United Nations CAC/COSP/IRG/2012/7

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

Distr.: General
27 August 2012

Original: English

Implementation Review Group
Resumed third session
Vienna, 14-16 November 2012
Agenda item 2
Review of implementation of the United Nations Convention against Corruption

Implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption

Thematic report prepared by the Secretariat

Summary

The present thematic report contains information on the implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption and technical assistance needs of 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 Convention in its resolution 3/1.

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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, the present report has 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 information on the implementation of chapter III (Criminalization and law enforcement) of the Convention by States parties under review in the first and second years of the first cycle of the Review Mechanism and related technical assistance needs. It is based on information included in the review reports of twenty-four States parties that had been completed, or were close to completion, at the time of drafting.[1]

II. General observations on technical assistance

4. Pursuant to paragraph 11 of the terms of reference, one of the goals of the Review Mechanism is to help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance. Pursuant to paragraph 44 of the terms of reference, the Implementation Review Group is to consider technical assistance requirements in order to ensure effective implementation of the Convention. As had been previously requested by the Group, this report contains a thematic overview of technical assistance needs, where possible with a regional breakdown.

5. Of the twenty-four States parties included in this report, fourteen requested technical assistance for chapter III of the Convention. These included six States parties from the Group of Asian and Pacific States, five from the Group of African States, two from the Group of Eastern European States, and one from the Group of Latin American and Caribbean States. As the report is based on a limited number of responses received from States parties under review, it does not purport to be exhaustive regarding overall technical assistance needs.

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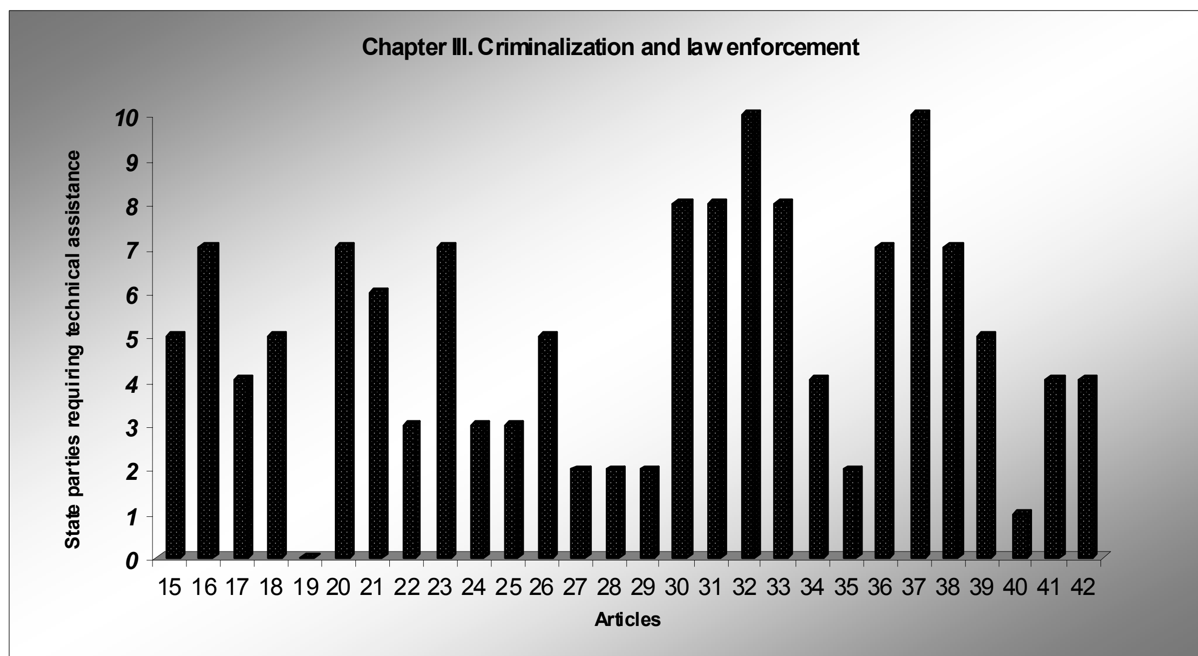
[1] The present data are based on country reviews as on 22 August 2012.

Figure 1
Technical assistance needs for chapter III



III. Implementation of the criminalization provisions of chapter III

A. General observations

Definition of "public official"

6. A cross-cutting issue related to the implementation of chapter III concerns the scope of coverage of the term "public official". For example, in the case of one State party members of Parliament were not considered public officials, thus limiting the implementation of several corruption offences with respect to parliamentarians, including domestic and foreign bribery and abuse of functions. Recommendations were made by the reviewing States parties to extend the scope of the relevant offences and provide for appropriate sanctions for parliamentarians. In the case of the same State party, the definition of "foreign official" did not explicitly include persons exercising public functions for a public enterprise. In four jurisdictions, the relevant laws did not cover the main categories of persons enumerated in the Convention or used inconsistent terms to define the class of covered officials. In another case, the anti-corruption legislation did not contain any explicit definition of the term "public official", which was only defined indirectly by reference to other concepts. With respect to the offence of abuse of functions, in particular, it was noted that in one jurisdiction, prosecutions often resulted in acquittals, due to the established court practice of excluding liability for a wide range of persons that did not fall under the term "officials", and the need for a new criminal law approach was identified.

B. Bribery offences

Bribery of national and foreign public officials and officials of public international organizations

7. All of the States parties had adopted measures to criminalize both active and passive bribery of domestic public officials. In addition, some had taken steps towards establishing as criminal offences the bribery of foreign public officials and officials of public international organizations. Nonetheless, a number of common issues were observed concerning the implementation of these offences. In several States parties, cases of a “promise” of an undue advantage were not explicitly covered or were indirectly covered under related concepts. Several States had additionally adopted a “conduct-based” approach whereby only the actual exchange was the subject of the offence, while an offer of bribery was not explicitly covered, although in some of these cases the offer could be prosecuted as an attempted crime or incomplete crime. Further, in one of these States parties, an “omission” to act was not criminalized and, additionally, passive bribery was only partly criminalized. Recommendations were issued by the reviewing States parties accordingly. In two cases, issues were raised concerning the concept of “official duty” and in several cases there were gaps as to third parties, such as the coverage of indirect bribery involving intermediaries or the accrual of benefits to third parties. Specifically, in one jurisdiction provisions criminalizing bribery aimed at obtaining the performance of acts not contrary to the duties of national public officials did not cover all instances of undue advantages for third parties. In a few cases the legislation contained specific exemptions or limitations, for example regarding bribery below certain threshold amounts, a defence of “reasonable excuse”, or immunity from prosecution for persons who reported the act of bribery (including in one case the possibility of having all or part of the property returned). In one case, the domestic bribery provision required the involvement of at least two people in the criminal conduct and further required an element of “economic benefit”, which was interpreted to cover only pecuniary benefits and not any other undue advantage. A recommendation to broaden the scope of the law was issued accordingly. A similar issue regarding the undue advantage was noted in three States parties: in two cases where a “value-based” approach was taken, which punished bribery only when it involved material advantages, and in another, where it was unclear whether the phrase “any valuable thing” in the national law adequately covered undue advantages. In one State party, a distinction was drawn between a gratuity (expediting an otherwise lawful administrative procedure) and a bribe, with the acceptance of the former punishable by a fine or up to 3 years’ imprisonment and the latter punishable by 1 to 5 years’ imprisonment, absent aggravating circumstances. In another case the nuance of an aggravated form of bribery existed where the official acted in breach of an obligation. Legislation had been drafted or introduced in several States parties to more fully implement the bribery provisions of the Convention, though progress was sometimes observed to be a long-term process.

Box 1
Example of the implementation of article 15

In one State party, the bribery law contained a very broad definition of the concept of an “undue advantage”, which was defined as “gift or other gain” understood to comprise money, any item regardless of its value, and a right or service provided without recompense or other quid pro quo, which created or may create a sense of obligation by the recipient towards the giver. It was noted that even the smallest amount of money or other objects could be considered as gifts and would suffice to be considered constituent elements of the criminal offence.

8. A number of States parties had not adopted specific measures to criminalize both active and passive bribery of foreign public officials and officials of public international organizations. In particular, the relevant conduct had not been criminalized in nine cases, although legislation was pending in six, and only criminalized with respect to active bribery in four others. One of these States had, however, prosecuted foreign officials on money-laundering charges with corruption being the predicate offence under related laws. Common challenges related to the inadequacy of normative measures and limited capacity. Recommendations were issued, as required, to adopt specific measures to explicitly cover foreign public officials and officials of public international organizations. In two cases, the foreign bribery statute contained an exception for facilitation payments made to expedite or secure the performance of routine Government action by foreign officials, political parties or party officials, and recommendations were issued accordingly. In a third case, the definition of covered officials was limited to foreign officials and the international organizations or assemblies of which the State party was a member, while in another jurisdiction the pending legislation would only address officials who did not enjoy diplomatic immunities. In one State party, the legislation did not explicitly criminalize undue advantages granted to foreign public officials for conduct that was not contrary to their duties. It was also noted that in States that had relevant legislation in place there were few reported cases.

Box 2
Examples of the implementation of article 16

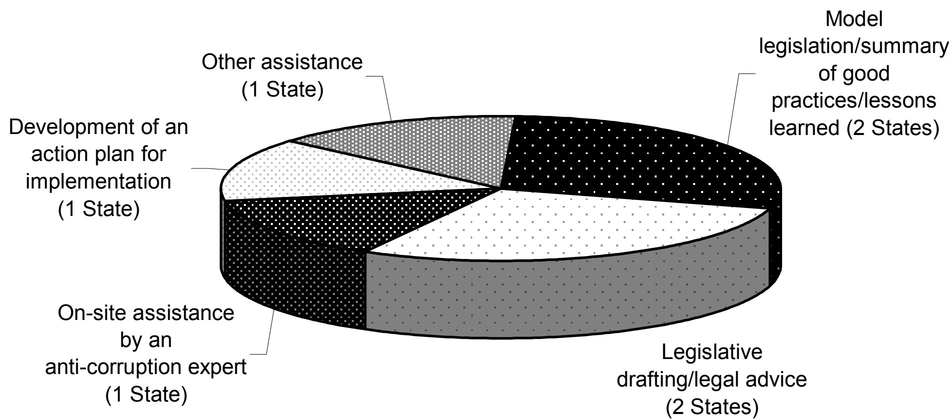
In two States parties, the foreign bribery law went beyond the requirements of the Convention and also covered cases where the bribe was not intended to “obtain or retain business or other undue advantage in relation to the conduct of international business”. In one case, the definition of “foreign public official” extended to officials designated by foreign law or custom, in particular to any individual who held or performed the duties of an appointment, office or position created by custom or convention of a foreign country or part of a foreign country.

Technical assistance needs related to articles 15 and 16

9. Of the five States parties requesting technical assistance to support the implementation of article 15, the main types of assistance requested were: model legislation, a summary of good practices and lessons learned (three States); legislative drafting and legal advice (two States); and other assistance in the form of training (two States). Individual requests were received for: an on-site visit by an anti-corruption expert; and the development of an implementation action plan. One

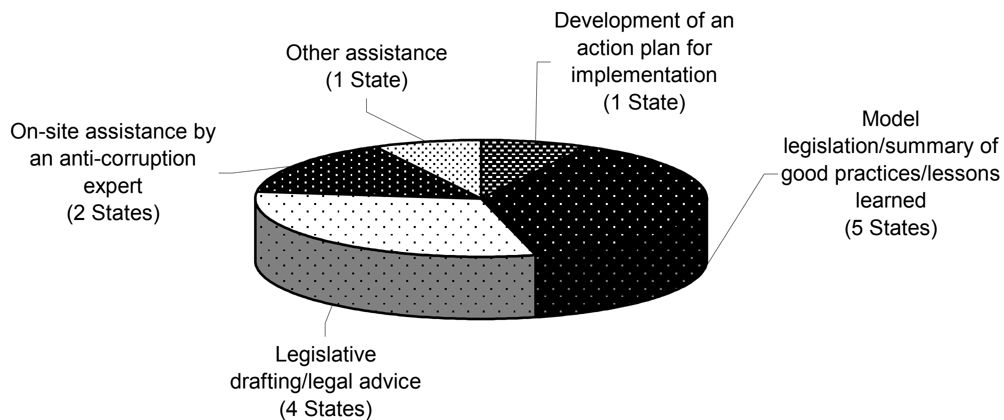
State from the Group of Eastern European States requested model legislation, a summary of good practices and lessons learned, while one country from the Group of African States requested other assistance in the form of training.

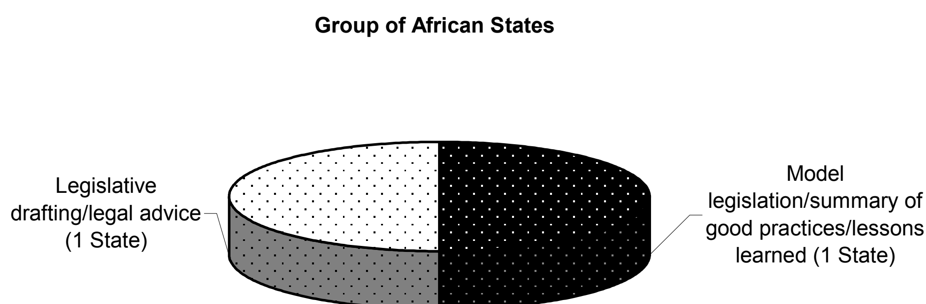
Group of Asian and Pacific States



10. Of the seven States parties requesting technical assistance to support the implementation of article 16, the types of assistance requested were: model legislation, a summary of good practices and lessons learned (six States); legislative drafting and legal advice (five States); on-site assistance by an anti-corruption expert (two States); other assistance in the form of conducting surveys and developing thematic reports on the issue (one State); and the development of an implementation action plan (one State).

Group of Asian and Pacific States





C. Abuse of power or office and related conduct

Embezzlement, trading in influence, abuse of functions and illicit enrichment

11. While all of the States parties had established measures to criminalize the embezzlement of public funds, common issues encountered related to the scope of the property that was the subject of the offence. In two cases, immovable assets were outside the scope of the offence, as a person could only embezzle property that was in his or her possession. In another case the national legislation covered only property, monies or securities belonging to the State, to an independent agency or to an individual, thus limiting the scope of coverage to private funds entrusted to an individual public official but not to an organization. A recommendation was issued to extend the law to such cases. In five cases there were limitations or discrepancies concerning the accrual of benefits to third parties. One of these jurisdictions further criminalized only misappropriation and conversion, not embezzlement and diversion. In one case, as with the bribery provisions, serious consequences must accrue for the offence of embezzlement to be completed in respect of property valued below a certain threshold. In another jurisdiction, the relevant legislation applied not just to public officials but to all persons who were entrusted with or had received property, including company directors, members and officers.

12. Trading in influence had not been established as a criminal offence in several States parties, although legislation had been drafted or introduced to criminalize trading in influence in several jurisdictions. In one case, the adoption of implementing legislation had been considered, but eventually the concept of trading in influence was considered overly vague and not in keeping with the level of clarity and predictability required in criminal law. A recommendation was issued to reconsider the possibility of introducing appropriate legislation in this and other cases. Where relevant legislation was in place, there were certain deviations from the scope of the Convention. For example, in one case the offence established was broader than in the Convention, but required that the conduct be carried out for the purpose of economic benefit and additionally, with regard to the passive version of the offence, the person influenced must be a public official. In two cases, only the passive version of the offence had been fully or partially established, with legislation pending to fully implement the offence in one of them. In a third case,

the abuse of “supposed” influence did not appear to be covered. In one State, the relevant law also covered trading in influence with respect to foreign public officials, though there was no specific reference to third-party beneficiaries, while in another case the offence did not apply to decision-making by foreign public officials or members of foreign public assemblies. In one State party, the offence was partially addressed through provisions against bribery.

Box 3
Example of the implementation of article 18

In one State party, the applicable legislation on trading in influence was observed to cover all material elements of the offence and additionally, neither the influence peddler, nor the person whose influence was sought had to be public officials. It was understood that the influence could be real or merely supposed, and the undue advantage could be for the perpetrator him/herself or for another person. The offence appeared to be completed whether or not the intended result was achieved, and additionally a separate offence was fulfilled if the person whose influence was sought actually carried out the act requested as a result of the improper influence. While no case examples on trading in influence were available, relevant actions had been brought under the anti-corruption law.

13. Most States parties had adopted measures to criminalize the abuse of functions by public officials, though a separate offence was not always explicitly recognized and there were some deviations. In one case, only the abuse of powers had been criminalized, and legislation was pending to more fully implement the offence. In another case, the relevant legislation criminalized only the illegal act, subject to a minimum threshold amount, and not an omission in the discharge of functions, though related offences existed and relevant legislation had been drafted. In one case, the legislation was limited to abuses causing losses to the State and did not appear to cover non-material benefits. In another case, the abuse of functions was prohibited under public service regulations and only disciplinary sanctions were available. As noted above regarding the definition of “public officials”, in one jurisdiction parliamentarians were exempted from the scope of coverage. In two cases, the accrual of benefits to third persons was considered to have been only indirectly or not explicitly addressed. In one State party, as with the offence of bribery, the offence required the involvement of at least two people in the criminal conduct and otherwise did not fully meet the requirements of the Convention, and a recommendation was issued accordingly. In two cases where the offence was not established, legislation had been drafted or introduced to implement the article.

Box 4
Example of the implementation of article 19

In one State party, the criminal code prohibited a wide array of activity, including where an official unlawfully acted with the intention of dishonestly obtaining a benefit for himself or another person or dishonestly causing a detriment to another person.

The broad scope of the domestic provision was noted in one State party where an “undue advantage” was not required as an element of the offence.

In another case, the abuse of official authority by public officials to the detriment of the public interest extended also to intentional, reckless and negligent behaviour.

14. Illicit enrichment had not been established as a criminal offence in the majority of States parties, but legislation was pending in several cases. Objections to enacting relevant legislation commonly related to the constitutionality of such legislation. Where illicit enrichment had not been criminalized, a similar effect was achieved by way of asset and income declaration requirements, as described in Box 6 below. In one State party, provisions in the criminal code on concealment and non-justification of resources, as well as the tax code pursued the same objective. However, in another jurisdiction where the concept of unjustified wealth and sanctions for a failure to declare assets were provided for, the law did not contain the required element that a public official could be obliged to explain an increase in assets. In another State party, unexplained wealth could be restrained and confiscated outside the criminal justice system under proceeds of crime laws, and the court could compel a person to prove in court that his or her wealth was not derived from a criminal offence where there were reasonable grounds to suspect that the person's total wealth exceeded the value of lawfully acquired wealth. Similarly in two States without illicit enrichment laws in place, the unlawful or unexplained assets could be confiscated under certain circumstances, in one case following a conviction of more than three years.

Box 5
Examples of the implementation of article 20

In one State party, a comprehensive provision on illicit enrichment had been enacted and two cases were pending in court. In another State party with limited asset and interest disclosure requirements, the offence had been established.

Box 6
Using asset and income declarations in lieu of illicit enrichment

In one jurisdiction where illicit enrichment had not been criminalized, a similar effect was achieved by way of a legal requirement that all public officers submit asset and income declarations and could be asked to explain any asset increases described in their disclosures. Noting a reporting rate of 99.5 per cent on such disclosures, a recommendation was issued to include stricter sanctions in the declaration requirements, such as forfeiture of undeclared property.

Similarly in another case, evidence of unexplained wealth could be introduced in court as circumstantial evidence supporting charges of corruption and senior officials were additionally obligated to file truthful financial disclosure statements, subject to criminal penalties.

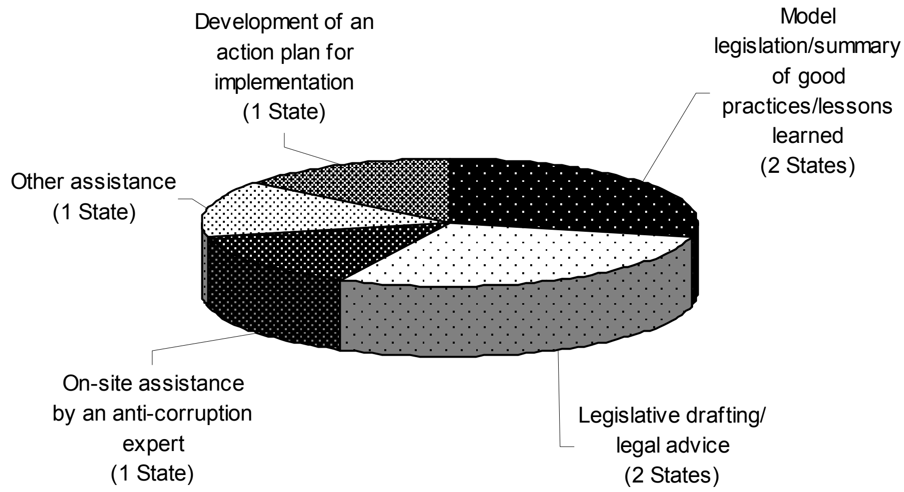
One State party was piloting the submission of such declarations before considering it a legal requirement. In the same case there were issues with respect to the property that was the subject of the illicit enrichment laws, and a recommendation was issued to consider streamlining the process of income and asset declarations.

Technical assistance needs related to article 20

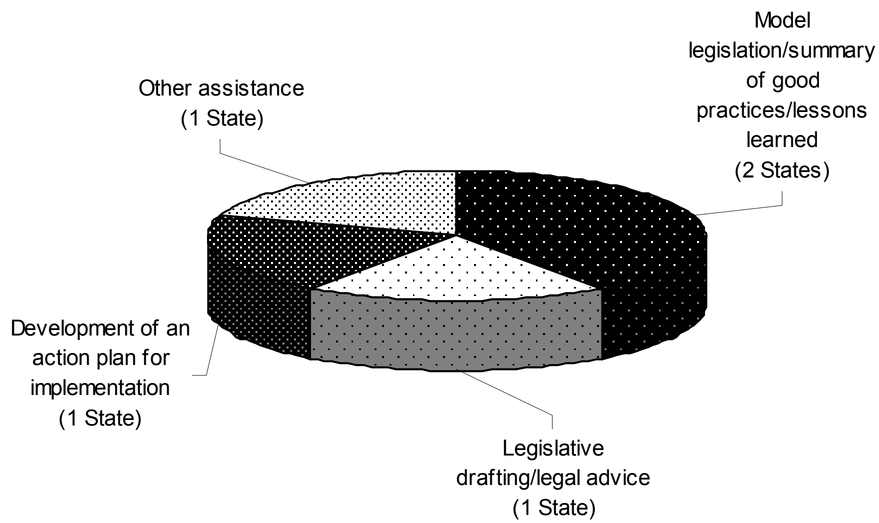
15. Of the seven States parties requesting technical assistance to support the implementation of article 20 of the Convention, the main types of assistance requested were: model legislation, a summary of good practices and lessons learned (five States); legislative drafting and legal advice (four States); the development of an implementation action plan (two States); other assistance in the form of training

and conducting research (two States); and on-site assistance by an anti-corruption expert (one State).

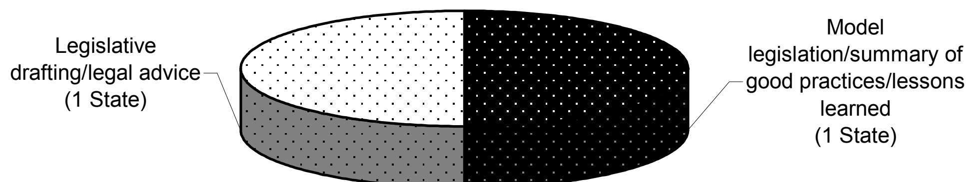
Group of Asian and Pacific States



Group of African States



Group of Eastern European States



D. Private sector offences

Bribery and embezzlement in the private sector

16. Less than half of the States parties had adopted measures to fully criminalize bribery in the private sector and, in five cases, had introduced relevant legislation. In one case, the law limited bribery in the private sector to a breach of obligations "in the purchase or sale of goods or contracting of professional services," although it was noted that other cases of bribery in the private sector would be covered under other provisions of the penal code. In another case the relevant conduct was criminalized notwithstanding that the act, favour or disfavour was not done or given in relation of the business or affairs of an employer. In a third case, the relevant provisions did not cover the indirect commission of the offence, although non-governmental organizations and foundations were covered to the extent that they engaged in "economic, financial or commercial activities". The indirect commission of the offence was covered in one State party, where it was notably absent in the corresponding bribery offence involving public officials. In two States parties there were issues concerning the scope of private sector officials covered, although legislation was pending to address the matter, and in a further case the relevant offence required damage or detriment to be caused to the represented entity, in variation from the provisions of the Convention. In one State party, notwithstanding the lack of a federal commercial bribery law, commercial bribery had been effectively prosecuted under related laws and was further criminalized at the state level. In another case the conduct was pursued under the fraud provisions of the penal code. In one State party where the offence was contained in the law against unfair competition, a prior complaint from competitors or State authorities was required for proceedings to be initiated, though this element was under consideration. A need to enact relevant legislation criminalizing bribery in the private sector was noted as a priority in one State.

17. All of the States parties had adopted measures to criminalize embezzlement in the private sector. However, in two cases the provision only indirectly covered various elements of such criminal conduct, and recommendations were issued to

more precisely reproduce the offence established in the Convention. In three cases, immovable assets were excluded from the scope of the national law and appropriate recommendations were issued, while in another case only property received by loan, borrowing, hiring or contract was covered. In one State party very low penalties were observed. In another case, measures to more fully implement the article were still under discussion at the time of the country review.

Box 7
Examples of the implementation of articles 21 and 22

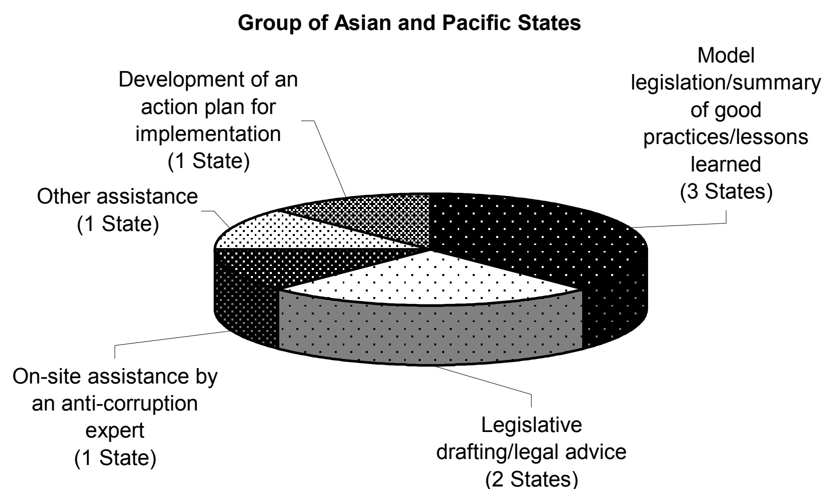
In one State party, the relevant law went further than the Convention in that a breach of duty was not required to establish bribery in the private sector.

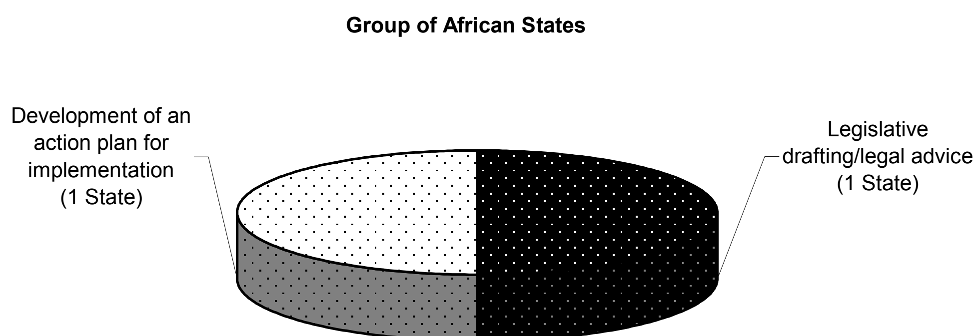
In two States parties, the offence of embezzlement in the private sector was broader than in the Convention, as it did not contain the condition for the offence to be committed "in the course of economic, financial and commercial activities".

In another State party, the penalty for the offence of private sector embezzlement was aggravated according to value of the embezzled asset and further aggravated if the offender "received the asset upon deposit imposed by law, by reasons of occupation, employment or profession, or as a tutor, trustee or court custodian".

Technical assistance needs related to article 21

18. Of the six States parties requesting technical assistance to support the implementation of article 21 of the Convention, the types of assistance requested were: model legislation, a summary of good practices and lessons learned (four States); legislative drafting and legal advice (three States); the development of an implementation action plan (two States); on-site assistance by an anti-corruption expert (one State); and other assistance in the form of conducting surveys and developing thematic reports on the issue (one State). One State from the Group of Latin American and Caribbean States requested model legislation, a summary of good practices and lessons learned.





E. Other offences

Money-laundering, concealment and obstruction of justice

19. There was some variation among the States parties with regard to the criminalization of money-laundering. While most States parties had taken measures towards establishing money-laundering as a criminal offence, in several cases there were significant gaps in the implementing law, which covered only part of the conduct described in subparagraphs (1)(a)(ii) and (1)(b)(i) of article 23, and only minor parts of subparagraphs (2)(a) through (e). As a result, while noting that legislation to fully implement the article had been introduced, an "urgent" recommendation was issued to enact appropriate legislation. There were similar issues with regard to the partial implementation of subparagraph (1)(a)(ii) of article 23 in another State party, where also accessory conduct such as counselling for the purpose of committing money-laundering and supporting a person in the commission of the predicate offence to evade the consequences of his or her actions were not criminalized. Here, also a recommendation was issued to broaden the list of predicate offences to include embezzlement in the private sector. In another case, attempted money-laundering was not punishable, though this would have been covered in a pending amendment of the law. Similarly, in two other jurisdictions, the participation in acts of money-laundering was not fully criminalized so as to cover conspiracy, assistance and attempt. Issues were also encountered concerning the objects of money-laundering: in one case the law appeared to be limited to certain objects of laundering, though it was explained that all types of property were covered; in another case the penal code did not contain a definition of property, though legislation was pending to address the issue. Gaps in implementation also existed in other States parties, for example in two cases concerning the absence of any provision to criminalize "self-laundering", and in another case regarding a limitation of the money-laundering offence to only criminal predicate offences and not to conduct such as tax evasion. In one State party, pending a legislative amendment, the scope of the money-laundering offence was limited to banking, financial and other economic operations which, though widely interpreted, were observed not to cover all potential areas of laundering of proceeds. Appropriate recommendations were issued by the reviewing experts. Several States parties had

adopted an "all crime approach" that did not restrict application of the money-laundering offence to specific predicate offences or categories of predicate offences, while others applied the law to "serious offences", though the applicable thresholds differed. The limited scope of the money-laundering offence was noted in several cases, because not all offences established under the Convention had been criminalized. In addition, in several cases, issues were encountered with respect to the coverage of predicate offences committed outside the territory of the State party: in one case, the extension was implicit; in two cases offences committed outside the State party were not considered predicate offences or were considered as such only for certain crimes; and in another case, dual criminality was required for prosecution of predicate offences committed abroad. Legislation was pending to address the issue of foreign predicate offences in some cases. A lack of relevant statistics was also noted.

Box 8

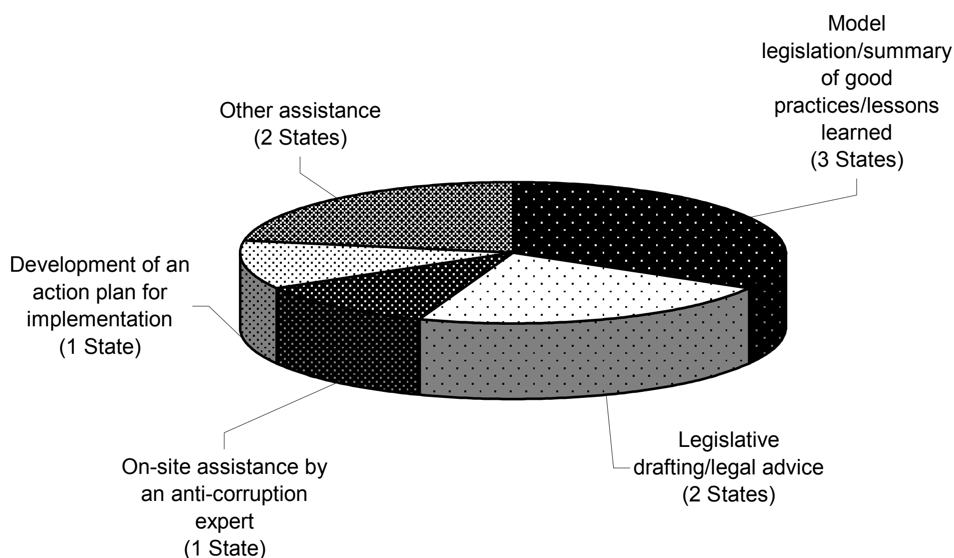
Example of the implementation of article 23

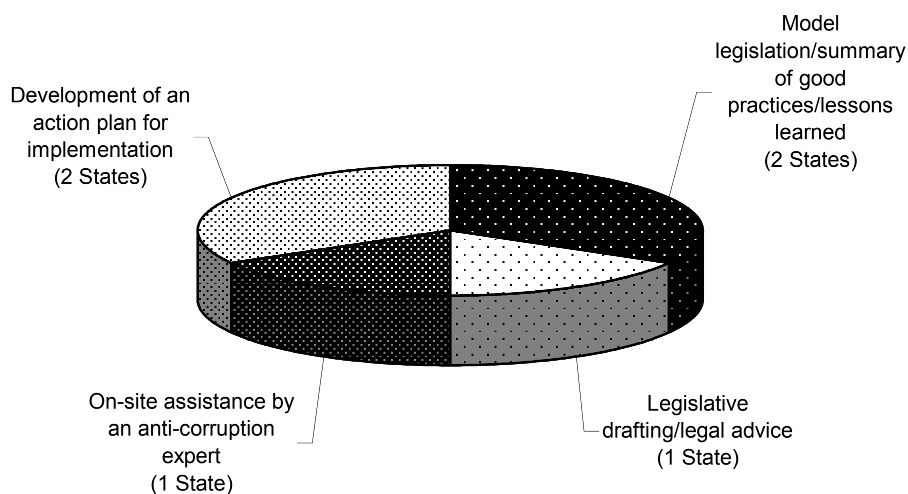
In one State party, money-laundering was defined broadly to include giving "a legal form" to illegal or undocumented property to conceal its illegal or undocumented origin. The inclusion of "undocumented property" extended liability to property suspected of being derived from criminal activity.

In another case, the money-laundering offences incorporated the mental state elements of intent, recklessness and negligence, which went beyond the minimum requirements of article 23 of the Convention. Statistics and case examples were provided, including one case involving a syndicate that laundered cash derived from commercial narcotics trafficking by depositing cash into innocent third party bank accounts. This released the equivalent legitimate funds from overseas money remitters, which could then be forwarded as payment for the drugs. The defendant, a low- to middle-level operator of the syndicate, was sentenced to 7 years imprisonment with a non-parole period of 4½ years for recklessly dealing in the proceeds of crime where the value of the money was $1 million or more. The judge declared that if the defendant had not pleaded guilty, a sentence of 8 years imprisonment with a non-parole period of 5½ years would have been imposed.

Technical assistance needs related to article 23

20. Of the seven States parties requesting technical assistance to support the implementation of article 23 of the Convention, the types of assistance requested were: model legislation, a summary of good practices and lessons learned (five States); legislative drafting and legal advice (three States); the development of an implementation action plan (three States); on-site assistance by an anti-corruption expert (two States); and other assistance in the form of training (two States).





21. In several States parties that had established concealment as a criminal offence, there were issues with respect to the continued retention of property. Legislation had been drafted or introduced in some jurisdictions to fully implement the article. The offence was not recognized in all States parties.

22. Obstruction of justice had been established as a criminal offence in most States parties. In two cases, issues related to the scope of coverage over conduct intended to interfere not just with the giving of testimony but with the production of non-oral evidence in a relevant proceeding. Additionally, in one of these cases, the relevant law covered only conduct in order to interfere with the true testimony of witnesses, not of experts, and further did not explicitly regulate the specific means of obstruction of justice (e.g., physical force, intimidation, offering or giving of an undue advantage). Similarly, in four cases, the specific means (use of physical force, threats, or intimidation) to induce false testimony or the production of evidence were not fully covered. In one case, interference with the exercise of official duties by a justice or law enforcement official was limited to acts committed by public officials and not other persons. Issues related to penalties were raised in some cases.

Box 9
Example of the implementation of article 25

Legal provisions in one State party that prohibited the use of physical force, threats or intimidation to interfere with the official duties of judicial officers and law enforcement officials also expressly extended to jurors and defence attorneys. Enhanced penalties applied if the offence was committed by public officials in the exercise of official duties. Further, legal persons could be held criminally responsible for the offence of influencing or coercing witnesses in criminal cases, with penalties including suspension of licenses, fines or liquidation.

F. Substantive and procedural provisions supporting criminalization

Liability of legal persons; participation and attempt; knowledge, intent and purpose; and statute of limitations

23. All except two of the States parties had adopted measures to establish the liability of legal persons for offences covered by the Convention, though a general liability provision did not always exist and there was considerable variation concerning the type and scope of such liability. Common challenges related to the inadequacy of existing normative measures and specificities in national legal systems. Thus, a number of States parties had established some form of criminal liability of legal persons for corruption offences, with certain exceptions or limitations in some cases. For example, in one jurisdiction the scope of the criminal liability of legal persons was narrowed by an exception for public entities, including publicly owned companies. In four cases, the liability was limited to certain offences or conduct, such as money-laundering (in two cases) and to money-laundering and bribery of national and foreign officials (in the third), with a further restriction that the offences in question must have been committed directly and immediately in the interest of the corporate body. In the fourth case, misappropriation or embezzlement were not covered. In another case, certain offences were excluded from the scope of coverage, such as embezzlement in the public and private sectors, abuse of functions and obstruction of justice. There was a lack of clarity in two cases as to whether legal persons were included in the scope of the relevant law, as an interpretation had not been given by the courts, and a recommendation was issued to clarify the situation, and in a third case the threshold for liability was unclear and a need to ensure that companies could be prosecuted independently of their natural persons was noted. In one case, the criminal code

prohibited establishing the criminal liability of legal persons. A similar prohibition existed in another jurisdiction, where only administrative liability was established. In a third case where civil and administrative measures were established, pending legislation would introduce the criminal liability of legal persons. Sanctions generally varied, ranging from administrative penalties, including blacklisting for certain violations, in one case, to monetary penalties, in another, and a combination of sanctions including confiscation and dissolution in two others. Sanctions for legal persons were generally higher than for natural persons. In six cases, a specific recommendation was issued to consider increasing the level of sanctions or adding non-monetary sanctions to the list of possible penalties, and legislation that would address the issue was pending in another case. Multiple forms of liability were possible in several jurisdictions. In one case, only civil liability had been established, pending amendments to the penal code that would, if adopted, have addressed the criminal liability of both legal and natural persons.

Box 10

Example of the implementation of article 26

Some form of criminal liability of legal persons for corruption offences had been established in a number of States parties. In one case, legal persons could be found criminally liable notwithstanding that the individual offender could not be identified or was otherwise not punished. In another case, the primary criminal responsibility of companies was provided for in connection with certain serious offences, including bribery and money-laundering, regardless of the criminal liability of natural persons, if the company failed to take all reasonable and necessary organizational measures to prevent the offence. Further, the subsidiary criminal liability of companies for all felonies and misdemeanours was established when an offence could not be attributed to a particular individual due to a lack of business organization of the commercial undertaking.

24. All of the States parties had adopted measures to criminalize the participation in, and attempt to commit, the offences enumerated in the Convention, though the scope and coverage of the provisions varied. In five States parties, the preparation of an offence (paragraph 3 of article 27) was not specifically criminalized, in some cases because it did not accord with basic principles of the national legal system. Similarly, in another case the preparation of a crime (i.e., conspiracy, abetting or proposal of the same) was punishable only for money-laundering offences, not corruption. In several States parties, legislation was pending or had been drafted to more fully implement the article.

25. All of the States parties had adopted measures to establish knowledge, intent and purpose as elements of the offences enumerated in the Convention that could be inferred from objective, factual circumstances. In most cases, these measures were included in the criminal procedure codes, the criminal or penal codes, evidentiary and case law. In two cases, the matter was not explicitly addressed in the law and further clarification was sought by the reviewing experts.

26. There was considerable variation among the States parties with regard to the length and application of the statute of limitations for offences established under the Convention. One State party had established a statute of limitations for offences under the Convention of either ten years (for offences punishable with imprisonment for more than three years) or five years (for offences punishable with

imprisonment between one and three years). Similarly another jurisdiction had established a minimum period for such offences of five years, which extended in some cases to ten years. The reviewing experts were of the view that ten years was a sufficiently long time, but that the appropriateness of a five-year statute depended on the possibility of prolongation or suspension of the statute and its application in practice. In this regard it was noted that several States parties did not provide for a suspension or interruption of the statute of limitations. The rules on interruption or suspension of the statute, including for evasion of justice, were repealed in one State because they were deemed too complex, while the periods of limitation had been extended to fifteen and seven years, and a recommendation was issued to consider providing for suspension of the statute. Another State party had established a general statute of limitations period of five years, which was disrupted when the defendant committed a new offence, and suspended by the formalization of the inquiry, which normally took up to two years. The statute of limitations period was also extended when the culprit fled the country, but not when the culprit evaded the administration of justice within the borders. A recommendation was issued to introduce a longer statute of limitations that covered every case of justice evasion, irrespective of whether the culprit was within or outside the country. Recommendations on extension of the statute were also issued in other cases: in one jurisdiction, to consider extending the limitation period of five years (which was routinely increased by up to three years upon request of a prosecutor and a relevant court finding); in a second case, to consider extending the three-year period to seven years for offences punishable by over three years' imprisonment and to five years for those punishable by less than three years; and in another State party to reconsider the periods of three years and two years, respectively, for offences punishable by more than one year and by up to one year or a fine, pending the adoption of a legislative amendment. A suggestion to commence the statute from the time of discovery, not the commission of the offence, was issued in one case where a six-year statute was established for offences punishable by fine, custody or imprisonment of not more than three years. In two cases, the statute established a period of limitations of between ten and twenty years.

Box 11

Example of the implementation of article 29

In one State party, when a criminal action was instituted against a civil servant, the interruption of the statute of limitations was applicable to all persons participating in the commission of the criminal offence, not just the perpetrator.

In one State party, some of the most common corruption offences committed by public officials (excess and abuse of duty, active and passive bribery, trading in influence and illegal gifts) had an extended statute of limitation, if the crime was of a serious nature (fifteen years instead of ten); if the crime was particularly serious, a general limitation of twenty-five years applied.

Four States parties had no statute of limitations in place for corruption offences, because the applicable law did not apply to criminal cases or there was no general statute of limitations.