meet its international obligations under the Convention without the need to amend the regulations each time a new State became party to the Convention.

23. Although most States parties could in principle use the Convention as a basis for extradition, it emerged that it was hardly ever utilized in practice for that purpose. In one State party, which could use UNCAC as a legal basis but had not yet done so, UNTOC had already been used as a legal basis for extradition. In one case, although it could not alone constitute a legal basis, the Convention could be used to expand the scope of a bilateral treaty in terms of extraditable offences. One State party argued that bilateral treaties often provided a more comprehensive and detailed regulation of extradition matters than the Convention. Another State party offered a different explanation, namely that practitioners generally lacked knowledge about the possibility to use the Convention as a concrete legal tool for international cooperation. Three States parties had not yet reached a clear position. In one State party, the Convention could potentially be used as a legal basis by designating it under the Extradition Act, which had not been done.

24. The majority of the States parties indicated their readiness to explore possibilities to conclude new treaties to enhance the effectiveness of extradition. A few provided the names of the countries with which treaty negotiations were ongoing. One State party highlighted its current policy to prioritize negotiations with those States parties in which there was a high presence of its own nationals. The one country that had not yet concluded bilateral extradition treaties indicated that preliminary discussions had started with several neighbouring countries. To a number of countries, recommendations to review existing and conclude new extradition treaties were given.

25. Substantial divergences emerged as to the average duration of extradition proceedings, which ranged from 1.5 to 4 months to twelve to eighteen months. It was noted that the European Arrest Warrant had contributed to shortening the period among European Union States, although no specific statistics were available on that. Individual countries reported that differences in the time frameworks often depended on the circumstances in which the request had been submitted. One European Union country, for example, indicated that a longer time (of one year approximately) was generally necessary in order to extradite fugitives to non-European Union countries. In another case, a proceeding that would normally last twelve months could be reduced to four months if the documentation supporting the extradition request was properly submitted. Less than half of the States parties under review envisaged simplified proceedings, typically based on the sought person’s consent to be extradited. Of those States parties that applied simplified proceedings, some indicated they were based on regional treaties. In one case, such proceedings were only available to non-nationals. According to another State party, simplified extradition proceedings were used in around half of the cases and could lead to extradition being granted within a few days if not even hours.

26. One country had faced several obstacles in obtaining cooperation from other States, including delays in receiving assistance due to the high costs involved and cumbersome procedures. Another country had made several extradition requests related to corruption offences, none of which was granted due to differences in legal systems. Only one country explicitly mentioned that it had neither received nor sent an extradition request for corruption-related offences.

27. Lack of uniformity was also recorded in terms of the evidentiary threshold prescribed by domestic laws in order to grant extradition. While some States parties did not require any evidence about the commission of the offence, others set a number of standards. These were expressed in terms of “probable cause” or “prima facie case”. Recommendations were made, in such cases to introduce a lower burden of proof in extradition proceedings to make it easier for requesting States to formulate an extradition request with better chances of success, unless their review team was convinced that such standards were applied in a sufficiently reasonable and flexible manner.

Box 5

**Example of the implementation of article 44 (9)**

As a member of a subregional organization, one State party reported about its extradition arrangements with countries belonging to the same organization and confirmed that no evidentiary requirements were in place. Instead, extradition was implemented through a system of mutual endorsement of arrest warrants, which the reviewers praised as greatly facilitating the prompt and effective surrender of fugitives.

Specific deadlines had been established in some jurisdictions for the review of incoming extradition requests by responsible authorities.

One country stated that it had recently established a dedicated unit within its Central Authority, with the view of expediting the execution of extradition requests, and has established a Committee on Extradition, comprising the Central Authority, the prosecution authority, the police, INTERPOL and the Department of International Relations with the view to enhance and streamline extradition procedures, and to discuss and address the main issues faced in this process. The Magistrate must, in order to facilitate extradition with countries of different legal systems, and to accelerate the process, accept as conclusive proof a certificate issued by an appropriate authority in charge of the prosecution in the foreign State, stating that there is sufficient evidence at its disposal to warrant the prosecution of the person concerned.

28. According to most States parties, the main due process guarantees were enshrined in their Constitution or the Criminal Procedure Code. Only one State party mentioned that relevant protections were available under “common law principles”. A few States parties explicitly mentioned the applicability of relevant human rights treaties, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Some countries provided a list of the rights and guarantees applicable under their domestic legal systems. These included, among others, the presumption of innocence, the *ne bis in idem* principle, the right to a defence counsel, the right to an interpreter, the right to appeal both the court ruling imposing preliminary detention and the court order authorizing

extradition. The right to appeal the decision authorizing extradition was not granted in all States parties. One State party had not taken any specific measures for the implementation of the provision and a recommendation was given to ensure implementation. The extradition law of one State party applied a whole range of human rights safeguards to the extradition process, among which was the right of the individual with respect to conditions of imprisonment pending extradition. Although in most countries these rights appeared to be applicable to the conduct of criminal proceedings, they were normally considered to be extendable to other judicial proceedings, including extradition.

29. All States parties had measures in place to ensure the presence of the sought person at extradition proceedings. Custody, in particular, could invariably be ordered upon request. In one case, local courts were empowered to consider the legality of detention during extradition proceedings in the same way as they would do for pretrial custody. While in some countries arrest lead always to custody, in other cases, while arrest during extradition proceedings remained the rule, it was possible to order the release of the sought person on bail in exceptional circumstances, notably when the chances of granting extradition would be slim, or on health grounds. In some instances, the role of INTERPOL's red notice system was highlighted as an important conduit for executing the arrest of fugitives. The detention could be ordered from 18 days in some countries (which could be extended upon request to 40) up to six months (which could be extended upon request to eight months); in the latter case, a draft law provided for the extension of the maximum duration to one year).

30. There appeared to be no uniform interpretation and application of the requirement to engage in consultations with the requesting State before refusing extradition. Some States parties considered that no implementing legislation was needed. This was the case either because they regarded the duty of consultation as part of international comity or practice or because they interpreted article 44 (17) of the Convention or equivalent provisions of bilateral or regional treaties as being directly applicable and self-executing in their own legal system. Other States parties had specific legislation on the issue. One State party argued that prosecutors, in their capacity as representatives of the requesting State before the extradition authorities, were implicitly bound to keep the requesting State informed of all of their actions. Another State party mentioned that, although consultations could take place through the diplomatic channel and its results presented to the judge during the extradition hearing, the judge could not have direct contact with the foreign authorities. In three cases, lack of legislation, relevant treaties and practice resulted in the non-implementation of the requirement.

**Box 6**

**Example of the implementation of article 44 (17)**

One State party reported that its central authority dealing with incoming and outgoing extradition requests would make every effort to consult with the requesting party if a request made under the Convention appeared to be deficient. This would include giving the requesting country the opportunity to supplement the request with additional evidence or explanations. The central authority routinely contacted treaty partners to solicit their views and encourage the supply of additional information if an extradition request appeared likely to be denied.

31. Some States parties provided statistics and figures about the number of extradition requests sent out and received over the past few years, including the percentage of granted requests. However, the data provided was of a general nature and did not provide a thorough account of incoming and outgoing extradition requests for corruption-related offences. One State party estimated that approximately 20 per cent of the outgoing extradition requests related to corruption offences. One State party was recommended to systematize and make best use of statistics or, in their absence, examples of cases, indicating the length of extradition proceedings to assess their efficiency and effectiveness, and cases of simplified extradition and enforcement of foreign criminal judgements. Two States parties were recommended to streamline or continue their efforts to create or strengthen a case management system containing a database with statistics and practical examples/cases for international cooperation in corruption cases, including extradition, which will provide a better picture of how the relevant legal framework is implemented in practice and increase the efficiency of international cooperation mechanisms.

### **C. Transfer of sentenced persons**

32. Most States parties had the necessary legal framework to carry out transfer of sentenced persons in accordance with article 45 of the Convention, notably via bilateral and regional agreements. No precise figures could be gathered about the number of prisoners that each State party had received or transferred abroad. One State party pointed to thousands of prisoners having being transferred to and from it since 1977, pursuant to relevant treaties.

33. The number of treaties concluded by States parties on this matter varied considerably. Whereas one State party was bound by twenty-eight bilateral agreements covering transfer of sentenced persons, another one was not yet part to any bilateral agreements. In one State party, apart from a number of bilateral treaties, arrangements were in force with more than 100 countries. Similarly to what was observed in relation to extradition, a tendency was detected to conclude relevant agreements with neighbouring States or States which share the same language. Regional agreements also appeared to be used rather extensively, particularly the 1983 European Convention on the Transfer of Sentenced Persons among Council of Europe Member States and its additional Protocol (1997), the Riyadh Arab Agreement for Judicial Cooperation, the CIS Convention on the Transfer of Convicted Persons to Deprivation of Liberty for the Further Serving of Sentences 1998 and the Convention on the Transfer of Sentenced Persons among the Portuguese Speaking Countries Community.

34. In four cases, no agreement was in place, with one State party arguing that its national legislation barred such transfers when the person concerned was serving any sentence under any conviction within its territory until his or her discharge. However, the same State party expressed the intention to amend such legislation in order to ensure compliance with the Convention. Another country reported that it had refused a request for transfer because of the absence of a legal framework.

35. Most States parties were in a position to transfer sentenced persons on the basis of domestic laws. In one case, this possibility was limited to persons sentenced

for money-laundering or drug-related offences. However, the same State party specified that, in practice, all transfers had taken place through treaties. Another State party specifically mentioned reciprocity and dual criminality as conditions to execute transfers. Only one State party mentioned that it had used the diplomatic channel twice to transfer sentenced persons. Finally, no statistics could be gathered as to the numbers of transfers carried out in relation to Convention-based offences.

---