



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

Distr.: General
14 August 2017

Original: English

Seventh session

Vienna, 6-10 November 2017

Item 2 of the provisional agenda*

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

Summary of the state of implementation of the United Nations Convention against Corruption: criminalization, law enforcement and international cooperation

Note by the Secretariat

1. The establishment and operation of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption have allowed for the collection, systematization and dissemination of an unprecedented wealth of information that is useful for furthering the goals of the Convention. The present, updated study is based on that information and contains a comprehensive analysis of the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) of the Convention by the 156 States parties reviewed at the time of drafting as part of the first cycle of the Implementation Review Mechanism, which began in 2010. More specifically, the study: (a) identifies and describes trends and patterns in the implementation of the above-mentioned chapters, focusing on systematic or, where possible, regional commonalities and variations; (b) highlights successes and good practices on the one hand, and challenges in implementation on the other, and presents a selection of examples of implementation that are considered noteworthy or illustrative of the legislation and practice of States parties; and (c) provides an overview of the emerging understanding of the Convention and differences in the reviews, where they have been encountered.

2. The study identifies legislative and institutional changes that have characterized the anti-corruption frameworks of most States parties in recent years and have led to a notable furthering of the purposes of the Convention. Combating corruption appears to rank among the highest priorities of many national Governments. In a considerable number of countries, legislative amendments and structural reforms have produced coherent and largely harmonized criminalization regimes, tangible results in terms of enforcement capabilities and action, and strong frameworks for extradition, mutual legal assistance and law enforcement cooperation. In many countries, these legal and policy developments were initiated as a direct result of or in the context of the implementation reviews. It has emerged, therefore, that the Convention and the reports produced as part of the Implementation Review Mechanism have already

* [CAC/COSP/2017/1](#).



played a significant role in triggering change and continue to serve as a basis for the establishment of effective anti-corruption regimes.

3. Nonetheless, substantial challenges remain. These range from the most rudimentary problems and practical impediments that are caused by a lack of experience, resources and training, to technical issues in the formulation of criminalization provisions or the incorporation of particular elements of the Convention into complex procedural structures.

4. Gaps are more obvious in the implementation of chapter III of the Convention, in relation to both criminalization and law enforcement, given that in those areas, the Convention requires States parties to implement a particularly wide and multifaceted range of measures. Driven by this requirement, as well as the concerted anti-corruption efforts undertaken at the global level in recent years, several countries have introduced new legislation for the purposes of fulfilling their obligations and improving their substantive and procedural criminal law provisions. Such new legislation has, for example, widened the range of corruption offences and increased the applicable penalties; expanded the definition of public officials; introduced a regime governing the liability of legal persons; reduced the scope of immunities; expanded the protection of witnesses, experts, victims and reporting persons; and strengthened the mandates and functions of specialized anti-corruption authorities. In this context, concepts that were new in some jurisdictions, such as bribery of foreign public officials and officials of public international organizations, illicit enrichment and the freezing of proceeds of crime, were analysed and effectively incorporated in national laws. Ancillary measures, for example regarding the consequences of acts of corruption and compensation for damage, were also enhanced.

5. Despite these efforts, however, in many countries there are considerable outstanding issues, especially concerning the inadequate execution of measures that are mandatory under the Convention. These include not only limitations in the scope of coverage of particular offences (e.g., gaps regarding the criminalization of bribery of national public officials or of obstruction of justice) and the lack of consistent and dissuasive sanctioning systems, but also the complete absence of the implementation of some provisions (notably the offence of bribery of foreign public officials and officials of public international organizations, measures that enable the identification, tracing, freezing, seizure and administration of property, and measures for the protection of witnesses). Problems were also observed with regard to the apparent ineffectiveness of existing legislation (for example with respect to money-laundering or establishing the liability of legal persons), attributed in part to obstacles posed to investigation and prosecution by immunities or the improper exercise of discretionary powers. With regard to law enforcement, challenges often arise because of limitations in relation to the efficiency, expertise, capabilities and independence of specialized authorities. There are also insufficient incentives for cooperation with law enforcement authorities and a lack of effective inter-agency coordination and information exchange, especially among agencies with an anti-corruption mandate. Challenges related to the implementation of non-mandatory provisions of the Convention are less pronounced but equally widespread.

6. Implementation of chapter IV appears to be more straightforward and solid, in part as a result of the ability of a number of countries to apply the text of the Convention directly and in view of the self-executing character of many of its provisions. Another reason is the accumulated experience of many States parties in the field of international cooperation as a result of long-standing practice on related issues. Many countries also confirmed compliance with a number of Convention provisions (such as on consultations with other countries during mutual legal assistance procedures) through practice and ad hoc arrangements. Additionally, the reviews have highlighted a tendency towards the relaxation of some legal and procedural constraints in the provision of assistance to foreign authorities. For example, the easing of evidentiary requirements in extradition proceedings was noted in a number of reviews. The interpretation of the dual criminality requirement on the basis of the underlying factual conduct is another example. Lastly, a substantial

number of parties appear to be in a position to accept requests in languages other than their official one(s).

7. Some of the biggest challenges regarding chapter IV appear to be operational. In this regard, a number of obstacles are linked to limited resources and/or the technical expertise available to use videoconferencing for mutual legal assistance purposes or to carry out special investigative techniques, either domestically or in the execution of foreign requests. The reviews also highlighted the limited use of a number of mechanisms envisaged in the Convention. For example, few States make direct use of the Convention as an autonomous legal basis in extradition matters and even fewer appear to resort to the transfer of criminal proceedings as a modality for international cooperation.

8. Numerous recommendations concerning the introduction of new provisions and laws were made during the reviews. They included recommendations on considering the consolidation and clarification of existing legislation in the context of ongoing legal reforms and the adoption of stand-alone legislative frameworks with anti-corruption measures. In many cases, recommendations were made on resource allocation and the capacities of anti-corruption bodies and institutions, enhancing law enforcement cooperation and inter-agency coordination, establishing suitable data-collection systems or case law typologies, simplifying international cooperation and promoting a culture of open dialogue between jurisdictions.
