



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

Distr.: General
25 September 2013

Original: English

Fifth session

Panama City, 25-29 November 2013

Items 2 and 6 of the provisional agenda*

Review of the implementation of the United Nations Convention against Corruption

International cooperation

Implementation of chapter IV (International cooperation) of the United Nations Convention against Corruption (review of articles 44 and 45)

Thematic report prepared by the Secretariat

I. Introduction, scope and structure of the report

1. In its resolution 3/1, the Conference of the States Parties to the United Nations Convention against Corruption adopted the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (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. The guidelines, together with the blueprint, 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 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. An analysis of related technical assistance needs is included in a separate document (CAC/COSP/2013/5).

3. The present thematic report contains information on the implementation of chapter IV (International cooperation) of the Convention by States parties under review in the first, second and third years of the first cycle of the Review

*CAC/COSP/2013/1.



Mechanism. It is based on information included in the review reports of 44 States parties that had been completed, or were close to completion, as at 1 September 2013.

4. The thematic report on the implementation of chapter IV of the Convention is contained in two documents. The present document covers general observations on challenges and good practices in the implementation of chapter IV and issues related mainly to articles 44 and 45 of the Convention. (Examples of implementation are given in boxes 1-5.) The second document (CAC/COSP/2013/10) covers the implementation of articles 46-50 of the Convention.

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

5. As had been requested by the Implementation Review Group, the present document contains an analysis of the most prevalent challenges and good practices in the implementation of chapter IV, organized by article of the Convention. For article 44 (extradition), which covers a wide range of detail, a further breakdown by paragraph is provided when the implementation of that article is discussed.

6. Analysis of the most prevalent challenges identified in the 44 country review reports revealed that challenges to international cooperation exist both at the legislative level and at the practical level (see table 1). States parties should continue their efforts to enact and, where appropriate, review and update international cooperation laws consistent with the Convention. States parties have been encouraged to ratify relevant bilateral, subregional and regional instruments and apply the Convention directly, if possible. Challenges were noted, inter alia, with regard to cooperation between jurisdictions with different legal systems, the dual criminality requirement, the enforcement of sentences and special investigative techniques. At the practical level, some States indicated that they lacked the modern tools, technical equipment and human resources required for successful cooperation. Achieving expeditious information exchange and efficient cooperation among central authorities, as well as national inter-agency coordination, and efficient case management were also mentioned. A number of States faced difficulties with regard to joint investigations. Putting in place the appropriate mechanism for compiling statistics was generally considered to be a challenge; at the same time, the availability of that information was considered important to allow an assessment of the efficiency and effectiveness of international cooperation.

Table 1

Most prevalent challenges in the implementation of chapter IV of the Convention

<i>Article of the Convention</i>	<i>Identified challenges in implementation</i>
Extradition (article 44)	<ul style="list-style-type: none"> • Limited capacity • Lack of inter-agency coordination • Specificities of the legal system • Lack of specific legal framework, or need for further development of the domestic legal framework

<i>Article of the Convention</i>	<i>Identified challenges in implementation</i>
Dual criminality (article 44, paragraph 2)	<ul style="list-style-type: none"> • Need to systematize information on extradition cases and to gather relevant statistical data • Limited capacity in terms of technologies and human resources for extradition hearings • Difficulties in the application of the dual criminality requirement • Specificities of the legal system and constitutional constraints
Expedite proceedings or simplify evidentiary requirements (article 44, paragraph 9)	<ul style="list-style-type: none"> • Need to simplify the proceedings in line with the Convention • Lack of tools to ensure expedited procedures • Difficulties with the adoption of more efficient extradition procedures • Difficulties in reducing administrative and judicial instances in passive extradition procedures
Extradite or prosecute (article 44, paragraph 11)	<ul style="list-style-type: none"> • Need to reform legislation in order to ensure the application of the principle of <i>aut dedere aut judicare</i> (extradite or prosecute)
Enforcement of foreign sentences (article 44, paragraph 13)	<ul style="list-style-type: none"> • Need to develop legislation in relation to the enforcement of sentences imposed by a requesting State
Agreements or arrangements (article 44, paragraph 18)	<ul style="list-style-type: none"> • Need to adopt further bilateral and multilateral agreements and expand existing ones, while ensuring that the instruments are in line with the Convention • Need to apply the Convention directly in order to enhance the effectiveness of extradition
Transfer of sentenced persons (article 45)	<ul style="list-style-type: none"> • Lack of agreements and experience
Mutual legal assistance (article 46)	<ul style="list-style-type: none"> • Limited capacity and resources • Lack of specific legislation • Gaps in the legal framework, or inadequacy of existing normative measures, such as non-recognition of the criminal liability of legal persons in mutual legal assistance proceedings • Need to improve case management systems to respond to requests for mutual legal assistance • Need to engage in bilateral and multilateral arrangements aimed at enhancing the effectiveness of the mutual legal assistance process • Need for interagency coordination among competent authorities in responding to and making requests for mutual legal assistance
Purposes of mutual legal assistance (article 46, paragraph 3)	<ul style="list-style-type: none"> • Lack of specific legislation • Gaps in the legal framework
Transfer of criminal proceedings (article 47)	<ul style="list-style-type: none"> • Lack of specific legislation, treaties or jurisprudence
Law enforcement cooperation (article 48, paragraphs 1 and 2)	<ul style="list-style-type: none"> • Practical challenges in swift information exchange in time-sensitive cases • Challenges in compiling statistics

<i>Article of the Convention</i>	<i>Identified challenges in implementation</i>
Joint investigations (article 49)	<ul style="list-style-type: none"> • Need to expand existing agreements • Lack of specific legislation on sharing information or lack of specific rules on law enforcement cooperation • Difficulties in establishing effective channels of communication among competent authorities • Need to include in relevant legislation powers of authorities to conclude agreements with counterparts • Little experience in conducting joint anti-corruption investigations • Lack of specific legislation, as well as clear guidelines through the adoption of relevant agreements with other law enforcement agencies • Need to develop bilateral or multilateral agreements or expand existing ones
Special investigative techniques (article 50)	<ul style="list-style-type: none"> • Need to develop legislation, taking into account the specificities in legal systems • Lack of inter-agency coordination • Limited capacity (limited technological resources) • Limited awareness of state-of-the-art special investigative techniques • Limited human and financial resources • Unclear guidelines on the use of special investigative techniques for the judiciary and investigation agencies

7. The most prevalent good practices highlighted in the 44 country review reports mirrored to a great extent the challenges (see table 2). Many of the recommendations aimed at addressing specific gaps and challenges could also be found among the most frequently mentioned good practices. At the legislative level, those practices included, for example, broad and flexible approaches to dual criminality, the ratification of bilateral and regional treaties and the use of the Convention as a legal basis. Also at the practical level, the most frequently cited good practices seemed to provide transferrable solutions to many of the challenges identified. These ranged from good practices in the use of channels and tools for informal communication and the exchange of personnel to methods for national inter-agency coordination, the establishment of committees and case management systems for central authorities.

Table 2

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

<i>Article of the Convention</i>	<i>Identified good practices in implementation</i>
Extradition (article 44, paragraph 1)	<ul style="list-style-type: none"> • Training related to the Convention, provided as part of the Government's initiative on how to use the Convention as a legal basis for extradition • Inclusion of a distinct component on international cooperation in the national strategy • Broad and flexible approach to dual criminality

<i>Article of the Convention</i>	<i>Identified good practices in implementation</i>
Expedition proceedings or simplification of evidentiary requirements (article 44, paragraph 9)	<ul style="list-style-type: none"> • Establishment of new legal frameworks to enhance international cooperation • Extradition regimes based on a network of treaties and conventions underpinned by a solid national legal framework allowing for efficient and proactive use of legislation • Shift from rigid list-based treaties to agreements primarily based on a minimum penalty requirement • Efficient use of an electronic database to track incoming and outgoing requests for extradition, allowing case officers to monitor the progress of requests and identify appropriate follow-up • Expedition of extradition proceedings through channels such as the International Criminal Police Organization (INTERPOL) and through electronic communication • Efficiency and ability to handle a high volume of requests by regular law enforcement authorities and specialized agencies that deal with requests involving complex and serious offences, including corruption offences • Establishment of a committee on extradition
Agreements or arrangements (article 44, paragraph 18, and article 46, paragraph 30)	<ul style="list-style-type: none"> • Significant number of treaties on extradition and mutual legal assistance, as well as against corruption, money-laundering and organized crime, containing provisions on international cooperation in criminal matters • Agreements with countries in which a large number of nationals are present • Memorandums of understanding to enhance the practical implementation of bilateral agreements • Multitude of methods of assistance for foreign States throughout the course of criminal proceedings by direct application of the Convention or through the provisions of domestic law
Mutual legal assistance (article 46)	<ul style="list-style-type: none"> • Use of the Convention as a legal basis for mutual legal assistance • Adoption of a dedicated and comprehensive legal framework that allows, inter alia, for the enforcement of foreign confiscation judgements • Development of tools such as an electronic database on mutual legal assistance • Inclusion of a distinct component on international cooperation in the national strategy
Execution of requests for mutual legal assistance and for information (article 46, paragraph 24)	<ul style="list-style-type: none"> • Frequent informal consultations with foreign authorities before making formal requests for mutual legal assistance • Review of draft requests before submitting formal requests for mutual legal assistance

<i>Article of the Convention</i>	<i>Identified good practices in implementation</i>
Law enforcement cooperation (article 48, paragraph 1)	<ul style="list-style-type: none"> • Short time frame for executing requests for mutual legal assistance • Use of channels such as INTERPOL to expedite the provision of assistance • Effective cooperation with other national law enforcement authorities, particularly regarding the tracing and freezing of assets • Application to become a member of international groups or networks (such as the European Police Office (Europol), INTERPOL and others) to facilitate cooperation • Domestic cooperation among the police, customs and border authorities, based on the legal powers of the three bodies to act on behalf of one another and to exchange information • Agreement to post international experts in a capacity that goes beyond that of liaison officers and that is related to the performance of domestic public functions • Established cooperation measures at both the national and international levels • A comprehensive range of investigative tools for international law enforcement cooperation • The presence of law enforcement attachés and the extensive use of informal law enforcement channels, as well as promotion of the sharing of information with foreign counterparts
Agreements or arrangements (article 48, paragraph 2)	<ul style="list-style-type: none"> • Recognition of the Convention as a legal basis for law enforcement cooperation • Capacity-building assistance provided to law enforcement authorities in developing countries • Enhancing channels for subregional cooperation • Conclusion of regional instruments on international cooperation, as well as against corruption, money-laundering and organized crime, containing provisions on international cooperation in criminal matters • Participation in regional bodies facilitating law enforcement assistance

8. Quantitative analysis of the country reports confirms the above-mentioned tendency. It was not surprising that the figures on challenges and good practices identified by article — and later in this report by paragraph of selected articles — showed high numbers in both categories in relation to the same provisions. On the one hand, as shown in figures I and II, the high number of challenges and good practices in relation to articles 44 and 46 were attributable to the large number of paragraphs in these provisions. On the other hand, as shown in figures III and IV, at the paragraph level, the practical relevance of specific topics reflected the high number of both challenges and good practices in their implementation. Examples

include article 44, paragraph 9, on expediting extradition procedures and simplifying evidentiary requirements for extradition, and article 46, paragraph 13, on central authorities. (The picture is only different with regard to article 48, where more good practices were identified on law enforcement cooperation for information exchange (article 48, paragraph 1) and more challenges with regard to relevant agreements and arrangements (article 48, paragraph 2); and with regard to article 50, on special investigative techniques, where a number of challenges have been identified without a significant number of correlating good practices.)

Figure I

Challenges in the implementation of chapter IV of the Convention, by article

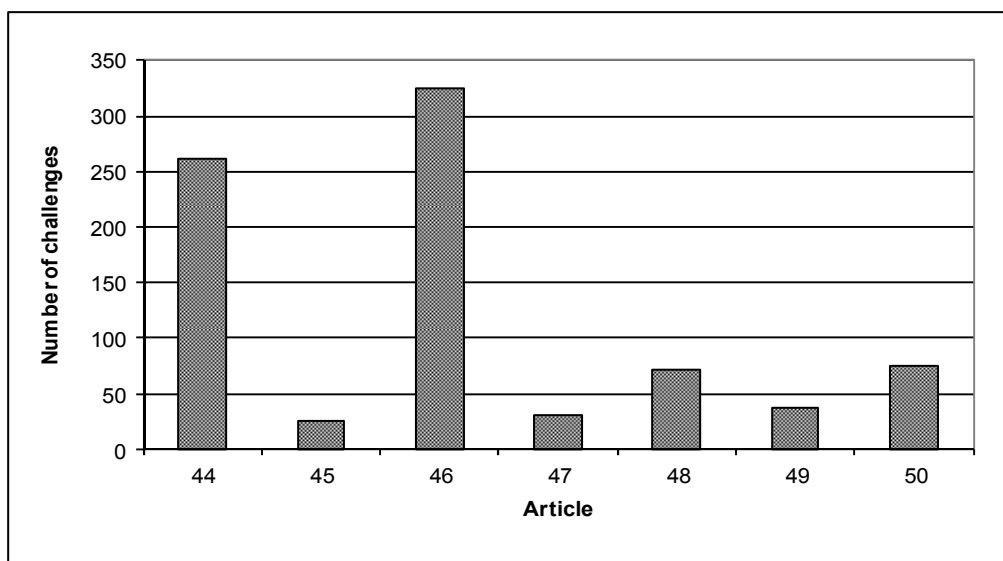


Figure II

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

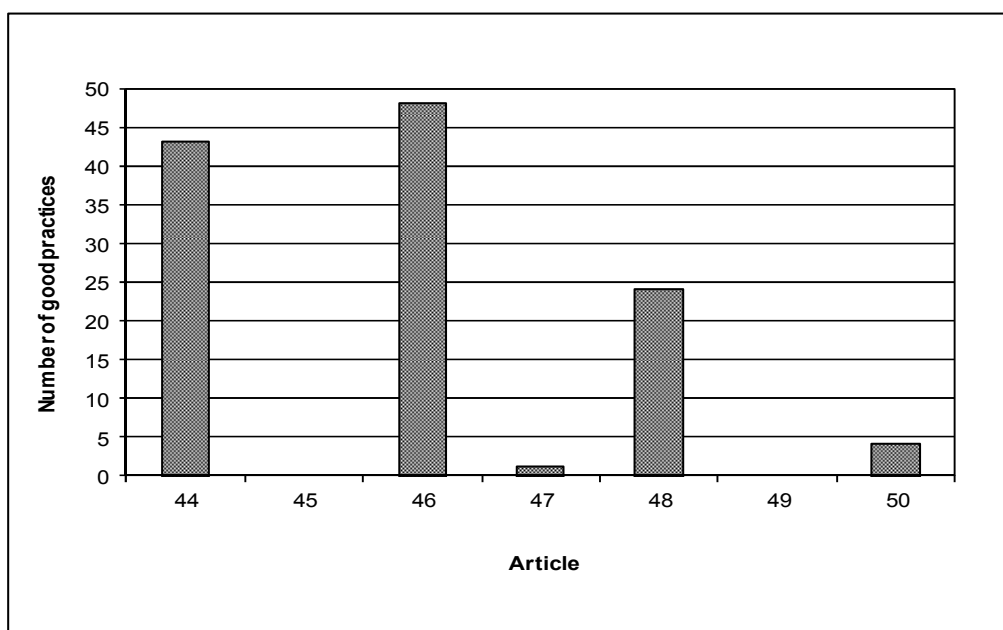


Figure III
Challenges in the implementation of article 44 of the Convention, by paragraph

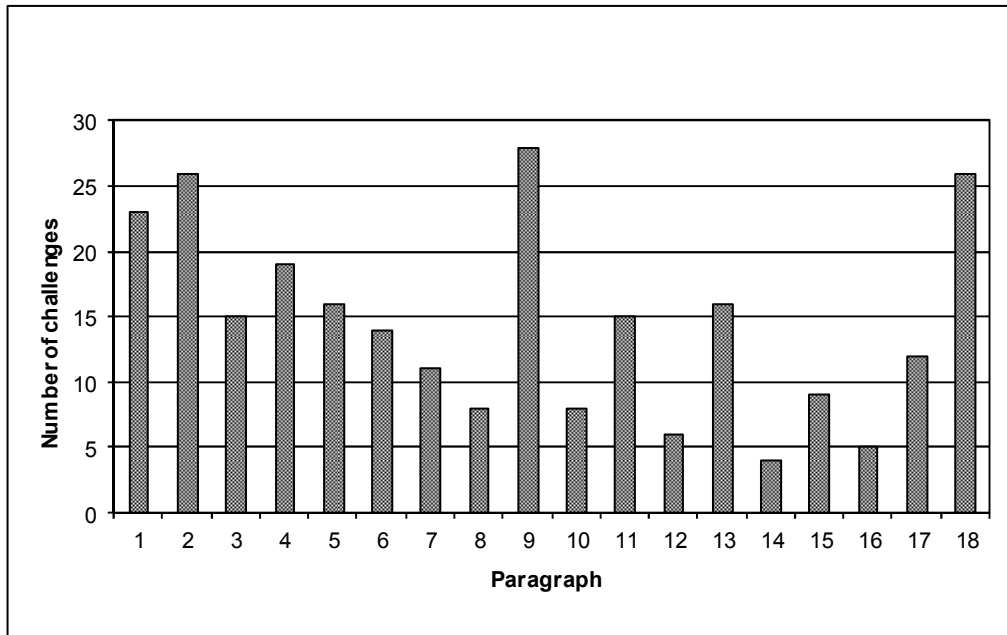
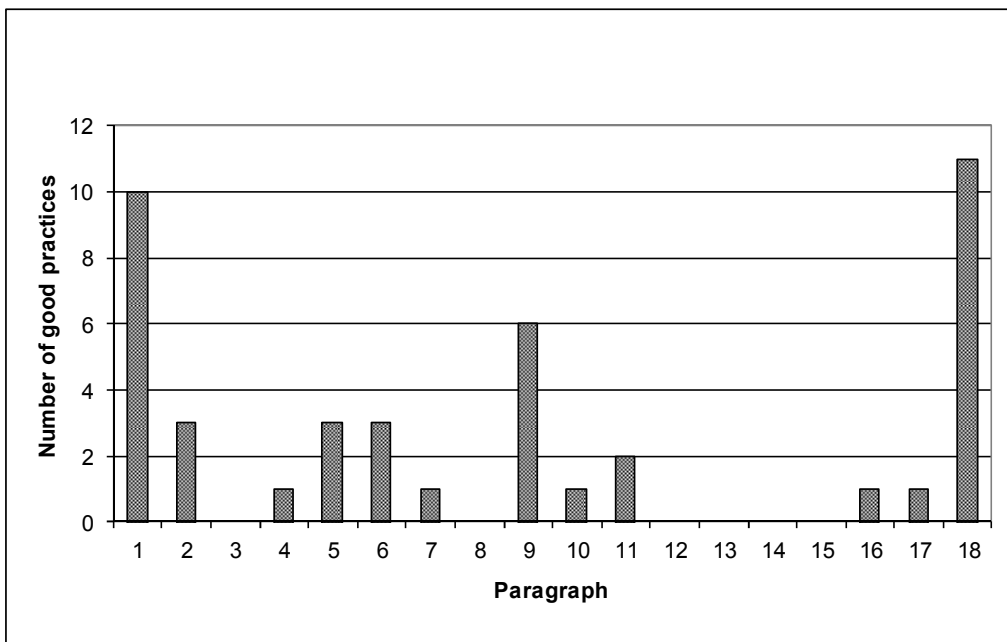


Figure IV
Good practices in the implementation of article 44 of the Convention, by paragraph



9. The broad correlation between both the number and the content of challenges and good practices demonstrated that the Review Mechanism, after the third year of country reviews, has been fulfilling its functions. According to the guiding principles and characteristics of the Review Mechanism, the Mechanism should: (a) provide opportunities to share good practices and challenges (paragraph 3 (c) of the terms of reference); (b) identify, at the earliest stage possible, difficulties encountered by States parties in the fulfilment of their obligations under the Convention and good practices adopted in efforts by States parties to implement the Convention (paragraph 3 (h) of the terms of reference); and (c) assist States parties in the effective implementation of the Convention (paragraph 3 (d) of the terms of reference). The tables and figures in the present report show that the country reviews create a wealth of information that allows the Review Mechanism to achieve those objectives.

III. Implementation of chapter IV of the Convention

A. Extradition

10. Most States parties regulated extradition in their domestic legal systems, mostly in the Constitution, the code of criminal procedure or special laws on international cooperation. Two States parties did not have national legislation on extradition: one indicated that it was considering the adoption of such legislation; in the other country, a recommendation had been made to consider developing an extradition law that would include all elements of extradition foreseen in the Convention and other international instruments, and that might include an amendment to the Constitution. At the time of the review, two countries had adopted new legislation that had not yet entered in force. In another country, the extradition act was under evaluation at the time of the country review.

11. In countries where legislation on extradition existed, that legislation did not regulate the matter of extradition with the same level of detail. One country had only limited extradition-related articles in its Constitution. In two countries, national legislation only referred to money-laundering offences. In one of them, certain general provisions in the Constitution applied to all offences and other practical questions were solved on the basis of reciprocity; it was recommended that legislation should be developed that would be applicable to all offences established in accordance with the Convention. The other country was planning to adopt an anti-corruption bill that would contain extradition-related provisions limited to the area of corruption. In one State party, the domestic law regulated only requests for extradition to other countries, and it was noted that those regulations could be applied *mutatis mutandis* to incoming requests for extradition. However, a recommendation was made to establish proceedings and regulations for incoming requests for extradition.

12. 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 legislation on extradition. 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 found in a regional treaty on corruption to which it was party.

13. 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. One Commonwealth member applied the London Scheme for Extradition within the Commonwealth, while another reported it could apply the London Scheme but would need to set out that Scheme in a regulation under the extradition act in the same way as an extradition treaty, which had not yet been done. For Member States of the European Union, Council of the European Union framework decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member States generally led to a two-tier system: a simplified system was applied for European Union member States, while general rules applied to other States. One member State of the European Union distinguished between three categories of States: European Union member States; designated extradition partners outside the European Union; and all other States, with whom special arrangements had to be made.

14. 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. Most treaties identified “extraditable offences” based on the mentioned minimum penalty requirement rather than by a list of offences. Some States parties departed from the one-year rule and applied a lower (six-month) or higher (two-year) minimum penalty threshold; some bilateral treaties applied a minimum penalty threshold of two years. When extradition was sought for the enforcement of a sentence, the threshold was typically six months (four months in three States parties).

15. One State indicated that its increasing reliance on the minimum penalty requirement approach in the negotiation of new international treaties introduced an important element of flexibility into the practice of extradition. In some countries using the threshold approach, recommendations were made to ensure that a wider range of corruption offences met the minimum penalty threshold. It was noted that challenges stemming from those thresholds might be addressed by increasing the applicable penalties to ensure that all offences established in accordance with the Convention would become extraditable. In one country, it was recommended that — to ensure that extradition was at least possible for all mandatory offences covered under the Convention — minimum penalties of 12 months should be established, or it should be stated in the extradition act or all treaties that all offences covered by the Convention were extraditable. One country, while not having a minimum penalty requirement in its legislation, relied on the Model Treaty on Extradition (General Assembly resolution 45/116, annex), which left it to the discretion of States to use a one- or two-year minimum penalty threshold; however, that country had not yet taken a decision on whether one or two years should be applied. Recommendations were also issued with regard to treaties that used a list approach: either to review those bilateral treaties that used the list approach and broaden them to include all offences covered by the Convention; or to include corruption-related offences in future extradition treaties and otherwise apply the Convention directly.

16. 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, of the Convention. However, some States parties confirmed that they had included such offences as extraditable offences when concluding new treaties on extradition.

17. A majority of States parties made “accessory offences” extraditable if the main offence satisfied the minimum penalty requirement. In one country, 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 of imprisonment. In two countries, the reviewers considered that high sanctions for corruption offences alleviated the need for extradition for accessory offences. Nine States parties confirmed that extradition for accessory offences was not possible.

18. Dual criminality appeared as a standard condition for granting extradition, although for several States parties that requirement was not absolute. One of them did not require dual criminality in practice, in the absence of an extradition law. Other States could overcome the requirement if the requesting State guaranteed reciprocity on the same issue, by direct application of the Convention, or when the conduct was deemed extraditable under an extradition treaty. One State party considered the absence of dual criminality to be an optional (as opposed to a compulsory) ground for rejecting a request for extradition. In yet another State, dual criminality was required in relation with designated States, but not required to enter into extradition agreements with other States; however, to constitute extraditable conduct in such agreements, the offence must have been committed in the jurisdiction of the State party.

19. States members of the European Union indicated that corruption was included in the Council of the European Union framework decision on the European arrest warrant as one of the offences that would give rise to surrender if they were 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 were defined by the law of the issuing member State, without verification of the dual criminality of the act.

20. In the vast majority of States parties, the principle of dual criminality was explicitly set out in their domestic legislation; however three States parties asserted that it was applied in practice or based on the bilateral treaties to which the State was a party. In one State party, the draft anti-corruption law foresaw extradition in the absence of dual criminality. One other 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.

21. Most States parties had made efforts to apply a flexible approach to the principle of dual criminality: the principle was usually deemed to be fulfilled regardless of the terminology used to denominate the offence in question, or for similar types of offences. In two countries, concerns were expressed that lack of full criminalization of all offences covered by the Convention could present problems in the context of the dual criminality requirement. One State party mentioned that it had encountered no obstacle in obtaining cooperation from or extending cooperation

to other States owing to the application of the principle. Another 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.

22. Most States parties could reject requests for extradition 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 judgement would facilitate the social rehabilitation of the sought person. Most States parties had in their legislation an exhaustive list of grounds for refusal, while some used those contained in treaties or deduced them from general principles of international law in the absence of applicable treaties. Some States parties listed the grounds for refusal in their Constitution.

23. Most States parties could not reject a request on the sole ground that the offence involved fiscal matters. In some countries there was no such impediment in the national legislation, while in other countries it was explicitly stated in the legislation that offences involving fiscal matters were also considered extraditable. In two countries no specific measures had been taken for the implementation of the provision and a recommendation had been made to ensure compliance with the Convention. In three countries, lack of legislation or practice left a degree of uncertainty as to whether a request for extradition might be denied on those grounds. One country provided examples of extradition for offences involving fiscal matters. According to the legislation of two States parties, some categories of offences were not extraditable due to their fiscal nature; however, if the elements of a given offence were considered to also constitute an act of corruption under the Convention, extradition would not be refused.

24. The majority of States parties could not grant (or could refuse) extradition if there was reason 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 several States parties, general constitutional clauses prohibiting discrimination in such cases were deemed sufficient for the implementation of that provision. In other countries, while the ratification of relevant human rights conventions or extradition treaties was in principle considered sufficient to implement the provision, a recommendation was made to take into account the provisions of international law when a law on extradition was enacted or to ensure application in practice. In eight States parties, the risk of sex-based discrimination was not considered, although one State party announced that that particular type of discrimination would be reflected in its new law on extradition. In one of those countries, discrimination on account of ethnic origin or political opinions was not considered a ground for refusing extradition. In three countries, domestic legislation did not make any reference to the “non-discrimination” clause. One State reported that extradition to its territory had already been refused on the basis of concerns regarding discrimination.

25. Nearly all States parties included the commission of a political offence among the grounds for rejecting a request for extradition. According to one State party, that was the most common cause for the rejection of incoming requests for extradition (together with the circumstance that the prosecution of the offence was statute-barred). Two States parties noted that some of their extradition treaties also included

a definition of a political offence. One country had legislation containing a definition of a political offence and also had a detailed list of offences that could not 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 a request for extradition on that ground were taken on a case-by-case basis, often relying on criteria elaborated in jurisprudence. In one country, 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. In the Constitution of one State party, it was mentioned that extradition was not allowed for “political reasons”, an expression that the reviewers found to be ambiguous in terms of 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. In some country reports, recommendations were made to clarify the law to ensure that corruption-related offences were not considered political offences or to monitor the application of the exception and, where appropriate, take action to clarify the law. Two countries excluded the possibility of invoking 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. In two countries, no information could be obtained.

26. Most States parties could not extradite their own nationals; some of them could not do so unless it was explicitly envisaged in applicable treaties. Six States could extradite their nationals. In one of them, the extradition of nationals was excluded unless the person concerned would be “better judged” in the place where the offence had been committed; and another one of those countries could only extradite its nationals when reciprocity on the extradition of nationals was granted. Additionally, in two States parties the extradition of a national was subject to ministerial discretion.

27. Most States parties specified that any refusal to grant extradition based on these grounds would trigger prosecution under domestic law, in accordance with article 44, paragraph 11, of the Convention. While in some States the principle of *aut dedere aut judicare* (extradite or prosecute) was regulated in the legislation or the Constitution, in others it was applied as a general principle of law. Some States parties reported on domestic criminal procedures that had been initiated when a request for extradition had been rejected on the basis of the nationality of the sought 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. In the two countries mentioned above in which the extradition of nationals was subject to ministerial discretion, it was also found that the principle of *aut dedere aut judicare* (extradite or prosecute) was not addressed or not mandatory.

Box 1

Example of the implementation of article 44, paragraph 11, of the Convention

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 renounce its jurisdiction and transmit all available evidence.

28. Only five 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, paragraph 12, of the Convention. Two of those five States applied the conditional surrender in the context of the Council of the European Union framework decision on the European arrest warrant; others were parties to bilateral agreements that regulated conditional surrender or foresaw it in their national legislation.

29. Many States parties were apparently not able to enforce a foreign sentence whenever they rejected a request for extradition (made for enforcement purposes) on grounds of nationality, as envisaged in article 44, paragraph 13, of the Convention. Those States parties that could enforce a foreign sentence when they rejected a request for extradition acted on the basis of national legislation, regional treaties or direct application of the Convention. 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 his or her nationality, was on its territory, its competent authorities could only initiate a new criminal proceeding for the same criminal conduct.

30. With regard to the legal basis for receiving or sending an extradition request, in the majority of States parties a treaty was not required as a basis for extradition. That 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 States parties 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 State. 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 2

Example of the implementation of article 44, paragraph 7, of the Convention

One State party applied the so-called “principle of favourable treatment”. Originally developed in connection with labour and human rights laws, 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.

31. 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 State reported having concluded

bilateral treaties on extradition 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 States explicitly indicated that their preferred tool for extradition were bilateral treaties. Three States had not yet concluded any bilateral agreements on extradition. In one State party, numerous 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 that contained some provisions on extradition. In general, bilateral treaties tended to be concluded with countries in the same region or those sharing the same language.

Box 3

Example of the implementation of article 44, paragraph 6, of the Convention

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

32. Although many States parties could in principle use the Convention as a basis for extradition, in practice that was rarely done. One State party noted, as a good practice, that it had made requests for extradition using the Convention as the basis for extradition. Another State party, which could use the Convention against Corruption as a legal basis for extradition but had not yet done so, the United Nations Convention against Transnational Organized Crime had already been used as a legal basis for extradition. In one country, although the Convention against Corruption alone could not be used as a legal basis for extradition, it 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 legal tool for international cooperation. Three States parties had not yet reached a clear position. In two States parties, the Convention could potentially be used as a legal basis by designating it under an existing extradition act, but that had not been done.

33. The majority of the States parties indicated their readiness to explore the possibility of concluding new treaties to enhance the effectiveness of extradition. A few provided the names of the States with which such treaty negotiations were taking place. One State party mentioned its current policy to prioritize negotiations with those States parties in which there was a high presence of its own nationals. One of the countries that had not yet concluded bilateral treaties on extradition 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. That was especially the case in those countries that could not use the Convention as a legal basis. In various countries, it was recommended that the Convention be used as a legal basis for extradition to compensate for the very limited number of bilateral treaties in place.

34. Substantial divergences emerged regarding the average duration of extradition proceedings, which ranged from 1.5-4 months to 12-18 months. It was noted that the Council of the European Union framework decision on the European arrest warrant had contributed to shortening the period among European Union member States, but no specific statistics were available in that regard. Differences in the time frame often depended on the circumstances in which the request had been submitted, such as the complexity of the case, appeal proceedings and parallel asylum proceedings. One European Union member State, for example, indicated that a longer period (of approximately one year) was generally necessary in order to extradite fugitives to non-member States of the European Union. In another country, a proceeding that would normally last 12 months could be reduced to 4 months if the documentation supporting the extradition request was properly submitted. Some countries had in their legislation time frames for resolving extradition cases, with significant variations: in one country, the legislation established a deadline of 30 days from the receipt of an extradition request to the extradition hearing and then another deadline of 15 days until the extradition; in another country, a deadline of six months had been established, with the possibility of extending the deadline for another six months.

35. About half of the States parties under review envisaged simplified proceedings. Those were based either on the sought person's consent to be extradited or on privileged cooperation with specific designated countries or treaty partners, a methodology used above all in countries with a common law or a mixed system. In one country, such proceedings were only available to non-nationals. While in one country the average extradition case following the general proceedings took six months, the simplified proceedings had an average duration of three months. According to another State party, simplified extradition proceedings were used in about half of the cases and could lead to extradition being granted within a few days if not hours. One country could receive extradition requests in urgent cases via INTERPOL; the same country also applied the simplified proceedings in article 6 of the Model Treaty on Extradition.

36. One country had faced several obstacles in obtaining cooperation from other countries, including delays in receiving assistance due to the high costs involved and cumbersome procedures. Another country had made several requests for extradition related to corruption offences, none of which had been granted owing to differences in legal systems. Four countries explicitly mentioned that they had neither received nor sent a request for extradition for a corruption-related offence.

37. There was little uniformity in terms of the evidentiary threshold prescribed by domestic law for granting 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". Simplified proceedings with treaty partners often consisted in a lower standard of proof so that no prima facie case was necessary. Recommendations were made in such cases to introduce a lower standard of proof in extradition proceedings in order to make it easier for requesting States to formulate an extradition request with better chances of success, unless the review team were convinced that such standards were applied in a sufficiently reasonable and flexible manner.

Box 4

Example of the implementation of article 44, paragraph 9, of the Convention

One State party that was a member of a subregional organization reported on its extradition arrangements with States belonging to the same organization. It 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 State indicated that it had recently established a unit within its central authority to expedite the execution of extradition requests and had established a committee on extradition, comprised of the central authority, the prosecution authority, the police, INTERPOL and the department of international relations, with a view to enhancing and streamlining extradition procedures and addressing the main issues faced in that process. The magistrate must, in order to facilitate extradition with States with 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 requesting State, indicating that there was sufficient evidence at its disposal to warrant the prosecution of the person concerned.

With a view to expediting extradition procedures, one State party had developed an extradition manual, a workflow chart and an extradition checklist that gave administrative and legal certainty in cases involving the sending and processing of requests for extradition. The authorities had also taken steps to sensitize all relevant stakeholders, especially judicial officers, of the applicable law and procedures and the relevant time frame to be followed.

38. According to most States parties, the main due process guarantees were enshrined in the Constitution or the criminal procedure code. Only one State party mentioned that relevant protections were available under “common law principles”. Reviewers found general process guarantees sufficient if they were deemed applicable to extradition proceedings. 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 for the Protection of Human Rights and Fundamental Freedoms. Some States provided a list of the rights and guarantees applicable under their domestic legal systems. Those included, among other things, the presumption of innocence, the *ne bis in idem* principle, the right to a defence counsel, the right to an interpreter and 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, and recommendations were issued that States should allow for an appeal procedure in extradition proceedings. One State party had not taken any specific measures to ensure the implementation of the provision and a recommendation was given to ensure implementation. The extradition law of one State party applied to the extradition process a whole range of safeguards of human rights, including the right of the individual with respect to conditions of imprisonment pending extradition. Extradition had been denied by one State because the person sought to be extradited had been tried in absentia in a foreign country although the residence and whereabouts of the person had been known.

39. Almost all States parties had measures in place to ensure the presence of the sought person at extradition proceedings, in particular, the possibility to order custody upon request. Most States applied the general rules of the criminal procedure law, while others had in their international cooperation laws specific provisions on provisional arrest or custody or cited relevant provisions in extradition treaties. In one country, local courts were empowered to consider the legality of detention during extradition proceedings in the same way as they would for pretrial custody. In some countries, arrest always led to custody; in others, while arrest during extradition proceedings remained the rule, it was possible to order the sought person to be released on bail in exceptional circumstances, notably when the chances of extradition being granted were slim, or on health grounds. In some instances, the INTERPOL red notice system could be used as a conduit for executing the arrest of fugitives, or at least a request for an arrest warrant could be received in urgent cases via INTERPOL. The detention could be ordered for a duration of 18 days in some countries (extendable upon request to 40 days) and six months in others (in which case, a draft law would provide for the extension for a maximum duration of one year). One country had concluded with its neighbouring countries a simplified warrant-of-arrest scheme.

40. 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. That was the case either because they regarded the duty of consultation as part of international comity or practice or because they interpreted article 44, paragraph 17, of the Convention (or equivalent provisions of bilateral or regional treaties) as being directly applicable and self-executing in their own legal system. However, in other countries recommendations were given to clarify the law in order to include this requirement or incorporate it into guidelines or other regulations. 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 action. In some countries, legislation covered related aspects such as the provision of additional information by the requesting State or the provision of reasons for refusal. Another State party mentioned that, although consultations could take place through diplomatic channels and their results were presented to the judge during the extradition hearing, the judge could not have direct contact with the foreign authorities. In four countries, lack of legislation, relevant treaties and practice resulted in the non-implementation of the requirement.

Box 5

Example of the implementation of article 44, paragraph 17, of the Convention

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. That would include giving the requesting State 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.

41. 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, in the majority of countries that collected statistics on extradition, the data provided were of a general nature and did not provide a thorough account of incoming and outgoing requests for extradition for corruption-related offences. One State party estimated that approximately 20 per cent of the outgoing requests for extradition were for corruption-related offences, and another State indicated that in the previous six years there had been 132 extradition cases involving corruption-related offences. With regard to passive requests for extradition, other States indicated that no requests for extradition for corruption-related offences had been received. Two States parties were recommended to systematize, centralize and make the best use of statistics. 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 for international cooperation in cases involving corruption, including extradition, which would provide a better picture of how the relevant legal framework was being implemented in practice and increase the efficiency of mechanisms for international cooperation.

B. Transfer of sentenced persons

42. Most States parties had the legal framework necessary to carry out transfer of sentenced persons in accordance with article 45 of the Convention, notably via bilateral and regional agreements. The number of treaties concluded by States parties on this matter varied considerably. Whereas one State party was bound by 28 bilateral agreements covering the transfer of sentenced persons, most States had a smaller number of treaties on the subject. Eight States were not yet parties to any such agreement. In one country, apart from a number of bilateral treaties, arrangements with more than 100 other countries were in force. As was observed in relation to extradition, there was a tendency to conclude agreements on the transfer of sentenced persons with neighbouring States or States sharing the same language. Regional agreements also appeared to be used rather extensively, particularly the Convention on the Transfer of Sentenced Persons, the Additional Protocol to the Convention on the Transfer of Sentenced Persons, the Riyadh Arab agreement on judicial cooperation, the convention of the Commonwealth of Independent States on the transfer of convicted persons to deprivation of liberty for the further serving of sentences and the Convention on the Transfer of Sentenced Persons between Member States of the Community of Portuguese Speaking Countries.

43. Most States parties were in a position to transfer sentenced persons on the basis of domestic law. In one country, that possibility was limited to persons sentenced for money-laundering or drug-related offences. However, the same State party specified that, in practice, all such transfers had taken place through treaties. Another State party specifically mentioned reciprocity and dual criminality as conditions for executing such transfers. Only one State party mentioned that it had used diplomatic channels twice to transfer sentenced persons. One State party that had not yet concluded any treaties argued that its national legislation barred such transfers when the person concerned was serving a sentence under a conviction within its territory — until that person's discharge. However, the same State party

expressed the intention to amend its national legislation in order to ensure compliance with the Convention. Another State reported that it had refused a request for such a transfer because of the absence of a legal framework. In two countries, legislation on the transfer of prisoners had been adopted but had not yet entered into force.

44. Generally no statistics could be gathered on the number of transfers carried out in relation to Convention-based offences. One State party provided statistics that showed between 20 and 30 prisoners transferred every year for all criminal offences. Another State party noted that thousands of prisoners had been transferred to and from its territory since 1977, pursuant to relevant treaties. One State noted that it had not yet recorded any cases with regard to corruption.
