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Implementation of UNCAC chapter IV: International cooperation in ASEAN States parties and Timor-Leste

April 2024

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Acknowledgements

This report draws on the approved reports and executive summaries of States parties to the United Nations Convention against Corruption (UNCAC) in the Association of Southeast Asian Nations (ASEAN) and Timor-Leste as part of the Mechanism for the Review of Implementation of UNCAC (UNCAC Implementation Review Mechanism).

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Disclaimer

This report has not been formally edited.

Implementation of UNCAC chapter IV: International cooperation in ASEAN States parties and Timor-Leste

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I: Introduction, scope and structure of thematic report

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UNCAC is the only legally binding universal anti-corruption instrument. The Convention was adopted by the General Assembly in October 2003 and entered into force in December 2005. As of April 2024, there are 190 parties to the Convention, representing a ground-breaking commitment to prevent and tackle corruption.[1]

UNCAC is unique in its holistic approach, adopting prevention and enforcement measures, including mandatory requirements for criminalizing corrupt behaviours. The Convention also reflects the transnational nature of corruption, providing an international legal basis for enabling international cooperation and recovering proceeds of corruption (i.e. stolen assets). The important role of government, the private sector and civil society in fighting corruption is also emphasized. The Convention includes an implementation review mechanism (UNCAC Implementation Review Mechanism), requiring each State party to be reviewed by two other States parties on its implementation of UNCAC across two review cycles: one focused on chapters III (criminalization and law enforcement) and IV (international cooperation) of the Convention and a second cycle focused on chapters II (preventive measures) and V (asset recovery). The Convention also calls on each State party to provide technical assistance and training, and exchange information to strengthen implementation.

Table 1: ASEAN States parties to UNCAC and Timor-Leste

ASEAN States parties to UNCAC and Timor-Leste	Date of ratification/ accession
Brunei Darussalam	2 December 2008
Cambodia	5 September 2007
Indonesia	19 September 2006
Lao PDR	25 September 2009
Myanmar	20 December 2012
Malaysia	24 September 2008
Philippines	8 November 2006
Singapore	6 November 2009
Thailand	1 March 2011
Timor-Leste	27 March 2009
Viet Nam	19 August 2009

This report aims to provide an overview of the implementation of UNCAC chapter IV on international cooperation by ASEAN States parties and Timor-Leste. The ASEAN States parties are Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (PDR), Malaysia, Myanmar,[2] the Philippines, Singapore, Thailand

1 UNODC. "Signature and Ratification Status", 1 February 2024. Available at: https://www.unodc.org/unodc/en/corruption/ratification-status.html.

2 Myanmar's executive summary for the first cycle review, covering the implementation of chapter III, was published on 12 October 2016 prior to the miliary takeover on 1 February 2021 (see S/RES/2669 (2022), which refers to "the ongoing state of emergency imposed by the military in Myanmar on 1 February 2021"). This report therefore includes an analysis of information provided by Myanmar at the time of its first cycle review. The information provided at that time may not reflect the current context.

and Viet Nam. At the time of this report, Timor-Leste had observer status in ASEAN and is, in principle, to be admitted as an ASEAN Member State.[3]

Table 2: UNCAC Implementation Reviews of ASEAN States parties and Timor-Leste – Cycle 1

States parties	First cycle (UNCAC chapters III and IV)	Reviewed by
Brunei Darussalam	Completed: Country visit was held on 12 – 16 March 2012	1. Yemen 2. Liechtenstein
Cambodia	Completed: Country visit was held on 15 – 18 September 2015	1. Togo 2. Myanmar
Indonesia	Completed: Country visit was held on 14 – 16 March 2011	1. Uzbekistan 2. United Kingdom
Lao PDR	Completed: Country visit was held on 29 October – 2 November 2012	1. Mongolia 2. Luxembourg
Malaysia	Completed: Country visit was held on 4 – 8 February 2013	1. The Philippines 2. Kenya
Myanmar	Completed: Country visit was held on 12 – 14 July 2016	1. Burundi 2. Thailand
Philippines	Completed: Country visit was held on 5 – 10 August 2012	1. Bangladesh 2. Egypt
Singapore	Completed: Country visit was held on 7 – 10 April 2015	1. Lebanon 2. Eswatini
Thailand	Completed: Country visit was held on 18 – 22 May 2015	1. Nepal 2. Bahrain
Timor-Leste	Completed: Country visit was held on 21 – 25 May 2012	1. Fiji 2. Namibia
Viet Nam	Completed: Country visit was held on 19 – 25 February 2012	1. Lebanon 2. Italy

Preparation of the report is based on information included in the country review reports and executive summaries from such reports of these States parties, following from the first cycle of the UNCAC Implementation Review Mechanism which took place between 2010 and 2015. The UNCAC Implementation Review Mechanism is a formal peer review process that aims to assist States parties in effectively implementing the Convention by identifying and substantiating the challenges, good practices and specific needs of each State party.

This report compiles the most common and relevant information on successes, good practices, challenges and observations contained in the country review reports and executive summaries, organized by each article of the Convention. It includes an analysis of related technical assistance needs faced by States parties in implementing the provisions of chapter IV of the Convention.

Since the first review cycle between 2010 and 2015, there has been no formal thematic review of the ASEAN States parties and Timor-Leste's implementation of UNCAC chapter IV as a whole. As such, while some of the information presented in this report may not reflect the most recent and specific legislative and operational developments since the first review cycle, the report provides valuable insights and thematic

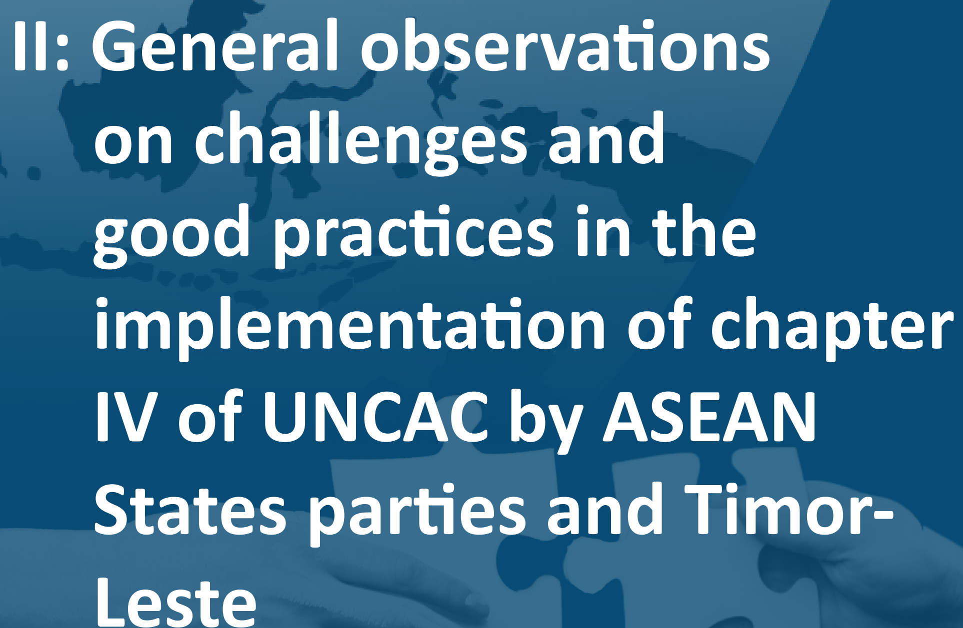
3 ASEAN, "ASEAN Leaders' Statement on the Application of Timor-Leste for ASEAN membership", 2022. Available at: https://asean.org/wp-content/uploads/2022/11/05-ASEAN-Leaders-Statement-on-the-Application-of-Timor-Leste-for-ASEAN-Membership.pdf.

learnings from the UNCAC Implementation Review Mechanism. It sets out areas for improvement, positive examples where relevant, and forms the groundwork for continued implementation efforts on UNCAC.

The comparison and analysis of information were challenging due to the different levels of information provided in the country review reports and executive summaries. This limitation should be taken into consideration while reading the report, as there may be potential for different interpretations and alternative conclusions based on the information from which this report is drawn.

Corruption does not respect territorial boundaries and therefore requires an international response. Chapter IV seeks to facilitate international cooperation and outlines States parties' obligations. States parties are required to provide support to requests for extradition and mutual legal assistance, including the arrest and detention of offenders, and the gathering and transferring of evidence for its use in court proceedings. States parties must also take steps to support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Chapter IV further requires States parties to consider establishing joint investigative bodies or conduct joint investigations on a case-by-case basis, where matters arise that are the subject of investigations, prosecutions or judicial proceedings in one or more States parties. Finally, States parties are required to consider the use of special investigative techniques, such as electronic or other forms of surveillance and undercover operations, and to allow for the admissibility in court of the evidence derived from these activities.



II: General observations on challenges and good practices in the implementation of chapter IV of UNCAC by ASEAN States parties and Timor-Leste

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This section presents a broad overview of the challenges and good practices in chapter IV's implementation by States parties.

Challenges

Generally, States parties experience different types of challenges in the implementation of chapter IV's provisions, given variations in their legal systems and pre-existing bilateral or multilateral agreements or arrangements. A common theme to the recommendations provided across different provisions in chapter IV was the need for States parties to explicitly clarify or legislate for different processes and procedures that they already are practicing. For example, States parties already commonly consulted with States who make extradition (article 44) and mutual legal assistance (article 46) requests before refusing them, but such practices were not yet adequately formalized in their frameworks. Challenges in consistency and legislative uncertainties were a focus of such recommendations, particularly in the application of the principle of extradite or prosecute *(aut dedere aut judicare*).

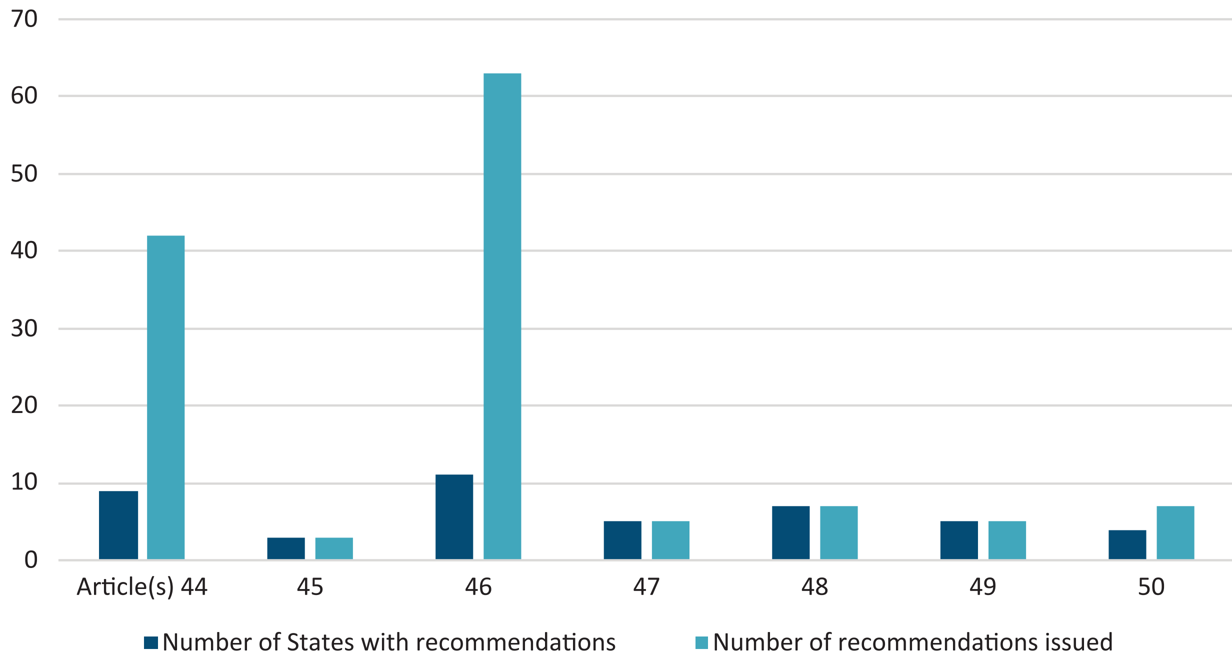
There was an emphasis on the efficient management and processing of such requests, including through the designation of appropriate authorities and the need for requests to be managed expeditiously. Barriers to the management and processing of requests were highlighted, including complex institutional arrangements and high evidentiary thresholds.

Some States parties possessed more experience in identifying, investigating and prosecuting cross-border Convention offences, which meant that adequate practices and processes were already in place by the time of the first review cycle. Conversely, States parties with fewer resources, capacity and technological know-how at the time of the first review cycle, including a lack of knowledge on special investigative techniques and how evidence derived from such techniques can be applied in proceedings (article 50), faced more normative and operational challenges that warranted more recommendations.

The provisions on extradition (article 44) and mutual legal assistance (article 46) received the most recommendations from reviewing experts, with over 40 and 60 recommendations respectively. The collective aim of such recommendations was to ensure that the broadest form of assistance could be provided to States that asked for it, with as few barriers as possible. Potential barriers such as the application of dual criminality and operational challenges in inter-agency coordination were addressed.

The transfer of sentenced persons (article 45) was more uniformly addressed by States parties than the transfer of criminal proceedings (article 47), with the latter receiving more recommendations than the former. A majority of States parties had not yet implemented article 47, with some having not had the opportunity to consider the issue. Article 45 was already commonly regulated by some form of arrangement or legislation, even if the actual experience of such transfers remains low.

Figure 1: Challenges identified in the implementation of chapter IV of the Convention



Operational challenges in the implementation of law enforcement cooperation (article 48), joint investigations (article 49) and special investigative techniques (article 50) were prevalent, from challenges in information-sharing to training needs and capacity-building. Across the three provisions, reviewing experts observed a need to conclude more agreements or arrangements to improve implementation.

Table 3: Most prevalent challenges in the implementation of chapter IV of the Convention

Article of the Convention	*Number of States receiving recommendations*	*Number of recommendations issued*	*Challenges identified*
44	9	42	Application of dual criminality; ensuring that Convention offences are extraditable offences, including by way of reviewing penalty requirements; monitoring the development of extradition practices; application of the Convention as the legal basis for extradition; concluding additional bilateral or multilateral treaties; notification to the Secretary-General of the United Nations whether the State under review will take UNCAC as the legal basis for cooperation on extradition with other States parties to the Convention; accessory extradition; reviewing treaties to ensure Convention requirements are

Article of the Convention	*Number of States receiving recommendations*	*Number of recommendations issued*	*Challenges identified*
			met; expediting extradition process or simplifying evidentiary requirements; application of the *aut dedere, aut judicare* principle; ensuring nationals who are not extradited are subject to prosecution; ensuring the guarantee of fair treatment; making explicit grounds for refusal, including based on discriminatory purposes, fiscal matters and political offences; explicit requirements to consult a requesting State before refusal.
45	3	3	Lack of experience or cases in transferring sentenced persons, especially in corruption cases; lack of statistics; challenges in international cooperation; specificities in the legal system; competing priorities; limited capacity; limited resources; entering bilateral or multilateral agreements or arrangements; monitoring application of draft laws.
46	11	63	Inadequacy of existing normative measures; broadening the scope of assistance; allowing the recovery of assets; facilitating voluntary appearances; using the Convention as a legal basis to streamline procedures and improve international cooperation; notification to the Secretary-General on use of Convention as a legal basis, designation of central authority, form and language of the request; enacting or enhancing the domestic framework on mutual legal assistance; application of dual criminality; rendering of non-coercive forms of assistance; assistance in terms of legal persons; allowing for transmission of information, particularly where legislation or treaties are silent on the issue; making provisions that guarantee the confidentiality of information; addressing the disclosure of exculpatory information or evidence; simplification of complex institutional arrangements; strengthening communication channels; inter-agency coordination; exchange of personnel; allowing central authorities to override bank secrecy; communication between multiple central authorities; operational challenges which require case management systems; collection of statistics; acceptance of oral requests; ensuring the confidentiality of incoming requests, unless such information is exculpatory; explicit clarification of practices; allowing the transfer of detainees for provision of evidence and ensuring consent requirement is met; inexperience in the use of videoconference for corruption cases;

Article of the Convention	*Number of States receiving recommendations*	*Number of recommendations issued*	*Challenges identified*
			making explicit the grounds of refusing mutual legal assistance, including by amending domestic legislation or monitoring future treaties; ensuring bank secrecy measures do not delay assistance; postponement of assistance in lieu of refusals; lack of time limits for assistance; timely provision of status updates; documenting positions and practices; making explicit the requirement to consult before refusing or postponing assistance; explicitly addressing the safe conduct of witnesses; ensuring the availability of such protections; codifying requirements on the provision of documents.
47	5	5	Lack of implementation; lack of regulation or procedural framework; challenges in international cooperation.
48	7	7	Limited capacity and experience in cross-border investigations; need to strengthen communication channels; need for training or capacity-building; lack of resources; competing mandates; lack of coordination; lack of information; challenges in sharing information; need to conclude more Memoranda of Understandings (MoUs) with foreign counterparts; posting of liaison officers; updates on training curriculum.
49	5	5	Lack of formal arrangements on joint investigations; lack of domestic laws to regulate the use of joint investigations; lack of resources; lack of experience in the application of joint investigations in domestic legislative frameworks; need to conclude agreements or arrangements to allow for joint investigative bodies or undertaking joint investigations on a case-by-case basis; need for clear procedures or guidelines.
50	4	7	Little experience with special investigative techniques in corruption cases; limited capacity and resources; limited awareness of such techniques and use of arrangements; lack of legislation, regulation or guidelines; inadequacy of normative measures; need to clearly define powers to conduct such investigations; need to enhance public trust; establishing the admissibility of evidence derived from special investigative techniques; competing priorities; challenges in inter-agency coordination; lack of agreements or arrangements on the international level.

Figure 2: Challenges identified in the implementation of chapter IV

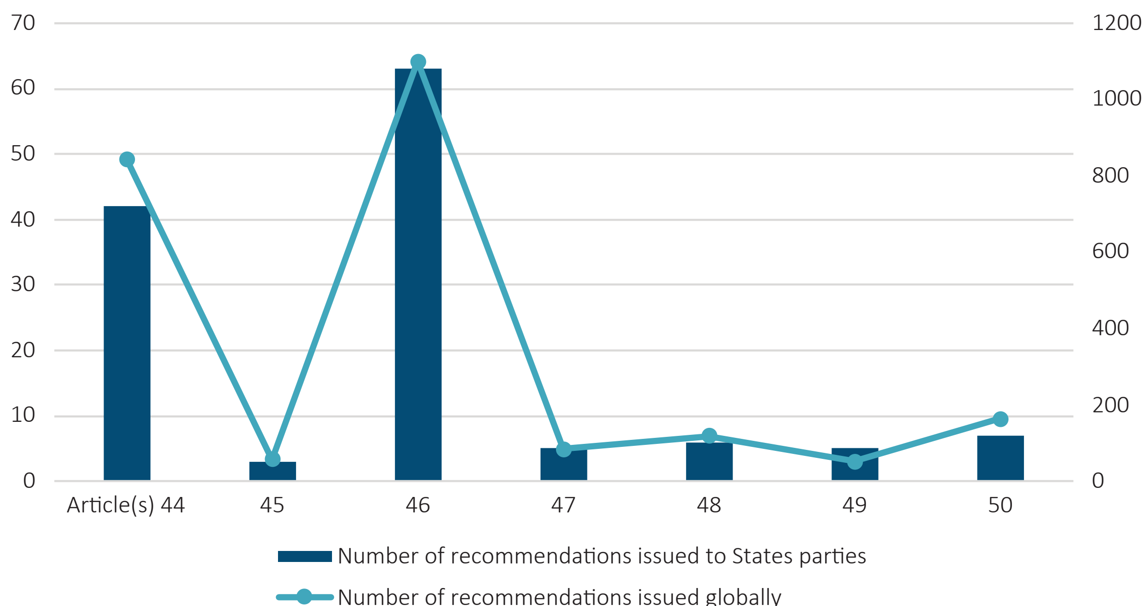


Table 4: Recommendations issued across the first review cycle

Convention article	*Number of recommendations issued to States parties (ASEAN States parties and Timor-Leste)*	*Number of recommendations issued globally across the first review cycle*
44	42	845
45	3	58
46	63	1100
47	5	84
48	7	119
49	5	52
50	7	163

Comparing the total number of recommendations issued to the States parties (ASEAN States parties and Timor-Leste) with the total number of recommendations[4] issued globally across the first review cycle (176 States) demonstrates an overall close match across most of the provisions in chapter IV. This is illustrated in the figure below.

Mutual legal assistance (article 46) resulted in the highest number of recommendations, with this number significantly higher than other provisions in chapter IV. The transfer of sentenced persons (article 45) received the lowest number of recommendations. There were also similarities observed in the transfer of criminal proceedings (article 47) and law enforcement cooperation (article 48).

Disparities are observed in provisions on extradition (article 44) and special investigative techniques (article 50), where there is a higher number of recommendations issued globally compared to the States parties. Conversely, States parties received a slightly higher number of recommendations for joint investigations (article 49) compared to global figures.

4 UNODC, “Follow-up actions taken by States parties to implement chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption: Note by the Secretariat (CAC/COSP/2023/8),” 2023. Available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/CAC-COSP-2023-8/2319919E.pdf.

Good practices

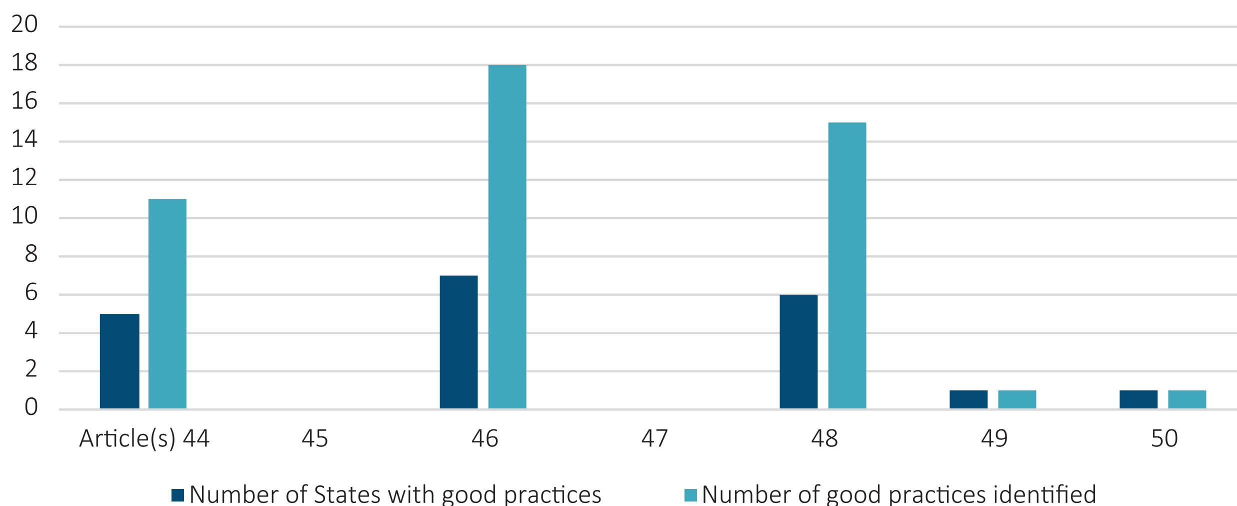
Similarly, good practices and positive observations in the implementation of chapter IV largely corresponded to differences in capacity, pre-existing practices and experiences by the ASEAN States parties. The implementation of mutual legal assistance (article 46) provisions received the highest number of good practices, with States parties praised for clear legislative frameworks, the flexible interpretation of dual criminality, a high degree of flexibility which takes into account the preferences of the requesting State and the ability to provide a wide range of assistance. Good practices in the implementation of extradition (article 44) provisions also followed similar themes, with an emphasis on the use of dedicated case management databases, simplified extradition procedures, and the clear provision of information to requesting States.

Law enforcement cooperation (article 48) received the second highest number of good practices and positive observations, from the vast networks ASEAN States parties are members of, the extensive use of international cooperation mechanisms, and other positive exchanges of information and training arrangements. Agreements and arrangements were observed at different levels, including at the State and agency levels through MoUs, transnational networks and informal ways of working. Positively, all States parties sought to cooperate on corruption-related matters, including at transnational and regional levels, notably through initiatives such as the ASEAN Parties against Corruption (ASEAN-PAC). States parties also were observed to dedicate themselves to regional initiatives on financial intelligence, such as the Asia-Pacific Group of Financial Intelligence Units (FIUs) and the Egmont Group of FIUs. Bilateral cooperation among ASEAN States parties and beyond were also common.

Good practices were lacking for the transfer of sentenced persons (article 45) and the transfer of criminal proceedings (article 47). Few good practices were observed for joint investigations (article 49) and special investigative techniques (article 50).

In addition to good practices and positive observations identified in the country review reports and executive summaries, this report also highlights potential good practices from the Convention's Legislative[5] and Technical Guides.[6]

Figure 3: Good practices identified in the implementation of chapter IV of the Convention



5 UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Corruption (Second revised edition)* (New York, UN, 2012). Available at: https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf.

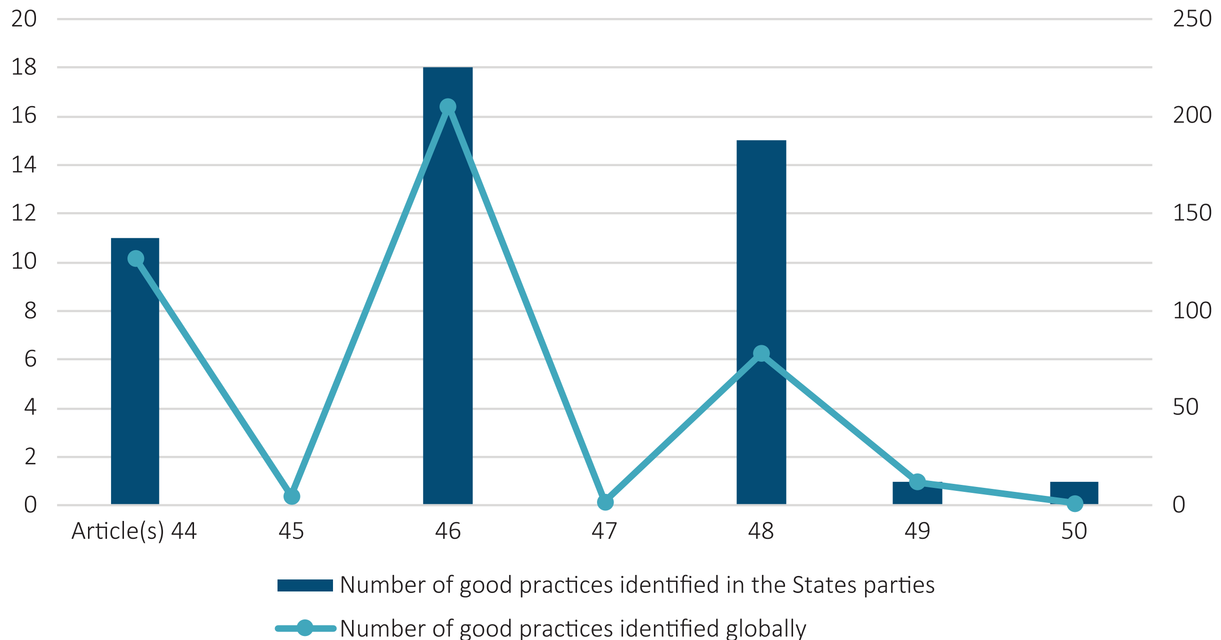
6 UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption* (New York, UN, 2009). Available at: https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf.

Table 5: Most prevalent good practices in the implementation of chapter IV of the Convention

Article of the Convention	*Number of States with identified good practices*	*Number of good practices issued*	*Good practices identified*
44	5	11	Ability to grant extradition without a treaty; flexible and reasonable manner of applying evidentiary requirements; provision of information on extradition (e.g. legislation, treaties, model request forms, checklists) on websites; sensitization of relevant stakeholders to extradition laws, procedures and timeframes; dedicated case management database for extradition; simplified extradition procedures; non-refusal of requests relating to Convention offences.
46	7	18	Ability to provide a wide range of mutual legal assistance; explicit referrals to international treaties on mutual legal assistance in domestic law; willingness to learn from international good practices; treaties on mutual legal assistance; flexible interpretation of dual criminality; responding to requests with regard to preferences of the requesting States on the mode, channel, mechanism and form of assistance; dedication of resources and effort to execute resources in the manner of assistance sought; flexibility on timeframes in which safe conduct is assured.
48	6	15	Extensive use of informal law enforcement cooperation; use of “visiting judges” to adjudicate domestic cases; use of specialized and skilled manpower; provision of dedicated training, capacity and exchange programmes; international assistance provider on law enforcement cooperation; secondments and direct cooperation with foreign counterparts; use of technology to efficiently process international cooperation requests; provision of information on such procedures through websites;

Article of the Convention	*Number of States with identified good practices*	*Number of good practices issued*	*Good practices identified*
48	6	15	quick acknowledgement of requests; provision of guidance to requesting countries; dedicated case management database for international cooperation; collection of disaggregated data on international cooperation; use of international cooperation mechanisms; proactive seeking of further agreements.
49	1	1	Use of operational working group.
50	1	1	Wide use and application of investigative techniques in investigating corruption cases at domestic and international levels.

Figure 4: Good practices identified in the implementation of chapter IV



Unlike the challenges, comparing the number of good practices identified in the States parties (ASEAN States parties and Timor-Leste) with the total number of good practices[7] identified globally across the first review cycle (176 States) reveals more differences than similarities. The figure below illustrates this.

7 UNODC, "Follow-up actions taken by States parties to implement chapter III (Criminalization and law enforcement) and chapter IV (International cooperation) of the United Nations Convention against Corruption: Note by the Secretariat (CAC/COSP/2023/8)," 2023. Available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session10/CAC-COSP-2023-8/2319919E.pdf.

Table 6: Number of good practices across the first review cycle

Convention article	*Number of good practices identified in the States parties (ASEAN States parties and Timor-Leste)*	*Number of good practices identified globally across the first review cycle*
44	11	127
45	0	5
46	18	205
47	0	2
48	15	78
49	1	12
50	1	6

Overall, the fewest good practices were identified for the transfer of sentenced persons (article 45) and the transfer of criminal proceedings (article 47). A similar number of good practices were identified in joint investigations (article 49).

Reviewing experts identified a significantly higher number of good practices in the States parties for law enforcement cooperation (article 48) compared to global figures. A higher number of good practices also were identified in the States parties for extradition (article 44), mutual legal assistance (article 46) and special investigative techniques (article 50).

Challenges and good practices in UNCAC provisions

This sub-section explores the challenges and good practices of each article of the Convention.

Article 43: International cooperation

Article 43 requires States parties to cooperate in criminal matters in accordance with articles 44 to 50 of the Convention and notes that States parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption, where appropriate and consistent with their domestic legal systems.

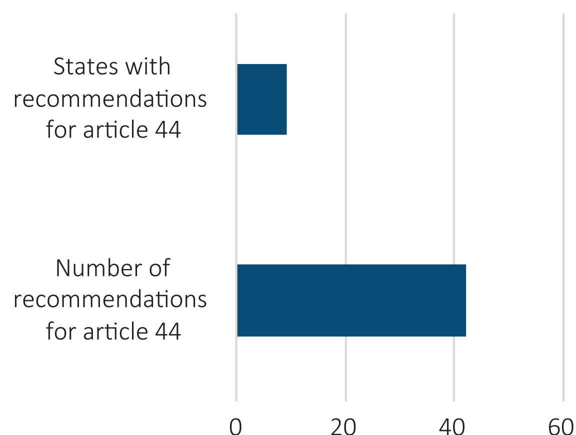
In doing so, article 43 addresses the potential obstacle of the dual criminality requirement, which would require the alleged crime to be considered criminal under the laws of the requesting and requested States parties, by noting that this requirement is fulfilled if the conduct underlying the offence is a criminal offence under the laws of both States parties

Corruption does not recognize territorial boundaries. Chapter IV therefore recognizes the need for action that goes beyond borders, with article 43 in line with the Convention's objective of promoting, facilitating and supporting international cooperation in the prevention of and fight against corruption (article 1(b)).

The scope of international cooperation in criminal matters does not only cover traditional forms of cooperation but also extends to other options in transnational criminal justice. This includes the transfer of proceedings in criminal matters, assistance in establishing joint investigative bodies and cooperation for the appropriate use of special investigative techniques.

Extradition and transfer of sentenced persons

Article 44: Extradition



Extradition is the formal process where a State requests ("requesting State") from another State ("requested State") the return of a person accused or convicted of a crime to stand trial or serve a

sentence in the requesting State. The Convention attempts to set a basic minimum standard for extradition.

Nine States parties[8] received over 40 recommendations on the implementation of article 44. Conversely, reviewing experts made note of over 10 forms of good practices or positive observations across five States parties.[9]

The legal basis for extradition

The Convention requires that States parties make the offences established in accordance with the Convention extraditable offences, provided that dual criminality is fulfilled (article 44(1)). States parties are allowed to grant extradition for Convention offences even without dual criminality, if their domestic laws allow for it (article 44(2)).

Dual criminality requires that an accused be extradited only if the alleged crime is considered criminal under the laws of the requesting and requested States parties. The critical emphasis is on whether the conduct is criminalized in both States, not whether the offence has the same name or is similarly categorized. This ensures that people are not arrested or detained in the requested State as a result of actions that are not criminal under the laws of that country.

Dual criminality should be automatically fulfilled between States parties on mandatory offences established by the Convention. However, in extradition cases concerning offences that are optional under the Convention and may therefore not be criminalized in the requested State party, the dual criminality requirement can be an obstacle, including in passive forms of offences such as the bribery of foreign officials and officials of public international organizations, bribery in the private sector and illicit enrichment.

States parties generally make dual criminality a prerequisite before extradition is granted. However, the application of dual criminality can differ, ranging from strict to flexible modes of application. For example, while Lao PDR strictly applies dual criminality, Cambodia, Malaysia and Singapore noted a flexible application of dual criminality, with a focus on the underlying conduct and elements of the offence. Such applications of dual criminality which facilitate cooperation were cited as good practices. Dual criminality can also be an optional ground for refusing extradition. This is the case under Vietnamese domestic legislation, although almost all treaties that Viet Nam is a party to make extradition conditional on the existence of dual criminality.

Brunei Darussalam and Thailand received recommendations concerning the dual criminality requirement:

- Brunei Darussalam received a recommendation to explore the possibility of taking legislative measures to allow for extradition in the absence of dual criminality; and
- Thailand received a recommendation to consider granting extradition for offences that are not punishable under its domestic law.

Article 44(4) requires States parties to deem the offences described in article 44(1) as automatically included in all existing extradition treaties between them. States parties are allowed to use the Convention as a legal basis for extradition if they require a treaty basis as a prerequisite for extradition (article 44(5)).

Where States parties make extradition conditional on the existence of a treaty, article 44(6)(a) requires States parties to indicate whether the Convention is to be used as a legal basis for extradition matters. If not, article 44(6)(b) requires States parties to conclude treaties in order to implement article 44, where appropriate. Where extradition is not conditional on the existence of a treaty, article 44(7) mandates States parties to recognize Convention offences as extraditable offences between themselves.

8 Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, the Philippines.
9 Cambodia, Malaysia, Singapore, Thailand, the Philippines.

A majority of States parties make extradition conditional on the existence of a treaty, although the exact number that do use the Convention as a legal basis for extradition is unclear. While more than 50 per cent[10] of the States parties indicated that they could, in principle, use the Convention as a legal basis in respect of offences covered by the Convention, 50 per cent[11] have also clarified that they do not currently use it as such. Instead, extradition is regulated by domestic law and other bilateral and multilateral agreements in force.

Examples of States parties indicating that they could, in principle, use the Convention as a legal basis for offences covered by the Convention include:

- Brunei Darussalam noted it did not make extradition conditional on the existence of a treaty and could use the Convention as a legal basis;
- Malaysia noted it requests extradition from treaty or non-treaty partners, and could, in principle, accept the Convention as the legal basis for extradition, upon the Minister issuing a special direction under Extradition Act 1992; and
- According to its Constitution and domestic laws, Timor-Leste could use the Convention as a legal basis for extradition on conditions of reciprocity, even as a party to the Extradition Convention among the Portuguese Speaking Countries Community.

Conversely, States parties with dualist traditions may make it so that the Convention cannot be used as the legal basis for extradition for corruption offences. Domestically, extradition would in theory be regulated by its domestic extradition legislation.

Reciprocity is often practiced where treaties may not be available. In Indonesia, while extradition is granted based on the existence of a treaty, extradition may be conducted in the absence of one if there is a "good relationship and if the interests of the Republic of Indonesia require it". Singapore's approach is also worth noting, where if extradition of a fugitive cannot be carried out due to the absence of a treaty or arrangement, or for other reasons, Singapore would do its best to render other forms of assistance to the requesting State so that the requesting State can seek the fugitive's extradition from other States should the fugitive leave Singapore.

Thailand's ability to grant extradition in the absence of a treaty was deemed by reviewing experts to be a good practice. Cambodia's comprehensive legal framework for extradition found in its Criminal Procedure Code was also deemed to be a good practice, with explicit referrals to international treaties for extradition.

During the first review cycle, Brunei Darussalam, Cambodia, Malaysia, Singapore and the Philippines received recommendations to consider applying the Convention as the legal basis for extradition in respect of offences covered by the Convention, or otherwise conclude additional bilateral or multilateral treaties. Lao PDR received a recommendation on monitoring the development of extradition practices to see whether the practice will continue to be treaty-based.

States parties have taken different approaches in determining which offences are extraditable. For example:

- In Indonesia, extradition is conducted for all offences listed as extraditable. If not, extradition may also be conducted based on the "policy" of the requested State party;
- In the Philippines, some treaties follow the "list double criminality approach", where a list of offences is provided, and extradition is granted at the discretion of the requested State. To the extent that not all UNCAC offences are criminalized, those offences are not extraditable under the Philippine's law;
- Singapore uses the list approach to define extradition crimes, which is wide enough to allow UNCAC offences to be

10 Brunei Darussalam, Cambodia, Indonesia, Malaysia, the Philippines, Timor-Leste.
11 Lao PDR, Myanmar, Thailand, Singapore, Viet Nam.

extraditable. Singapore has also included such offences as extraditable offences in extradition treaties with other States parties.

Close to 50 per cent[12] of the States parties received recommendations on notifying the Secretary-General as to whether they would accept the Convention as a legal basis for extradition, or to notify the Secretary-General of that possibility.[13]

Article 44(8) requires States parties to carry out extradition subject to the conditions provided for by the domestic law of the requested State party or by applicable extradition treaties, including, *inter alia*, conditions relating to minimum penalty requirements for extradition and the grounds which the requested State party may refuse extradition.

More than 50 per cent[14] of the States parties have imposed minimum penalty requirements for extradition, usually ranging between one to two years of imprisonment, though some impose more specific requirements. For example, in Viet Nam and Timor-Leste, if extradition is sought to execute a prison sentence, the remaining imprisonment term must at least be six months. In the Philippines, bilateral treaties tend to adopt the "non-list double criminality approach", which means the underlying conduct in both States must be punishable by the minimum period of imprisonment.

Extradition may also occur in instances where the death penalty may be imposed by the requesting State party, as acknowledged by Viet Nam and Malaysia. In contrast, Timor-Leste refuses extradition requests if the sentence of the requesting State entails the death penalty, life imprisonment or a sentence resulting in any irreversible injury to the person's integrity.

The United Nations, as a whole, opposes the use of the death penalty in all circumstances, even when backed by legal process.[15] Several international and regional human rights instruments prohibit the use of the death penalty or encourage its abolition and/or strictly limit its application, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, and multiple United Nations General Assembly resolutions.[16]

Convention offences may by default be extraditable in some States parties given their required length of imprisonment. Such is the case in Thailand, where all Convention offences have a minimum imprisonment term of one year.

Conversely, some corruption offences in Lao PDR carry a punishment of less than one year, which would make these offences non-extraditable. Reviewing experts recommended that Lao PDR consider reviewing its penalty requirements to ensure that all Convention offences are extraditable given their periods of imprisonment.

Article 44(3) provides that where a request for extradition includes several separate offences, at least one of which is extraditable under the article and some of which are not extraditable due to their imprisonment period but are related to offences established in accordance with the Convention, then the requested State party may consider granting those extradition requests.

Accessory extradition, in which extradition is possible for all offences if the request includes several separate offences, of which some are extraditable, is not uniformly addressed across States parties. For example, while Timor-Leste allows for accessory extradition, Cambodia only allows accessory extradition for offences which

12 Brunei Darussalam, Cambodia, Malaysia, Timor-Leste.

13 UNODC provides States parties with a simplified notification process using a template form, which can be submitted online. See UNODC, "On-line directory of Competent National Authorities under the United Nations Convention against Corruption," 2024. Available at: https://www.unodc.org/compauth_uncac/en/index.html.

14 Cambodia, Lao PDR, Malaysia, Myanmar, Thailand, Timor-Leste, Viet Nam.

15 UNODC and E4J, "The death penalty and organized crime," 2018. Available at: https://www.unodc.org/e4j/zh/organized-crime/module-10/key-issues/death-penalty-and-organized-crime.html#:~:text=The%20United%20Nations%20system%20as,when%20backed%20by%20legal%20process.

16 United Nations Development Group, "Death penalty: excerpt from the UNDG Guidance Note on Human Rights for Resident Coordinators and UN Country Teams," 2017. Available at: https://unsdg.un.org/sites/default/files/2020-03/Death-Penalty.PDF.

are extraditable under Cambodian law and could be prosecuted by the requesting State.

Two States parties[17] received recommendations on including the possibility of accessory extradition by article 44(3).

Article 44(18) requires States parties to conclude bilateral and multilateral agreements or arrangements to enhance the effectiveness of extradition.

Most States parties are parties to bilateral or multilateral arrangements to enhance the effectiveness of extradition. During the first review cycles, these numbers usually ranged from between four to over 10 bilateral partners on extradition.[18] Singapore had the most extensive extradition treaty networks, having bilateral extradition treaties with more than 40 jurisdictions and being party to multilateral extradition treaties providing for extradition, including the London Scheme for Extradition within the Commonwealth.

Three years after becoming a State, Timor-Leste became a party to the Extradition Convention among Portuguese-speaking countries. At the time of the first review cycle, this Convention also applied to Angola, Brazil, Capo Verde, Guinea-Bissau, Mozambique, Portugal and São Tomé and Príncipe. However, Timor-Leste had not concluded any bilateral extradition agreements. Reviewing experts noted that for efficiency and specificity, Timor-Leste should consider concluding bilateral and multilateral agreements on extradition.

Two other States parties received recommendations on the implementation of article 44(18):

- Brunei Darussalam received a recommendation to seek to expand the country's extradition treaty network to enhance the effectiveness of extradition and in doing so, make the best use of existing resources and/or consider increasing such resources; and
- Malaysia received a recommendation to comprehensively review its existing treaties to ensure that they all meet UNCAC requirements, with reviewing experts welcoming Malaysia's indications that future extradition treaties would be tailored to be consistent with UNCAC provisions.

The extradition process

Pursuant to article 44(9), a State party must endeavour to expedite extradition procedures and simplify evidentiary requirements relating to corruption offences.

States parties have different ways of processing and managing extradition requests using central authorities and responsible government agencies. Commonly, extradition involves judicial, administrative and executive procedures. For example, extradition is judicial-administrative in Thailand and judicial-executive in Cambodia.

Fifty per cent[19] of the States parties received recommendations on expediting extradition procedures or simplifying the evidentiary requirements relating to corruption offences.

In Brunei Darussalam, a *prima facie* case needs to be established in domestic extradition proceedings, which may lengthen proceedings due to the need to meet evidentiary standards. As such, reviewing experts recommended that Brunei Darussalam amend its extradition legislation to simplify the evidentiary requirements.

Extradition decisions in Lao PDR are made by different government agencies responsible for extradition, including the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Public Security and the Supreme Prosecutor's Office. Lao PDR therefore received recommendations on:

- Ensuring its extradition procedures are expedited and evidentiary requirements are simplified;

17 Cambodia, Myanmar.

18 At the time of the first review cycle, Cambodia had extradition treaties with four countries; Indonesia and Malaysia had seven bilateral extradition treaties with neighbouring countries; and the Philippines and Viet Nam had over 10 bilateral extradition treaties.

19 Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Thailand.

- Identifying implementation gaps under its new extradition framework and working effectively to address them;
- Ensuring that aggregate statistics on extradition are collected nationally; and
- Clearly defining responsibilities among competent authorities.

Indonesia received a recommendation to consider indicating a time limit for making extradition decisions in its law, to ensure that procedures are expeditious.

Reviewing experts recommended that Thailand expedite extradition procedures and simplify evidentiary requirements, as simplified procedures only apply where a wanted person gives consent to being extradited. Additionally, reviewing experts observed the differences in Thailand's process of determining and executing extradition requests, which would depend on the request's legal basis. Requests from States that have a treaty with Thailand were submitted directly to its central authority, while requests from other States were submitted through diplomatic channels. Where diplomatic channels were used, the Criminal Court would determine whether or not the extradition request would be admitted. Thailand's Ministry of Foreign Affairs and Cabinet may also be involved if the request was deemed to possibly affect international relations.

Reviewing experts recommended that Malaysia ensure future treaties address the obligation to expeditiously submit cases for prosecution and that this is followed in practice. During the first review cycle, it was estimated that the timeframe from receiving an extradition request to the final decision was between six and 12 months. Malaysia liaises with foreign authorities through its central authority and other diplomatic and informal channels.

At the same time, reviewing experts observed good practices in Malaysia's extradition processes, where Malaysia placed its relevant extradition legislation, treaties, model request forms and checklists on its websites in English. There was also praise for the efforts that the Malaysian authorities had taken to proactively sensitize all relevant stakeholders, especially judicial officers, to the applicable extradition laws, procedures and timeframes. Reviewing experts noted that Malaysia's use of a dedicated case management database for extradition requests allowed for the quick provision of status updates and the timely, accurate and efficient tracking and execution of requests.

In identifying challenges to the implementation of article 44, the Philippines noted a lack of existing normative measures, limited capacity, limited inter-agency coordination, and a need for the judiciary and courts to be familiar with extradition procedures. It was observed that extradition cases in the Philippines were handled by a designated panel of attorneys who were determined by the Secretary of Justice.

Cambodia received a recommendation to consider drafting guidelines and templates to handle requests, even as reviewing experts deemed its laws to sufficiently comply with article 44(9) of the Convention. In Cambodia, reviewing experts observed that the Phnom Penh Court of Appeal made decisions on extradition. If the decision was granted, the Minister of Justice would then propose for the Government to issue a sub-decree ordering the extradition of the wanted person.

Reviewing experts cited Singapore's flexible and reasonable manner of applying evidentiary requirements as a good practice, where the provision of *prima facie* evidence efficiently enabled extradition.

It is worth noting that reviewing experts were satisfied with Timor-Leste's implementation of simplified extradition procedures. Consisting of an administrative and judicial stage, Timor-Leste's Ministry of Justice would determine the admissibility of incoming and outgoing requests, with the Supreme Court of Justice then deciding whether the extradition request should be granted. Urgent requests may be transmitted by electronic means, telegraph or by any other means allowing for a written record.

Provisional arrest

Article 44(10) provides that the requested State party may make a provisional arrest or take other appropriate measures to ensure his or her presence for the purposes of extradition. Although this is not a mandatory requirement under the Convention, most countries are able to take the individual sought for extradition into custody prior to the extradition hearing if this is considered necessary to facilitate the request.

During the first review cycle, more than 50 per cent[20] of the States parties could arrest or detain a person whose extradition is sought. For example:

- Cambodian legislation allows for the provisional arrest and detention of wanted persons for extradition on grounds of urgency, but the wanted person will be released, if Cambodia does not receive all the documents required to validate the extradition request within two months from the date of arrest;
- In Singapore, a fugitive will be apprehended based on a warrant of apprehension, with a hearing first conducted in Singapore's courts;
- In Timor-Leste, provisional arrest may be granted if requested on serious grounds, including the risk of evasion of the person sought; and
- Viet Nam's domestic mutual legal assistance law permits a person sought to be taken into custody while an extradition request is being considered.

States parties may have bilateral or multilateral schemes in place on provisional arrest. For example, Malaysia was observed to have a warrant of arrest scheme in place with Brunei Darussalam and Singapore at the time of the first review cycle.

Extradition of nationals

The Convention aims to avoid safe havens for offenders who commit Convention offences on the grounds of nationality and obliges States parties to prosecute or extradite their nationals (*aut dedere aut judicare*).

Article 44(11) notes that if a State party has refused extradition on the basis of nationality, then States parties are to submit the case for domestic prosecution upon request of the requesting State. In such instances, the State party is also required to ensure that the case is treated with the same gravity as other serious domestic offences and work in collaboration with the requesting State in procedural and evidentiary matters. Article 44(13) notes that if States parties deny extradition for the enforcement of a sentence on the grounds of nationality, they must consider enforcing the sentence imposed under the domestic law of the requesting State.

Fifty per cent[21] of the States parties clarified that they generally do not allow for the extradition of their citizens. However, it is unclear whether the prosecution always takes place in the absence of extradition, as legal frameworks, levels of discretion and requirements differ. For example:

- Prosecution of nationals in Cambodia depends on the principle of opportunity, based on its Criminal Procedure Code. This means that prosecutors have a large margin of discretion and prosecution of nationals will not be guaranteed in every case;
- Indonesia requires a complaint by the victim or formal information from the country where the offence was committed;
- Malaysia's Extradition Act obliges the Minister to submit the relevant case to the Public Prosecutor to have the criminal prosecuted under Malaysian law, but there is no binding requirement on the Public Prosecutor to undertake the prosecution, and the obligation to prosecute a national where extradition is refused is not established in all of Malaysia's bilateral treaties; and

20 Cambodia, Malaysia, Myanmar, Singapore, Thailand, Timor-Leste, Viet Nam.

21 Cambodia, Indonesia, Malaysia, Thailand, Timor-Leste.

- The *aut dedere aut judicare* principle is applied at the discretion of the Office of the Attorney General in Thailand.

There are exceptions. In Indonesia, extradition of a national may be conducted if the person concerned would be better adjudicated where the offence was committed. However, exceptions are generally rare.

Treaties may contain provisions on managing the extradition of nationals. For example, while Singapore does not have restrictions on the extradition of its nationals, nationality is a ground for refusal under certain extradition treaties. Under those treaties, Singapore has an obligation to prosecute if the necessary requirements are met. Moreover, some extradition treaties that Viet Nam is a party to contain provisions on the mandatory prosecution of non-extradited nationals at the request of the other party to the treaty. In the Philippines, the extradition of its nationals is a discretionary ground for refusing extradition, except in the case of certain treaties which note that extradition would not be refused based on nationality.

Otherwise, States parties may be silent on the extradition or prosecution of its nationals. For example, Lao PDR, while not extraditing its citizens, does not have any clear provisions requiring it to prosecute.

States parties received the following recommendations from reviewing experts:

- Cambodia to ensure that nationals who are not extradited are prosecuted in Cambodia, with recommendations on adopting guidelines to ensure compliance with that obligation;
- Lao PDR to review and amend existing extradition treaties and establish appropriate procedures in future treaties and practices to ensure that nationals who are not extradited are subject to domestic prosecution; and
- Lao PDR to review its domestic legislation and draft extradition laws to consider allowing more flexible arrangements for the extradition of nationals.

During the first review cycle, five States parties[22] clarified that they would not consider the enforcement of a foreign sentence where extradition of a national is refused. For example, in Cambodia, there were no provisions to recognize the enforceable character of a foreign criminal sentence, and as each State is deemed to have sovereign jurisdiction, the sentence of one State cannot be enforced in another. This differed in Timor-Leste, where foreign sentences can be enforced on the condition that the sentence can be confirmed by the courts.

Grounds for refusal

Article 44(14) provides that States parties must ensure the fair treatment of persons facing extradition proceedings, including the enjoyment of all rights and guarantees provided by their domestic law.

Article 44(15) recognizes that States parties may refuse extradition on the basis of nationality, or if they believe that there are substantial grounds that the extradition request has been made for the purpose of prosecuting or punishing a person on account of their sex, race, religion, nationality, ethnic origin, political opinions or that would cause prejudice to a person's position for any one of those reasons.

During the first review cycle, close to 50 per cent[23] of the States parties had guarantees of fair treatment in their domestic laws. For example:

- In the Philippines, it is a legal requirement to make available remedies which safeguard the extradited person's fundamental right to liberty, including the right to counsel and bail. Guarantees of fair treatment are provided in its Constitution and the Extradition Act;
- Thailand provides guarantees of fair treatment in its domestic legislation and the Constitution;

22 Cambodia, Lao PDR, the Philippines, Thailand, Viet Nam.
23 The Philippines, Thailand, Timor-Leste, Viet Nam.

- Timor-Leste constitutionally guarantees fair treatment for all persons under Timorese jurisdiction, which is reinforced by a separate constitutional provision that specifically acknowledges the supremacy of human rights law in Timor-Leste's jurisdiction; and
- The guarantees of fair treatment and respect of fundamental rights for all persons subject to criminal proceedings in Viet Nam's laws also apply to judicial proceedings.

Most States parties are parties to treaties or have some form of domestic provision that stipulates mandatory grounds for refusal of extradition on the account of sex, race, religion, nationality or political opinion. Four States parties received recommendations on this matter, such as:[24]

- Cambodia to include a reference to the constitutional guarantee on due process and non-discrimination in its Criminal Procedure Code;
- The Philippines to consider amending its extradition treaties to address the right to refuse extradition on the grounds of a discriminatory purpose of the request, as this right is not addressed in some extradition treaties;
- Thailand to include discriminatory purposes among the grounds for refusing extradition in its domestic legislation, as this is already provided for in bilateral treaties.

The Convention seeks to limit the refusal of extradition requests on the ground that the offence also involves fiscal matters, and for political offences. Article 44(16) provides that States parties may not refuse an extradition request on the sole ground that the offence is also considered to involve fiscal matters; while article 44(4) provides that if States parties use the Convention as a basis for extradition, they will not consider corruption offences as political offences.

None of the States parties refuse extradition requests on the sole ground that the offence is considered to involve fiscal matters, although one State received a recommendation to explicitly clarify that fiscal matters do not constitute a ground for refusal.[25]

Most States parties do not refuse extradition requests for political offences. In Indonesia, extradition may be refused in the case of political offences only if there is an agreement between Indonesia and the concerned country. Such occurrences were noted to be exceptional. Thailand mentioned that it had previously experienced difficulties in making extradition requests as a requesting State for prominent politicians accused of corruption charges, due to grounds that such requests were made with political motives.

A third of States parties[26] clarified that offences under the Convention are not considered to be political offences. Viet Nam noted that it does not have a definition of political offences in its legislation but determines the political nature of the offences for which extradition is sought on a case-by-case basis.

Lao PDR received a recommendation to monitor the political offence exception and implement clear guidelines to ensure that cases are not deemed political offences under future extradition laws.

Consultation prior to refusal

Article 44(17) provides that, where appropriate, the requested State party shall consult with the requesting State before refusing extradition.

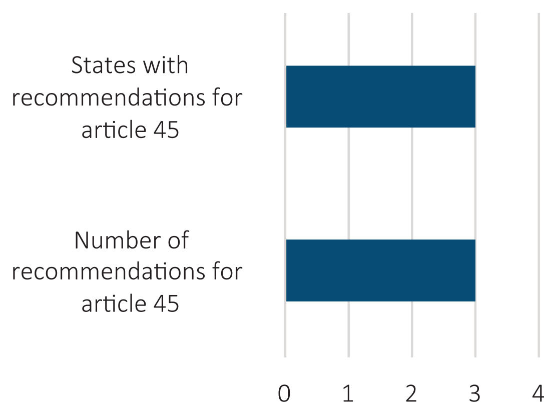
Most States parties consult with requesting States before refusing extradition in practice, even if the obligation to consult is not always present in domestic laws or treaties. Four States parties[27] received recommendations to consider amending their bilateral treaties or domestic legislation to provide more certainty on the requirement to consult before refusing extradition.

24 Cambodia, Myanmar, the Philippines, Thailand.
25 Myanmar.
26 Cambodia, Myanmar, Thailand.
27 Cambodia, Lao PDR, Myanmar, the Philippines.

In noting that it had not previously refused any extradition requests at the time of the first review cycle, Lao PDR also expressed that consultations were not always held in practice before refusing extradition – although information on the status of a request would always be provided when asked. Reviewing experts recommended that Lao PDR ensure that consultations were always held before refusing extradition and Lao PDR's institutions were informed of this requirement.

Article 45: Transfer of sentenced persons

Article 45 calls on States parties to consider concluding bilateral or multilateral agreements or arrangements to allow for the transfer to their territory of offenders who have been convicted and sentenced for Convention offences, in order to serve their sentence there. The aim of this article is to improve the chances for the social rehabilitation of such persons.



A majority of States parties have some form of arrangement or legislation to allow for the transfer of sentenced persons, with 50 per cent[28] having existing bilateral treaties on the transfer of sentenced persons.

Three States parties[29] received recommendations, where these States parties were encouraged to enter into bilateral or multilateral agreements or other arrangements on the transfer of sentenced persons. Lao PDR in particular received a recommendation on monitoring the application of its draft law on prisoner transfer.

During the first review cycle, Malaysia was the only State party with dedicated legislation on the transfer of sentenced persons in its International Transfer of Prisoners Act 2012. This Act could also apply to countries which Malaysia has a treaty with or other agreements containing reciprocal arrangements.

States parties may take other approaches to the transfer of sentenced persons, for example:

- Singapore is not a party to international agreements regulating the transfer of sentenced persons, but has previously received and considered requests to enter into such agreements;
- Timor-Leste is a party to the Convention on the Transfer of Sentenced Persons among the Portuguese Speaking Countries Community; and
- Viet Nam regulates the transfer of sentenced persons through domestic mutual legal assistance laws and bilateral treaties.

The transfer of sentenced persons to Viet Nam is required to align with certain principles, such as the need for the transfer to originate from purposes of humanity and in respect of each State's independence, sovereignty and national territorial integrity. Other conditions on nationality and residential requirements must be met. The transferring State and sentenced person must also consent to the transfer.

Otherwise, it was observed that States parties may have little experience or cases on transferring sentenced persons. Even if experience of such transfers does exist, they may not concern persons convicted of corruption. For example, Lao PDR noted that it could apply the Convention directly, in principle, but had no statistics on the number of prisoner transfer cases.

In the implementation of article 45, Indonesia, the Philippines, Timor-Leste and Viet Nam cited a mixture of challenges on inter-agency coordination, international cooperation, specificities in the legal system, competing priorities, limited capacity

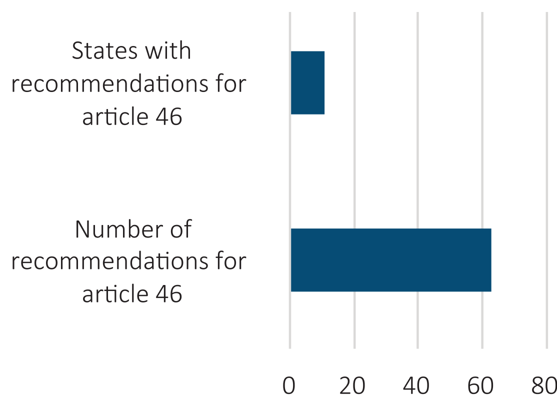
28 Cambodia, Lao PDR, Thailand, the Philippines, Viet Nam.
29 Lao PDR, Myanmar, the Philippines.

(including human, technological and institutional capacities) and resources.

While reviewing experts did not identify examples of good practices or observations in the States parties, the Convention's Technical Guide sets out useful indicators regarding the factors that need to be taken into account when dealing with requests for the transfer of sentenced persons, including the length of the remaining sentence, the need for both States to agree to the transfer, and the consent of the sentenced person to the transfer.[30]

Mutual legal assistance and transfer of criminal proceedings

Article 46: Mutual legal assistance



Mutual legal assistance is an international cooperation process by which States parties seek to provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases. It is also used to trace, freeze, seize and ultimately, confiscate criminally derived wealth. The Convention generally seeks ways to facilitate and enhance mutual legal assistance under article 46.

All States parties received recommendations on the implementation of article 46, totalling over 60 recommendations. Conversely, reviewing experts also observed almost 20 examples of good practices or positive observations across most States parties.

Following the first review cycle and in response to requests from Southeast Asian States parties, UNODC supported the establishment of the Southeast Asia Justice Network (SEAJust) in 2020.[31] SEAJust is a judicial cooperation network serving as an informal platform that facilitates direct contact and communication between central authorities for mutual legal assistance in criminal matters. At the time of this report, all States parties were members of the network.

The Global Operational Network of Anti-Corruption Law Enforcement Authorities (GloBE)[32] was established in 2021 to facilitate transnational cooperation on corruption cases. The GloBE Network offers different mechanisms to bring together international efforts against corruption. This includes digital services to assist practitioners with relevant resources, referrals to existing networks and appropriate contacts. At the time of this report, five States parties[33] were members of the GloBE Network.

Scope of mutual legal assistance

Article 46(1) calls for the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to Convention offences. The Convention lists the specific types of mutual legal assistance that a State must be able to provide.

The types of mutual legal assistance that a State must be able to provide include, among other things:

- Taking evidence or statements from persons;
- Effecting service of judicial documents;
- Executing searches and seizures, and freezing;
- Examining objects and sites;
- Providing originals or certified copies of relevant documents and records including government, bank, financial or business records;

30 UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption,* p. 156.
31 For more updated information on SEAJust and its work, see UNODC, "South East Asia Justice Network: SEAJust", updated 2023. Available at: https://www.unodc.org/roseap/en/SEAJust/index.html.
32 Global Operational Network of Anti-Corruption Law Enforcement Authorities, updated 18 April 2024. Available at: https://globenetwork.unodc.org.
33 Cambodia, Indonesia, Malaysia, Thailand, Viet Nam.

- Identifying or tracing the proceeds of crime or property;
- The recovery of assets; and
- Any other type of assistance that is not contrary to the domestic law of the requested State party.

States parties are generally able to, at least in principle, provide a range of legal assistance, even if they may not have the experience of providing such forms of assistance yet. For example, despite the relative recency of its legal framework, reviewing experts observed that Timor-Leste was able to provide wide measures of assistance – including for searches and seizure of objects or property, transit of persons, hearing of suspects, witnesses or experts, the procuring of evidence and more.

Thailand received a specific recommendation to take the necessary measures to allow for the recovery of assets through requests. At the time of the country visit, the return of forfeited assets to the requesting State was deemed problematic, as under Thailand's domestic law the forfeited property would become Thailand's property. Subsequently, Thailand amended its laws to address the return of assets to the country of origin. Reviewing experts also recommended that Thailand broaden the scope of its assistance.

Cambodia received recommendations on:

- Ensuring that all investigation and law enforcement measures that could be taken in a purely domestic context can also be used in fulfilling requests for mutual legal assistance; and
- Making provisions for facilitating the voluntary appearances of persons in the requesting State party in accordance with article 46(3)(h) of the Convention.

Lao PDR noted challenges in terms of the inadequacy of existing normative measures, competing priorities, inter-agency coordination and limited capacity, such as in terms of technologies and human resources.

As a good practice, reviewing experts commended Malaysia's indicated ability to render a wide range of mutual legal assistance to requesting States, borne out by the increasing number of requests Malaysia had responded to, including in corruption cases.

The legal basis for mutual legal assistance

Article 46 provides a legal basis for mutual legal assistance in relation to all offences covered under the Convention. If two States parties are not bound by a relevant mutual legal assistance treaty, the Convention can operate as a legal basis for affording such assistance. Where no treaty of mutual legal assistance is binding, article 46(9) to (29) details the types of assistance that may be requested, as well as the conditions and procedures for requesting and rendering assistance. States parties are encouraged to apply these provisions in a complementary manner to existing mutual legal assistance treaties, as well as to apply these paragraphs if they facilitate cooperation.

In principle, States parties can use the Convention and other instruments such as the United Nations Convention against Transnational Organized Crime (UNTOC)[34] as a legal basis for mutual legal cooperation. Four States parties[35] noted that they can, in principle, use the Convention as the legal basis. More than 50 per cent[36] of the States parties apply the principle of reciprocity, which allows them to render mutual legal assistance even in the absence of a treaty.

Three States parties[37] received recommendations on the use of the Convention as a legal basis for mutual legal assistance. Existing legal specificities, such as in Viet Nam where all provisions are non-self-executing, may prove to be a challenge. Reviewing experts noted that using the Convention

34 UNODC, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto." Available at: https://www.unodc.org/romena/en/untoc.html.

35 Lao PDR, Malaysia, Singapore, Thailand.

36 Brunei Darussalam, Cambodia, Indonesia, Singapore, Thailand, Viet Nam.

37 Cambodia, Timor-Leste, Viet Nam.

as a legal basis would streamline procedures and improve cooperation with other States parties to the Convention.

The primary treaty on mutual legal assistance in the ASEAN region is the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (MLAT). MLAT aims to support and strengthen ASEAN Member States' efforts to combat transnational crimes and other transnational challenges by enhancing cooperation in law enforcement and mutual legal assistance in criminal matters. All ASEAN States parties have ratified the MLAT, while Timor-Leste is a party to the Convention on Mutual Legal Assistance in Criminal Matters among the Portuguese Speaking Countries Community. Other mutual legal assistance networks that some States parties like Malaysia and Singapore subscribe to include the Commonwealth Schemes on Mutual Legal Assistance (Harare Scheme).

Between their regional counterparts and beyond, States parties commonly apply bilateral agreements as the legal basis for mutual legal assistance, including with States parties in Europe, the Pacific, People's Republic of China and the United States of America. During the first review cycle, Timor-Leste was a State party that had yet to conclude bilateral agreements on mutual legal assistance, owing to the recency of its legal framework.

A majority[38] of the States parties had some form of domestic framework specifically focused on mutual legal assistance. States parties with a dualist tradition cannot apply treaties directly and require domestic provisions on mutual legal assistance.

States parties may regulate the use of mutual legal assistance in other laws. For example, Cambodia's Anti-Corruption Law contains mutual legal assistance provisions.

States parties received recommendations on either enacting a domestic framework for mutual legal assistance or enhancing its current frameworks or arrangements. The Philippines received a recommendation to enact mutual legal assistance laws or provisions in its criminal procedures in line with the Convention, as its mutual legal assistance framework focuses on money laundering offences and may not fully apply to all cases where the predicate offence involved corruption.

In terms of a good practice, reviewing experts referred to Cambodia's comprehensive legal framework which explicitly refers to international treaties for mutual legal assistance in its Criminal Procedure Code. Viet Nam's treaties on mutual legal assistance with countries in the same region were also positively noted, as this network allowed Viet Nam to grant assistance in corruption-related cases.

Non-coercive measures

While States parties may decline to render assistance on the ground of the absence of dual criminality, they are, under article 46(9)(b), required to render assistance involving non-coercive measures (for example, taking voluntary witness statements, sharing intelligence, conducting crime scene analysis, obtaining criminal records or other publicly available material), provided this is consistent with the basic concepts of their legal system and the offence is not of a trivial nature.

"Non-coercive action" and "coercive action" may be interpreted differently across States parties. Some examples of what "non-coercive" and "coercive" actions constitute include the following:

- Immediate arrests and arrests with warrants are deemed to be coercive actions in Lao PDR;
- In the Philippines, non-coercive actions are actions that could be executed without having to file an application or petition in court;
- In Singapore, coercive measures include compelling private parties to give evidence before a Singaporean court and produce documents, the confiscation and restraint of assets, and the execution of search and seizure. Non-coercive actions include the provision of information in the public

38 Brunei Darussalam, Indonesia, Malaysia, Myanmar, Singapore, Thailand, Timor-Leste, Viet Nam.

domain and the voluntary provision of statements or evidence by a private party.

The provision of mutual legal assistance in the absence of dual criminality varies across States parties. On one end of the spectrum are States parties[39] that do not provide mutual legal assistance in the absence of dual criminality, even when the requested assistance does not involve coercive action, unless some form of treaty provides otherwise. Malaysia had previously rejected requests for mutual legal assistance on the grounds of dual criminality, although these were not on corruption matters. On the other end of the spectrum, States parties may apply the dual criminality principle broadly and more closely in the spirit of the Convention. For example, in Singapore, dual criminality is required for coercive measures, but not for non-coercive measures and obtaining evidence for foreign tax evasion offences.

More commonly, a middle-ground approach is taken, in which a case-by-case basis determines whether dual criminality poses an obstacle to the provision of mutual legal assistance. In Brunei Darussalam, the absence of dual criminality is a discretionary ground for refusing mutual legal assistance under certain treaties. In the Philippines, mutual legal assistance may be granted based on reciprocity, provided that the request does not involve coercive action. The request must contain a reciprocity undertaking to note that a similar request by the Philippines will be granted.

States parties may also render mutual legal assistance in the absence of dual criminality, even if its domestic provisions may stipulate otherwise. For example, while the absence of dual criminality is a mandatory ground for refusing requests for mutual legal assistance in Viet Nam, its authorities may provide information for offences not criminalized under Viet Nam's laws to networks, such as the International Criminal Police Organization (INTERPOL) or the ASEAN Chiefs of National Police (ASEANAPOL). Reliance is often placed on treaties that allow Viet Nam to grant assistance even in the absence of dual criminality.

Reviewing experts recommended that States parties explicitly allow for the provision of mutual legal assistance in the absence of dual criminality, whether in domestic legislation or future treaties. Recommendations on this aspect were provided to seven States parties.[40] Reviewing experts recommended that mutual legal assistance at the very least be provided in relation to non-coercive measures, even in the absence of treaties.

States parties that were able to flexibly interpret the dual criminality requirement to render a wide measure of assistance were highlighted positively.

Legal persons

Article 46(2) extends the provision of mutual legal assistance with respect to investigations, prosecutions and judicial proceedings into the conduct of legal persons, where a legal person may be held liable in accordance with article 26 of the Convention in the requesting State party.

Five States parties[41] clarified that they afford mutual legal assistance in relation to offences committed by legal persons in practice; however, for other States parties this aspect may not be clear. Reviewing experts observed that Lao PDR may not have implemented article 46(2), as Lao PDR does not recognize the criminal liability of legal persons and requires dual criminality for executing mutual legal assistance requests.

Commonly, domestic legislation may not explicitly clarify whether mutual legal assistance can be provided for in relation to legal persons, but a provision of such assistance remains possible in practice. For example:

- Malaysia provides mutual legal assistance concerning legal persons in practice, with most assistance on legal persons involving requests to obtain bank account and financial records and the verification of data; and

39 For example, Thailand.
40 Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand, Viet Nam.
41 Cambodia, Malaysia, Singapore, the Philippines, Thailand.

- Viet Nam has not established the criminal liability of legal persons but considers requests based on the principle of reciprocity.

Reviewing experts recommended that Indonesia and Lao PDR enable or ensure that mutual legal assistance involving legal persons can be executed, given that their legislation did not make references to legal persons at the time of their reviews.

Spontaneous transmission of information

The Convention encourages the spontaneous transmission of information prior to a mutual legal assistance request, as envisaged in articles 46(4) and (5). There is no obligation to do so in a specific case; however, the main goal of the spontaneous exchange of information is to assist foreign counterparts in receiving evidence that could be helpful for conducting inquiries and criminal proceedings in its preliminary stage, which may result in the submission of a formal mutual legal assistance request at a later time.

States parties may have legislation which could be interpreted to authorize the spontaneous transmission of information.[42] Where legislation is absent on this point, States parties can and commonly transmit information on criminal matters spontaneously to their foreign counterparts. For example, Cambodia noted that the exchange of information is frequently practiced between its FIUs, police and foreign counterparts, even when Cambodia's laws do not clearly provide for such transmission of information without prior request.

Transmission of information can take place through various channels. Brunei Darussalam and Thailand noted the spontaneous transmission of information via informal cooperation and informal channels of communication on a case-by-case basis.

Reviewing experts made recommendations to five States parties[43] to allow for the spontaneous transmission of information in the context of mutual legal assistance, particularly where domestic legislation or treaties have remained silent or are not explicit on the matter. Brunei Darussalam received a recommendation to expand the practice of spontaneous transmission of information that could assist in undertaking or successfully concluding inquiries and criminal proceedings, or result in a formal mutual legal assistance request.

Article 46(5) imposes an obligation on the receiving State party to keep the information transmitted confidential and comply with any restrictions on its use, unless the information received is exculpatory to the accused.

Most States parties have some form of provision or pre-existing practice to maintain the confidential use of such information. Generally, there are also no barriers posed to States parties on agreeing or accepting specifications on confidentiality from the requesting State party. Singapore noted that without the consent of the requesting State, Singapore would neither confirm nor deny the existence of a request nor disclose any of its contents beyond government departments, agencies, courts or enforcement agencies in Singapore. Requests would also not be disclosed further than necessary to obtain the cooperation of the witnesses or other persons concerned.

Cambodia and Thailand received recommendations in relation to article 46(5):

- Cambodia received a recommendation to make provisions for guaranteeing the confidentiality of information;
- Thailand received a recommendation to provide for the disclosure of exculpatory information or evidence in proceedings other than those stated in the request. Thailand, in practice, complies with requests for confidentiality from a requesting State. Its central authority informs the relevant agencies to ensure this confidentiality is maintained. However, the disclosure of exculpatory information or evidence was deemed not to be properly addressed.

42 Indonesia.
43 Cambodia, Indonesia, Lao PDR, Thailand, Viet Nam.

Designating a central authority

Article 46(13) requires each State party to designate a central authority to receive requests for mutual legal assistance and either execute or transmit those requests to the competent domestic authorities for execution. The Secretary-General of the United Nations shall be notified of this designated central authority.

States parties use a variety of institutional arrangements to receive, transmit and execute mutual legal assistance requests. Some States parties designate one entity as the sole central authority, while some central authorities play the role of receiving requests while authorization is carried out by another entity. For example, Timor-Leste's Office of the Prosecutor General is the designated central authority, but its Ministry of Justice holds the responsibility of authorizing mutual legal assistance requests.

During the first review cycle, at least five States parties[44] had not notified the Secretary-General of the United Nations of their designated central authority and received recommendations from reviewing experts to do so.[45]

States parties may continue the practice of transmitting and receiving mutual legal assistance requests through diplomatic channels, even if they have designated a central authority for managing such requests. For example, Viet Nam can require that a request for mutual legal assistance be submitted through diplomatic channels even if it has designated some ministries and its Supreme People's Procuracy as authorities. Singapore's central authority can also send and receive requests through diplomatic channels, depending on the other country's preference, and such transmissions are deemed particularly suitable for requests that contain confidential information.

Reviewers recommended States parties simplify arrangements for requests. For example, as Lao PDR's central authority for mutual legal assistance varies from one agreement to another, reviewing experts recommended that Lao PDR designate one central authority for mutual legal assistance. Lao PDR also received a recommendation to ensure that the taking of testimony and evidence is carried out in a court of law, as extradition processes were previously negotiated by a committee.

Indonesia received a recommendation to explore the possibility of designating its Corruption Eradication Commission (KPK) as the central authority for all corruption cases. At the time of the first review cycle, Indonesia's authority for mutual legal assistance was the Ministry of Law and Human Rights, which then passed on all the requests within its remit to the KPK.

The communication between the central authority or authorities and other competent authorities, who are national points of contact to receive and process mutual legal assistance requests, received attention from reviewing experts:

- Cambodia and Lao PDR received recommendations to allow and use direct communication between its central authorities, and to designate a central authority as the entry point for mutual legal assistance requests;
- Indonesia received a recommendation to provide its competent authorities with the authority to override bank secrecy in the execution of mutual legal assistance requests;
- Lao PDR received a recommendation to enhance inter-agency coordination and cooperation among competent authorities for mutual legal assistance.

Reviewing experts recommended that Thailand assess whether allowing for direct communication between central authorities outside the scope of mutual legal assistance treaties and INTERPOL would facilitate cooperation. Thailand's central authority only receives requests from States with which it has a mutual legal assistance treaty, with

44 Cambodia, Lao PDR, Malaysia, Thailand, Timor-Leste.

45 UNODC provides States parties with a simplified notification process using a template form, which can be submitted online. See UNODC, "On-line directory of Competent National Authorities under the United Nations Convention against Corruption," 2024. Available at: https://www.unodc.org/compauth_uncac/en/index.html.

requests from all other States arriving through diplomatic channels. Nonetheless, reviewing experts positively noted that States which have a bilateral agreement with Thailand could directly address requests to Thailand's central authority.

Brunei Darussalam and Lao PDR received recommendations on the operational management of mutual legal assistance requests by its authorities. Brunei Darussalam received a recommendation to establish a case management system within the central authority to facilitate, *inter alia*, the regular monitoring of mutual legal assistance proceedings to improve its standard practice. Lao PDR received recommendations on:

- Collecting aggregate statistics on the number of requests made and received nationally; and
- Distinguishing cases of law enforcement cooperation from mutual legal assistance.

Reviewing experts deemed the positive role of Malaysia's Attorney-General's Chambers in ensuring a cooperative working relationship among different criminal justice authorities, particularly in the efficient processing of mutual legal assistance requests and its oversight of incoming and outgoing requests, to be a good practice.

Form, language and content of requests

> Article 46(14) stipulates that requests shall be made in writing or, where possible, by any means capable of producing a written record in a language accepted to the requested State party. The Secretary-General of the United Nations shall be notified of the language(s) acceptable to each State party at the time the State party deposits its instrument of ratification to the Convention. Requests may be made orally under urgent circumstances and where this is agreed to between States parties but shall be confirmed by writing.

In addition to English, some States parties have stipulated that mutual legal assistance requests are to be made in their national language, such as Khmer (Cambodia) language.

During the first review cycle, close to 50 per cent of the States parties had not made the requisite notifications on the use of language for mutual legal assistance requests to the Secretary-General of the United Nations and received recommendations to do so.[46] Additionally, Malaysia received a recommendation to specify in its model request form that requests for mutual legal assistance are acceptable in English. Cambodia was also asked to clearly specify that English can be used in requests for mutual legal assistance.

States parties treat urgent requests differently. Malaysia, Timor-Leste and Singapore claimed that they accept urgent requests from INTERPOL. Malaysia noted its acceptance of oral requests, while Thailand noted that it did not. Timor-Leste also indicated an acceptance of urgent requests in the form of letters rogatory transmitted directly between competent judicial authorities.

Reviewing experts recommended that:

- Thailand consider accepting oral requests; and
- Lao PDR continue to ensure that requesting States are familiar with the content and format of mutual legal assistance requests that are acceptable to Lao PDR, in treaties and its mutual legal assistance framework and practice.

Speciality and confidentiality

> Under article 46(19), requesting States are under an obligation to refrain from using any information received through mutual legal assistance or protected by bank secrecy for any purpose other than the proceedings for which that information was requested, unless authorized to do so by the requested State. Additionally, article 46(20) provides that the requesting State may require the requested State to keep the fact and substance of the request confidential, except to the extent necessary to execute the actual request.

46 Cambodia, Lao PDR, Malaysia, Timor-Leste.

The rule of specialty in mutual legal assistance, where information received for a purpose is not used for other matters other than those stated in the request, is generally observed by most States parties. In Viet Nam, this doctrine is enshrined in domestic mutual legal assistance laws and treaties. Singapore, as a matter of practice, provides an undertaking not to use anything obtained from a request for other matters unless consent is provided. In Timor-Leste, the Minister of Justice may only authorize the use of obtained information in other proceedings after having sought the opinion of the Prosecutor-General.

States parties also generally treat the fact and substance of the request confidentially. Timor-Leste explicitly noted that it maintains the confidentiality of requests for assistance, the request's purpose, measures taken to respond to the request, and other relevant documents. If assistance cannot be carried out without unveiling such information, Timor-Leste consults with the foreign counterpart on whether to continue executing the request.

For legal certainty, Thailand received a recommendation to establish a provision ensuring the confidentiality of incoming requests for mutual legal assistance. Lao PDR also received a recommendation on ensuring that evidence or information received through mutual legal assistance requests is protected from uses other than those stated in the request, unless such evidence or information is exculpatory.

Execution of the request

Article 46(17) obligates requests be executed in accordance with the domestic law of the requested State party and where possible, in accordance with the procedures specified in the request to the extent this is not contrary to the domestic law of the requested State.

Close to 50 per cent[47] of the States parties noted that they would follow the procedure specified by the requested State for outgoing requests, unless this conflicts with national legislation. Reviewing experts requested that Cambodia explicitly clarify its mutual legal assistance framework so that requests can be executed in accordance with the procedures specified in the request, unless such procedures conflict with domestic law.

Reviewing experts regarded Singapore's practice of following the preferences of requesting States concerning the mode, channel, mechanism and form of assistance as a good practice. Singapore proactively asks requesting States which procedures they would like Singapore to follow when providing assistance, and dedicates substantial resources and effort to execute requests in accordance with the manner of assistance sought.

Article 46(10) allows for the transfer of detainees for the purposes of investigations, prosecutions or judicial proceedings in line with the Convention, if the person freely gives their informed consent and both States agree. Further obligations are set out in articles 46(11) and 46(12), including the transfer and return of a detainee without delay.

Transfer of detainees

Most States parties have not adequately implemented article 46(10), and implementation may be partial. For example, Thailand regulates the transfer and receiving of persons in custody for testimonial purposes, but not for all the purposes envisioned in the Convention.

Lao PDR, Malaysia and Singapore received recommendations on the implementation of article 46(10):

- Lao PDR received a recommendation on ensuring that the consent provisions in existing treaties extend and apply to the provision of testimony or evidence in future cases involving the transfer of prisoners;
- Based on observations during the first review cycle, as Malaysia had little experience in the transfer of prisoners for providing testimony or assistance,

47 Cambodia, Myanmar, Singapore, Viet Nam.

reviewing experts recommended that Malaysia implement the requirements of article 46(10);

- In Singapore, persons detained or serving a sentence cannot be transferred to another country to give evidence based on its domestic laws. However, Singapore could assist other States with obtaining voluntary statements from prisoners, taking evidence before a Singaporean judge, or in certain circumstances, facilitating the provision of evidence by a video link. Reviewing experts recommended that Singapore make arrangements so that detained persons could give evidence in appropriate cases.

Videoconferencing

Article 46(18) proposes the use of videoconferencing as a means of providing evidence in cases where it is neither possible nor desirable for the witness to appear in person in the territory of the requesting State party to testify.

At the time of the first review cycle, States parties appeared to have had experience with videoconferencing as a means of providing evidence, but not necessarily in corruption cases. Malaysia noted that foreign video evidence would be admissible, but its only experience with video testimony was in relation to a terrorism case. Thailand similarly noted it had permitted the hearing of witnesses by videoconference in cases that did not include corruption charges.

Singapore can assist requesting States with videoconferencing and other forms of assistance for the purposes of obtaining evidence in investigations, prosecutions or judicial proceedings. However, it does not accept the evidence provided by video links in domestic trials.

Some States parties noted that they did not have legislation permitting the hearing of witnesses by videoconference or were otherwise silent on the issue. For example, Viet Nam noted its code on criminal proceedings contains no provisions for taking testimony online. Cambodia's laws also do not explicitly permit hearings of individuals to take place by videoconference. However, no corresponding recommendations were issued on this provision for both States parties.

Grounds for refusal

The Convention recognizes the diversity of legal systems and allows States parties to refuse to provide mutual legal assistance under certain conditions.

Article 46(21) allows such refusals if:

- The request is not made in conformity with the provisions of article 46;
- The requested State considers that the execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests;
- The requested State party is prohibited from carrying out the action requested had it been subject to investigation, prosecution or proceedings under its own jurisdiction;
- If it would be contrary to the requested State's legal system to grant the request.

Reasons for refusing mutual legal assistance shall be given (article 46(23)).

The Convention also stipulates that a State party may not refuse a request for mutual legal assistance on certain grounds. These are grounds of bank secrecy (article 46(8)), and on the sole ground that the offence is also considered to involve fiscal matters (article 46(22)).

States parties mostly adhere to the grounds of refusal stipulated in the Convention in practice, even if legislation to that effect is not in place. Cambodia noted that in the absence of national legislation on mutual legal assistance, it would only refuse requests based on what is stipulated in treaties, including article 46(21).

More than 50 per cent[48] of the States parties informed the reviewing experts that they do not refuse requests for mutual legal assistance based on bank secrecy or grounds of fiscal matters. Indonesia noted that it will not refuse requests on the grounds that the request would burden the assets of the State.

States parties made specific mentions of how they strive to respond to all mutual legal assistance requests. In the Philippines, while a request may be refused to protect the sovereignty, security, public order or the country's essential interests in certain mutual legal assistance treaties, the Philippines has never denied any requests on such grounds. Lao PDR also noted it has never refused any requests, which reviewing experts positively observed.

Malaysia provided a case example in which it rendered assistance in a matter that touched on national security, demonstrating that such grounds for refusals do not tend to impede Malaysia from complying with requests.

Most recommendations were centred on making the grounds for refusing mutual legal assistance requests more explicit, where this would involve:

- Brunei Darussalam amending its domestic legislation to expressly provide for the exclusion of fiscal offences, rather than relying on the discretionary powers of the Attorney-General to do so on a case-by-case basis;
- Cambodia clarifying that requests can be executed unless they conflict with domestic law;
- Lao PDR ensuring that future treaties do not expand the grounds for refusing mutual legal assistance;
- Malaysia ensuring that the undertaking it requires from requesting States on the assessment or collection of tax is not interpreted in a manner contrary to the Convention; and
- The Philippines amending its existing mutual legal assistance treaties or laws to ensure that mutual legal assistance will not be refused on the ground that the offence involves fiscal matters.

Timeframes

Under article 46(24), States parties are obliged to execute requests expeditiously and take as full account as possible of eventual deadlines facing the requesting authorities. A requesting State may make reasonable requests for information on the status and progress of its mutual legal assistance request, and the requested State shall respond to such reasonable requests. Article 46(25) notes that the requested State may postpone mutual legal assistance on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

The time required to respond or execute mutual legal assistance requests can vary hugely depending on the nature and complexity of the request. During the first review cycle, States parties provided the following examples of practice:

- Brunei Darussalam noted the average time to respond to mutual legal assistance requests on documentary evidence not related to corruption was two weeks;
- Lao PDR noted that mutual legal assistance requests were generally executed within 30 days from receipt;
- Singapore noted that some requests could be completed within a matter of days of receipt while others could take longer, with the amount of time dependent on factors such as the type of assistance sought, complexity of the request, quality of the initial request, including the quality of the English translations, and whether additional information is needed from the requesting State; and
- Viet Nam did not have a detailed timeline for the execution of mutual legal assistance requests but noted that the average time for execution could range from one month to one year, with variations depending on how specific provisions of domestic law applied to different criminal offences, such as the temporary detention, seizure and investigation period.

The Philippines noted that in executing requests, its central authority takes into account the

48 Brunei Darussalam, Indonesia, Malaysia, Myanmar, Thailand, the Philippines.

urgency of the request and the preferences of the requesting State. In Indonesia, incoming requests must indicate a desired time limit, but in practice, Indonesia obtains clarification from the requesting State when no deadline is indicated.

On the postponement of mutual legal assistance requests, reviewing experts recommended that:

- Indonesia explores the possibility of ensuring that the execution of a request can be postponed on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding in Indonesia;
- Lao PDR considers amending its draft mutual legal assistance laws to provide for postponement rather than refusing assistance that interferes with an ongoing investigation, prosecution or proceeding; and
- Malaysia reviews its mutual legal assistance framework to enable its authorities to postpone rather than refuse assistance that could prejudice a criminal matter in Malaysia, noting that in practice the legislation is already interpreted and applied in this manner.

Otherwise, reviewing experts made recommendations for States parties to ensure that mutual legal assistance requests are addressed expeditiously, for example, by:

- Indonesia specifying in its laws that the condition of indicating a desired time limit for request execution is not mandatory, and that Indonesia would consult with the requesting State when the information contained in the request is not sufficient for approval;
- Lao PDR ensuring that requests for mutual legal assistance are executed swiftly and timely, with status updates provided promptly;
- Malaysia monitoring as much as possible the application of bank secrecy measures to ensure that bank secrecy requirements do not delay the provision of mutual legal assistance in future cases; and
- Singapore documenting its position and practice of executing requests as soon as possible by including this position in its workflow or standard operating procedures.

The efficient management of mutual legal assistance requests may necessitate a suitable system. Singapore utilizes software to facilitate case management and record-keeping, establishes workflows and procedures for processing and tracking requests, and regularly updates requesting State parties on developments concerning requests. While reviewing experts praised Brunei Darussalam's two-week timeframe for cases that did not include corruption charges, it was noted that the absence of a case management system in the long run may reduce opportunities to regularly monitor timeframes to improve a standard practice.

Consultation prior to refusal

Article 46(26) obligates the requested State to consult with the requesting State to consider whether a request for assistance may be granted, subject to terms and conditions, before deciding to refuse assistance. If the requesting State party accepts assistance subject to these conditions, then it shall comply with the conditions.

While the requirement to consult with requesting States prior to the refusal of a mutual legal assistance request is not often addressed in domestic legislation, 50 per cent[49] of the States parties have clarified that they do, in practice, consult with the requesting State prior to refusing or postponing a request.

Reviewing experts therefore recommended that States parties explicitly set out their practice of consulting requesting States prior to refusing or postponing mutual legal assistance requests in their domestic laws or procedures. For example:

- Cambodia was asked to explicitly include the obligation to hold consultations before refusing a request in its mutual legal assistance framework;

49 Cambodia, Lao PDR, Myanmar, Thailand, Viet Nam.

- Lao PDR was asked to address this matter in future mutual legal assistance laws or regulations, and to inform the relevant institutions of this requirement;
- Malaysia was encouraged to review its domestic legislation and treaties to ensure that consultations with requesting States were always held before refusing or postponing assistance; and
- Singapore received a recommendation to document its position and practice of consulting with the requesting State by including this position in its workflow or standard operating procedures of its central authority.

Safe conduct of witnesses

Article 46(27) envisages the safe conduct of witnesses, experts or other persons who consent to provide evidence in the territory of the requesting State party. Such persons shall not be prosecuted, detained, punished or subjected to any other restrictions of personal liberty in that territory. Time limitations exist for such safe conduct.

Four States parties[50] have some form of provision or framework which regulates the transfer of prisoners, experts and witnesses for the purpose of providing evidence in the territory of the requesting State, which also provides for their safe conduct and related protections. However, at the time of the first review cycle, the Philippines noted that opportunities to apply such protections in practice were not yet always available.

In Timor-Leste, suspects, accused persons, witnesses or experts can be summoned to appear for the purposes of foreign criminal proceedings, if Timor-Leste received the request at least 50 days before the person's scheduled date to appear. The concerned person would be informed of their right not to appear.

Lao PDR received a recommendation on addressing the safe conduct of witnesses, experts or other persons in future treaties, and ensuring that these are implemented in practice, in particular by keeping relevant agencies informed.

Malaysia's domestic legislation which gives authorities the flexibility to set appropriate timeframes in which safe conduct will be assured, based on the principle of reciprocity, was deemed to be an example of a good practice.

Costs

Article 46(28) notes that States parties shall consult to determine the terms and conditions under which the mutual legal assistance request will be executed, and how costs shall be borne, where the expenses of a substantial or extraordinary nature are or will be required.

Most States parties have clarified that they bear the ordinary costs of executing mutual legal assistance requests, with Singapore noting that it regularly bears such costs. Timor-Leste executes requests for free but noted it is the requesting State party who bears costs deemed "to be of relevance on account of the human or technological means used", and other substantial and significant costs.

In noting examples of what extraordinary costs could be borne by requesting States, Lao PDR provided the following from its draft mutual legal assistance laws:

- Fees of legal advice and legal representation or expenses of witnesses or experts as per the request;
- Expenses associated with the transfer of persons to the requesting State and returning them to Lao PDR; and
- Expenses on communication by electronic means.

Indonesia is an exception, where its domestic laws note that the requesting State ordinarily bears the costs unless a mutual agreement provides otherwise. Reviewing experts observed this to be contrary to the principle of article 44(28). They noted that it would be beneficial to amend Indonesia's laws to provide that costs will be borne by the requested State, unless otherwise agreed.

50 Myanmar, Cambodia, the Philippines, Timor-Leste.

Provision of documents

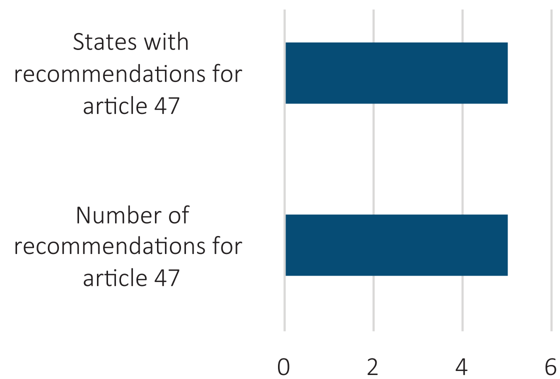
Article 46(29) obligates the requested State to provide the requesting State with its records, documents or information that under its domestic laws are available to the public. Discretion is given to the requested State to provide such materials, whether in whole or in part, where such documents or information are not available to the general public.

Most States parties can and do provide the requesting State with information that is in the public domain upon request. Where such existing practice is not specified in the law, reviewing experts recommended its codification, such as for Indonesia. Indonesia, while able to provide documents to requesting States, has laws which do not appear to guarantee that such information and documents can be transmitted.

Different approaches are taken to the provision of information that is unavailable to the general public. Malaysia is able to provide publicly unavailable government records based on a production order under its mutual legal assistance legislation, otherwise the Attorney-General may apply for declassification in accordance with its Official Secrets Act. In Singapore, factors that will be considered in the disclosure of confidential information include the type of information requested, the necessity of the information requested and the reasons behind the request for information.

Article 47: Transfer of criminal proceedings

Article 47 invites States parties to consider the transfer to one another of criminal proceedings where this would be in the interest of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution. This is designed to make it more practical, efficient and fairer to all parties concerned to consolidate the case in one place.



The majority of the States parties have not implemented article 47. During the first review cycle, four States parties[51] clarified they had regulated the transfer of criminal proceedings from one State to another pursuant to legislation and procedures, while other States parties had either not yet considered the issue or anticipated only formally considering it in the future. For example, Singapore noted that no case had presented itself yet in respect of the transfer of criminal proceedings, but that it would consider the matter if the need arose.

Timor-Leste cited challenges in terms of international cooperation where the transfer of criminal proceedings was concerned, while Indonesia noted that implementation challenges stemmed from the specificities of its legal system.

Five States parties[52] received recommendations on the implementation of article 47 Recommendations were made on providing for the possibility of transferring criminal proceedings to another State party for the prosecution of a Convention offence, and to establish procedural frameworks as such.

While no specific examples of good practice were cited, the Convention's Technical Guide recommends the determination of a list of priorities while considering the transfer of criminal proceedings. For example,[53] consideration could be given to the appropriateness of prosecuting an offence where it has been committed, rehabilitation of the offender, difficulties in securing evidence, the most effective laws in different jurisdictions, among others.

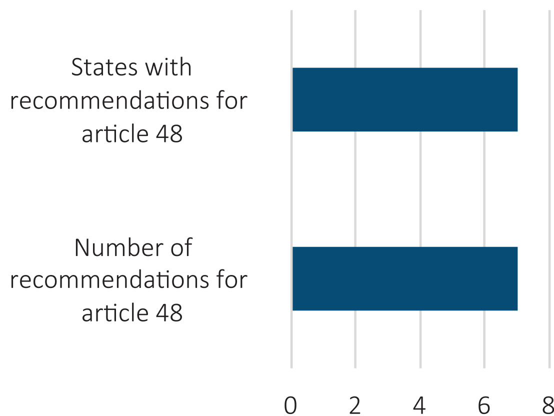
51 Brunei Darussalam, Thailand, Timor-Leste, Viet Nam.
52 Cambodia, Lao PDR, Myanmar, Thailand, Timor-Leste.
53 UNODC and UNICRI, *Technical Guide to the United Nations Convention against Corruption,* pp. 173 – 174.

Law enforcement cooperation

Article 48: Law enforcement cooperation

Article 48 seeks to enhance the effectiveness of law enforcement cooperation and requires States parties to, among other things, enhance and, where necessary, establish channels of communication with a view to facilitating the secure and rapid exchange of information relating to all aspects of Convention-related offences, including their links with other criminal activities.

The Convention requires States parties to work closely with one another in terms of law enforcement cooperation in areas set out in article 48(1). Additionally, the Convention calls on States parties to consider entering into agreements or arrangements on direct cooperation (article 48(2)), and endeavour to conduct law enforcement cooperation in order to respond to corruption-related offences committed through the use of modern technology (article 48(3)).



States parties cooperate on law enforcement with their foreign counterparts through different means. Cooperation may be formal or informal and occur on international, regional or bilateral levels, covering a variety of aspects of law enforcement.

Using the Convention as a legal basis

Two States parties[54] clarified that they do not use the Convention as a legal basis for direct law enforcement cooperation in respect of the offences covered by it. Reviewing experts observed that information on this point was lacking for some States parties, such as Lao PDR, which cited a reliance on existing mutual legal assistance treaties or cooperation with transnational networks on policing. Conversely, Thailand considered the Convention as the basis for law enforcement cooperation and has signed MoUs with its counterparts on such cooperation. Singapore, which also considered the Convention as a basis for law enforcement cooperation, explicitly stipulated that formal arrangements or agreements are not required to render informal assistance to a foreign law agency.

Transnational networks on policing and law enforcement

The two key transnational networks on policing used by States parties in ASEAN at the time of the country reviews were the International Criminal Police Organization (INTERPOL) and ASEAN Chiefs of National Police (ASEANAPOL).

All States parties are members of INTERPOL. INTERPOL Member countries coordinate through INTERPOL offices in each country and its database and secure network I-24/7. Coordination is implemented 24 hours a day. However, reviewing experts observed that INTERPOL remains under-utilized on corruption-related matters. For example, in one year, a State party noted it had received over 100 requests from INTERPOL, but none touched on corruption matters.

ASEANAPOL originated as a conference rather than an operational organization, with its first formal meeting held in 1981. A Terms of Reference in 2009 established a permanent ASEANAPOL Secretariat. All ASEAN Member States are represented and coordinated through the ASEAN Secretariat.

54 Cambodia, Myanmar.

Other transnational networks on law enforcement in which States parties may participate include the Economic Crime Agencies Network. This is a formal network of law enforcement agencies from various States primarily involved in investigating and combating economic crime. Agencies from Southeast Asia and further afield such as Australia, New Zealand, Nigeria and the United States are involved.

Transnational networks focused on anti-corruption

Examples of transnational networks on anti-corruption which States parties participate in include:

- The International Association of Anti-Corruption Authorities, an independent anti-corruption organization that all ASEAN States parties have member organizations;[55]
- The Stolen Asset Recovery Initiative (StAR), which is a partnership established in 2007 between the World Bank Group and UNODC that supports international efforts to end safe havens for corrupt funds;[56] and
- The GloBE Network,[57] where members communicate through the GlobE Secure Communications Platform.

Regional initiatives on anti-corruption

States parties are highly represented in regional initiatives on anti-corruption. A key initiative is ASEAN-PAC, formerly the Southeast Asia Parties against Corruption (SEA-PAC) until 2019.[58]

ASEAN-PAC is the primary forum for member organizations to consult and exchange preliminary information on corruption matters. At the time of this report, Timor-Leste had not become a member of ASEAN-PAC.

ASEAN-PAC became an accredited entity associated with ASEAN in 2017. It has a flexible and informal structure, and working system based on information sharing and consensus. Reviewing experts noted that ASEAN-PAC neither constitutes a binding international treaty nor a legal basis for operational matters. However, each Member State signs an MoU containing commitments on:

- The exchange and provision of information and mutual coordination to prevent and fight corruption;
- Cooperation in official training and expert exchanges;
- Technical assistance;
- Hosting and attending consultation meetings, seminars and regional meetings on preventing and fighting corruption; and
- Establishing secretariats and encouraging ASEAN-PAC's movement.

Other regional initiatives on anti-corruption in which States parties participate include:

- The Asia-Pacific Group on Money-Laundering (APG), a regional anti-money-laundering body functioning as part of a global network of Financial Action Task Force-Style Regional Bodies.[59] At the time of this report, all States parties were members;
- The Asian Development Bank/ Organization for Economic Cooperation and Development (OECD) Anti-Corruption Initiative for Asia, which provides a regional forum to exchange practices and experiences in anti-corruption and business integrity efforts;[60]
- The Asia-Pacific Economic Cooperation Anti-Corruption and Transparency Experts Working Group that coordinates and implements the Asia-Pacific Economic

55 International Association of Anti-Corruption Authorities, updated 2024. Available at: https://iaaca.net/.
56 Stolen Asset Recovery Initiative, updated 2024. Available at: https://star.worldbank.org/.
57 Global Operational Network of Anti-Corruption Law Enforcement Authorities, updated 18 April 2024. Available at: https://globenetwork.unodc.org.
58 ASEAN PAC, "Background," 2014. Available at: https://www.asean-pac.org/?page_id=4223.
59 APG, "APG History and Background," 2024. Available at: https://apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c-9018-8bd1f6869162.
60 OECD, "Anti-corruption initiative for Asia and the Pacific," updated 2023. Available at: https://www.oecd.org/corruption/anti-corruption-initiative-for-asia-pacific.htm.

Cooperation's commitments on anti-corruption obligations;[61]

- The Asset Recovery Inter-Agency Network for Asia and the Pacific (ARIN-AP), a professional network which seeks to increase the effectiveness of members' efforts in depriving criminals of their illicit profits on a multi-agency basis;[62]
- The Anti-Corruption Agency Forum, [63] which provides a venue for policy dialogue among the heads of anti-corruption agencies that have been leading collaborative efforts in the fight against corruption in the Asia-Pacific region.

Regional initiatives on FIUs

States parties' FIUs have formalized connections with their foreign counterparts, commonly through the use of MoUs.

Additionally, FIUs may be part of the following:

- The Asia-Pacific Group of FIUs; and
- The Egmont Group of FIUs, a global organization that facilitates and prompts the exchange of cooperation among member FIUs through the dissemination of information, knowledge and expertise.[64]

Bilateral forms of cooperation

Bilateral MoUs between States parties and other foreign counterparts are common among FIUs, specialized bodies and other bodies. For example, during the first review cycle:

- Thailand's FIU had signed more than 40 MoUs with counterparts. Its National Anti-Corruption Commission also signed over 30 agreements with domestic and international organizations on countering corruption;
- Indonesia's KPK had MoUs with around 20 institutions from different States across Africa, Asia, the Middle East and Europe;
- The Philippines' Anti-Money-Laundering Council had executed over 30 MoUs with counterparts; and
- Malaysia's FIU had signed more than 30 MoU with counterparts. The Royal Malaysian Police and Malaysian Anti-Corruption Commission had also signed MoUs with their counterparts.

Informal cooperation

Informal cooperation between States parties is common, as formal agreements are not always a prerequisite to rendering assistance or information-sharing.

Singapore relies on the informal provision of assistance and deems this approach to be more comprehensive, as there is no dependence or impediment by the presence or absence of a treaty. Liaison officers in Singapore are designated to facilitate such informal forms of cooperation. While Singapore does not use a common database to exchange information, it receives requests from counterparts through its generic inbox, referrals from other domestic agencies, its Corrupt Practices Investigation Bureau and INTERPOL.

The Philippines has a database of suspicious and covered transactions to identify unlawful activities including corruption. Its Anti-Money Laundering Council is able to spontaneously share information with foreign counterparts.

Exchange of information and training

States parties place an emphasis on cooperation which is based on the mutual learning and sharing of information. The exchange of information, including confidential information, is commonly included in MoU and other forms of arrangements. For example, Malaysia is party to the Agreement on the Exchange and Establishment of Communication Procedures, which provides for the exchange of information with Indonesia, Malaysia and the Philippines.

61 APEC, "Anti-Corruption and Transparency," 2023. Available at https://www.apec.org/groups/som-steering-committee-on-economic-and-technical-cooperation/working-groups/anti-corruption-and-transparency#.

62 ARIN-AP, "Mission and Objectives," 2013. Available at http://www.arin-ap.org/about/mission.

63 Anti-Corruption Agency Forum, "Updates," 2010. Available at: http://www.aca-forum.org/index.do.

64 Egmont Group, "Connecting Financial Intelligence Units Worldwide," 2024. Available at https://egmontgroup.org/.

States parties may integrate training from overseas institutions, send their personnel abroad, and promote the exchange of personnel. For example:

- In Brunei Darussalam, its Anti-Corruption Bureau's work scheme mandates that each officer go through a nine-month police training in Singapore's Home Team Academy; and
- The Philippines has a database of suspicious and covered transactions to identify unlawful activities including corruption, and its National Police (PNP) promotes the exchange of personnel with foreign counterparts for training purposes. The PNP has placed and received attaches from abroad, and also maintains foreign country desks for general criminal cases.

States parties may host or offer specialized training to assist their foreign counterparts with capacity-building. For example, Singapore is an international training and assistance provider on international and law enforcement cooperation. Malaysia provides anti-corruption courses and sends experts to other States to conduct training in and from Malaysia's Anti-Corruption Commission and Anti-Corruption Academy. As part of the Asia-Pacific Group's Technical Assistance Donor and Provider Group, Malaysia has also provided anti money-laundering assistance to other countries in Southeast Asia to expedite their implementation of global anti-money-laundering and countering of financing terrorism standards.

Thailand's Anti-Corruption Coordination Center (TACC) provides legal advice and interpretation of relevant Thai laws to foreign counterparts. It also recommends the most appropriate and efficient legal strategies and procedures when their foreign counterparts request law enforcement assistance from Thailand. The TACC acts as a focal point for corruption cases and the recovery of assets.

Seven States parties[65] received recommendations on the implementation of article 48.

Lao PDR cited limited capacity and experience in cross-border investigations with a focus on corruption. Reviewing exerts recommended the strengthening of communication channels, especially on specific means and methods of investigations involving the use of technology. A recommendation was further made to strengthen the exchange of personnel by posting and/or receiving liaison officers in/from other States. Reviewing experts also observed that Lao PDR could benefit from training or capacity-building on strengthening law enforcement cooperation through INTERPOL, ASEANAPOL and other mutual legal assistance mechanisms.

In Viet Nam, reviewing experts observed that the use of modern technology to deal with corruption crime could be applied gradually.

The Philippines noted challenges in terms of competing priorities, where anti-corruption measures may compete with the respective mandates of government agencies or entail additional efforts and taskings. The PNP reported that one broad structural reform of consolidating all anti-corruption bodies under one agency could address coordination problems and the diffusion of powers, responsibilities and accountabilities in the fight against corruption.

The Philippines also cited a lack of information and direct cooperation with international law enforcement agencies. Reviewing experts recommended that the Philippines further strengthen its direct law enforcement cooperation to enhance the effectiveness of international cooperation, with specific efforts through the Philippines' Office of the Ombudsman.

Reviewing experts made other recommendations for:

- Brunei Darussalam to put in place a database which allows for information to be shared with law enforcement counterparts in other States, as a common database did not yet exist during the first review cycle;
- Cambodia to encourage its Anti-Corruption Unit to continue its close cooperation with counterparts in the region, conclude

65 Brunei Darussalam, Cambodia, Lao PDR, the Philippines, Thailand, Timor-Leste, Viet Nam.

more MoUs with them, and provide ways to exchange case-related information;
- Thailand to consider strengthening law enforcement cooperation through the exchange of personnel, as its National Anti-Corruption Commission had not considered the posting of liaison officers through bilateral arrangements during the first review cycle;
- Timor-Leste to include in the curriculum of its Legal Training Centre specialized modules on international cooperation, where Timor-Leste noted challenges in international cooperation in terms of information exchange.

Reviewing experts identified over 10 forms of good practices across the following States parties.

Brunei Darussalam

In 2012, reviewing experts praised Brunei Darussalam's high levels of cooperation with counterparts in the region and with INTERPOL on law enforcement cooperation. Additionally, reviewing experts highlighted a unique practice in Brunei Darussalam based on bilateral agreements or arrangements of "visiting judges" to adjudicate domestic cases. Although not directly linked to the implementation of article 48, reviewing experts noted that this practice demonstrated a familiarity with utilizing international expertise, which indicated a readiness to engage in agreements to accept "liaison officers" for the purposes of enhancing international cooperation.

Malaysia

In 2013, reviewing experts praised different facets of Malaysia's implementation of article 48, including:

- The use of specialized and skilled manpower who actively cooperate with foreign counterparts;
- Dedicated training, capacity-building and exchange programmes through the Malaysian Anti-Corruption Academy;
- The Malaysian Anti-Corruption Commission's active role as an international training and assistance provider, including the hosting of attachment officers; and
- The various exchanges of personnel, secondments and direct cooperation between FIUs and foreign counterparts to enhance cross-border cooperation.

Singapore

In 2015, reviewing experts commended Singapore's work in efficiently processing international cooperation requests, including through the use of technology. Singapore's websites provided thorough information on international cooperation procedures and template forms. The use of flowcharts and procedures further strengthened internal coordination and created greater legal certainty for processing requests. Singapore acknowledged all requests within days of their receipt and provided guidance to requesting States.

Singapore's dedicated case management database for international cooperation, which allowed for the quick provision of status updates and the timely execution and tracking of requests, even remotely, was deemed to be a unique feature. This database also allowed for the collection of disaggregated data on international cooperation.

Singapore's active role as an international training and assistance provider on international law and law enforcement cooperation was positively noted. Additionally, reviewing experts praised Singapore's computer forensics unit that specialized in forensic examinations of computer-related evidence, noting that Singapore had shared information acquired through such means with foreign counterparts to facilitate investigations.

Thailand

In 2015, reviewing experts praised Thailand's law enforcement authorities for proactively seeking to conclude further agreements on the sharing of intelligence and information, and the manner in which such authorities are actively using a number of international cooperation mechanisms.

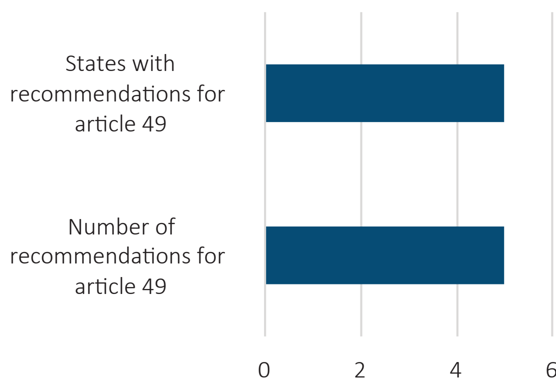
Timor-Leste

With legislation adopted at the time of the first review cycle, reviewing experts in 2012 expressed confidence in the implementation of such laws,

and that consideration for entering into bilateral and multilateral agreements and arrangements would be duly taken.

Article 49: Joint investigations

Article 49, while non-mandatory in nature, builds on the requirements set out in article 48. The provision encourages States parties to consider entering into arrangements to conduct joint investigations, prosecutions and proceedings in more than one State party, where a number of States parties may have jurisdiction over the offences involved. Article 49 further enables States parties to undertake joint investigations on a case-by-case basis when relevant arrangements or agreements do not exist.



The implementation of article 49 is partial across States parties. Over 50 per cent[66] of the States parties do not have any formal arrangements with other jurisdictions on joint investigations. Timor-Leste indicated that it has not implemented article 49 and anticipated that this would take place only after key national events such as the national election and the recruitment of staff.

States parties may have domestic legislation that authorizes the use of joint investigations, sometimes in specific contexts. They may also adopt bilateral agreements on joint investigations. For example, Brunei Darussalam had a bilateral agreement with Malaysia's Anti-Corruption Commission, with nine joint investigations carried out from 2004 to 2012. Mutual legal assistance provisions may also be relied on, with ASEAN Member States being party to the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (MLAT), although the MLAT does not have specific provisions on joint investigations.

States parties have carried out joint investigations on a case-by-case basis in the absence of formal arrangements. For example, the Philippines carries out joint investigations principally on anti-money laundering through ad-hoc arrangements that do not always take the form of a formal task force. Singapore also carries out investigations on a case-by-case basis on Convention offences despite not having any agreements or arrangements on joint investigations.

Legislative challenges, where two States parties[67] noted a lack of domestic laws to regulate the use of joint investigations, were cited as an impediment in implementing article 49. Operational challenges and inadequate resources were also raised, with Viet Nam noting that joint investigations are a new field and there is little experience on its application in their domestic legislative framework. Viet Nam highlighted that in existing practice, it receives foreign requests and carries out investigations in accordance with domestic laws. Lao PDR noted it had no experience using joint investigations with another country, while Indonesia expressed that experience-building was still required, even after having previously established joint operations with foreign agencies in corruption cases.

Five States parties[68] received recommendations on the implementation of article 49, with three[69] on concluding agreements or arrangements, whether bilateral or multilateral, to allow for the establishment of joint investigative bodies or undertaking of joint investigations on a case-by-case basis. Additionally, Lao PDR received a recommendation to ensure that clear procedures and guidelines are in place for joint investigations, including through relevant agreements or arrangements with law enforcement agencies.

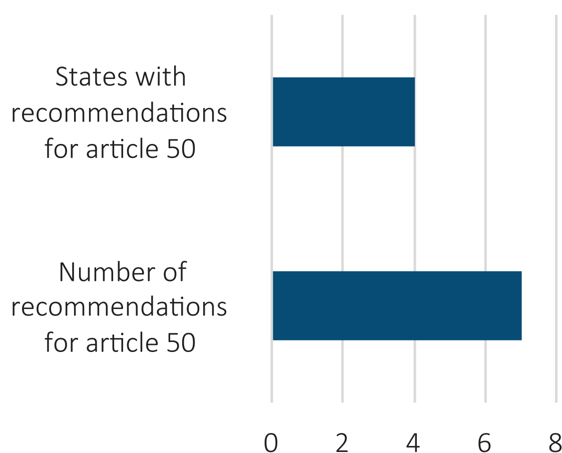
66 Cambodia, Myanmar, Singapore, Thailand, Timor-Leste, Viet Nam.
67 Lao PDR, Viet Nam.
68 Cambodia, Lao PDR, Myanmar, Thailand, Viet Nam.
69 Cambodia, Myanmar, Thailand.

The use of an Operational Working Group between Brunei Darussalam and Malaysia was deemed a positive example of law enforcement cooperation among States at the policy and operational levels. This Group comprises of officers from the investigation and intelligence divisions of the Malaysian Anti-Corruption Commission and Brunei Darussalam's Anti-Corruption Bureau. Meetings are held annually to review the need for establishing joint investigative teams in specific cases. Success stories were provided to reviewing experts to illustrate the high degree of international cooperation on joint investigations, including a 2009 joint investigation which crippled the practice of accepting bribes in oil smuggling syndicates.

Article 50: Special investigative techniques

Article 50 requires States parties to take measures to allow for the appropriate use of special investigative techniques for the investigation of corruption, with the endorsement of special investigative techniques at the national and international levels.

Article 50(1) advocates for the use of controlled delivery and, where appropriate, electronic or other forms of surveillance and undercover operations. However, the deployment of such techniques must be done to the extent permitted by the basic principles of domestic legal systems. States parties are also obliged to take measures allowing for the admissibility in court of evidence derived from such techniques.



The term "controlled delivery" is defined in article 2(1) as the "technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view of the investigation of an offence and the identification of persons involved in the commission of the offence". At the international level, article 50(4) clarifies that controlled delivery may include methods such as intercepting and allowing goods or funds to continue intact or be removed or replaced, in whole or in part.

States parties are at different stages of implementing article 50. All States parties have some form of experience or knowledge in the use of special investigative techniques; however, levels of regulation, knowledge and expertise differ. One State party noted it had little experience using special investigative techniques in corruption cases apart from surveillance operations and cited other challenges such as limited capacity, resources and awareness of such techniques.

A third[70] of States parties cited pre-existing knowledge and use of controlled delivery as a special investigative technique for the investigation and prosecution of corruption cases, while other States parties noted its use in drug-related cases but not corruption so far. Other special investigative techniques such as electronic surveillance were observed to be deployed mainly for monitoring purposes.

The regulation and control of special investigative techniques across States parties can be likened to a sliding scale. On one end, States parties such as Singapore have minimal restrictions for law enforcement agencies to exercise a wide range of investigative techniques like controlled delivery, continued surveillance and undercover operations in accordance with procedures, guidelines and circumstances of the case. On the other hand, States parties may only allow the use of special investigative techniques once some form of approval is obtained. For example, Timor-Leste

70 Brunei Darussalam, Singapore, Timor-Leste.

allows for the use of special investigative techniques by law enforcement agencies if allowed by a court decision, including phone tapping, interception of communications, undercover operations and controlled deliveries. Similarly, a court order is required in the Philippines, which can generally be obtained within one day. Commonly, States parties have additional written measures, procedures and checklists for their law enforcement agencies in using such techniques.

Legislation tends to be the preferred method of regulating the use of special investigative techniques. For example, Cambodia relies on specific legislation, such as anti-corruption laws, to allow for the use of such techniques. Malaysia embeds provisions on special investigative techniques in other laws, such as those on maintaining internal security.

A third of States parties[71] were observed to lack legislation, regulations or guidelines on the use of special investigative techniques. Lao PDR cited the inadequacy of existing normative measures such as laws and regulations as a challenge, with officials in its judiciary and investigation agencies indicating a need to clearly define the power to conduct such investigations. States parties with some form of provision to regulate the use of special investigative techniques may also only partially implement article 50. For example, Indonesia's legislation does not mention "controlled delivery" but references "tap-wiring".

The increased scrutiny of law enforcement operatives accompanies the scrutiny of how special investigative techniques are used. Indonesia highlighted its lack of power to intercept communications at the investigation stage with regard to corruption cases, and that consideration could be given to provide their policing operatives with such powers in the future. However, Indonesia noted the importance of enhancing public trust towards its police force before such decisions were taken.

Limited capacity can pose a challenge. The Philippines acknowledged there was a need to train agents to handle complex cases, such as lawyers and certified public accountants. A lack of resources for implementation was also noted, with the Philippines citing more resourcing was required to combat cybercrime and gather electronic evidence in corruption cases.

The use of special investigative techniques, once explicitly regulated by States parties and carried out lawfully, can be admissible in courts.[72] In Brunei Darussalam, the admissibility of evidence is determined in court on its relevance, regardless of how it was obtained. In States parties where legislation, regulations or guidelines on the use of special investigative techniques may be lacking, evidence gained may still be admissible subject to examination by the court and other methods of authentication.[73] In Lao PDR, evidence gained by special investigative techniques may not be directly admissible, but could be used to build direct evidence. For other States parties, a lack of domestic regulation on the use of special investigative techniques also means an inadmissibility of evidence in court. Viet Nam, for example, noted it cannot consider the "evidence" obtained through the use of special investigative techniques to qualify as "evidence approved by Courts" because its domestic laws do not contain provisions on this.

Four States parties[74] received recommendations on the implementation of article 50. Lao PDR, and Thailand received recommendations to clearly define the power to conduct special investigative techniques in corruption cases and establish the admissibility of evidence derived from the use of such techniques. On a more specific point, the Philippines received a recommendation to amend its Anti-Wiretapping Law to permit wiretapping in corruption cases, as wiretapping is generally not permitted. While Viet Nam had not implemented article 50 and reviewing experts observed areas for improvement, Viet Nam did not officially receive any recommendations.

71 Lao PDR, Myanmar, Viet Nam.
72 For example, Brunei Darussalam, Cambodia, Malaysia, Singapore.
73 Lao PDR.
74 Lao PDR, Myanmar, the Philippines, Thailand.

Article 50(2) encourages States parties to conclude bilateral or multilateral agreements or arrangements for using special investigative techniques in the context of cooperation at the international level. In the absence of such agreements or arrangements, article 50(3) stipulates that decisions to use special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings of the exercise of jurisdiction by the States parties concerned.

International arrangements for using special investigative techniques across States parties are not widespread. Fifty per cent[75] have not concluded agreements or arrangements on special investigative techniques at the international level. Viet Nam noted that such international arrangements have not been concluded because they have not regulated special investigative techniques domestically, and bilateral partners have not made requests to apply such techniques internationally. Moreover, Viet Nam indicated that even if partners have made requests for the application of such techniques, Viet Nam may not meet the requirements in terms of technical capacity.

States parties cited a variety of challenges regarding the use of special investigative techniques on an international level:

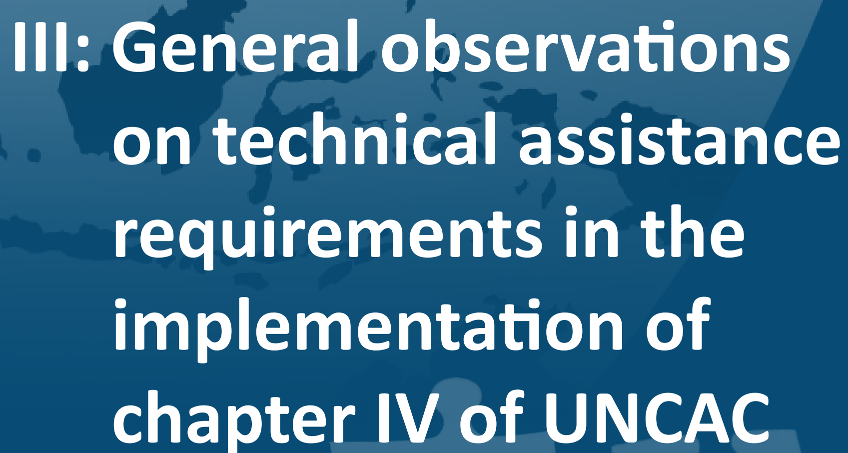
- The Philippines cited challenges of competing priorities and inter-agency coordination. The PNP is a general law enforcement agency and has a broad mandate of using special investigative techniques internationally; however, the requirement to follow agency procedures could inhibit the fast execution of cases involving special investigative techniques. The PNP noted that a potential solution was to have more active involvement by other agencies, such as the Office of Ombudsman, to assist with inter-agency coordination;
- The Philippines and Indonesia noted that they had limited awareness of state-of-the-art agreements or arrangements;
- Timor-Leste and Indonesia cited general challenges on international cooperation in terms of special investigations, including limited capacity;
- Indonesia cited challenges of specificities of the legal system and limited resources for implementation.

Reviewing experts provided Thailand with recommendations on the use of special investigative techniques in the international context, by noting that it may wish to include the use of special investigative techniques internationally in their legislative reforms.

Malaysia's wide use and application of investigative techniques in investigating corruption cases at domestic and international levels were deemed a good practice. Malaysian law enforcement authorities have entered into an MoU with ASEAN police agencies, which allow the use of special investigative techniques, and continue to seek arrangements with other police forces beyond the States parties.

75 Lao PDR, Myanmar, Singapore, the Philippines, Viet Nam.

III: General observations on technical assistance requirements in the implementation of chapter IV of UNCAC



III: General observations on technical assistance requirements in the implementation of chapter IV of UNCAC

The Convention calls on each State party to provide technical assistance and training, and exchange information to strengthen implementation. This section analyzes the technical assistance needs of States parties in the implementation of chapter IV.

Across chapter IV, States parties made a total of over 70 technical assistance requests. The most requested types of technical assistance include:

- Capacity-building (over 10 technical assistance requests);
- Summaries of good practices and lessons learned (over 10 technical assistance requests); and
- Training-related requests (over 10 technical assistance requests).

The figure below provides an approximate breakdown, with technical assistance grouped into broad categories.

Figure 5: Forms of technical assistance requests

When analyzed by each provision of the Convention, it is possible to assess which provisions received a higher number of technical assistance requests, and how this is spread across States parties. This highlights which provisions of the Convention may require more immediate attention and what kinds of expertise States parties commonly require.

Overall, special investigative techniques (article 50) received the highest number of technical assistance requests. This was followed by provisions on extradition (article 44) and mutual legal assistance (article 46). These figures corresponded with a higher number of States parties requesting technical assistance under these provisions, with over half requesting assistance for special investigative techniques (article 50) and mutual legal assistance (article 46), while half requested assistance for extradition (article 44).

Figure 6: Technical assistance requirements identified in the implementation of chapter IV

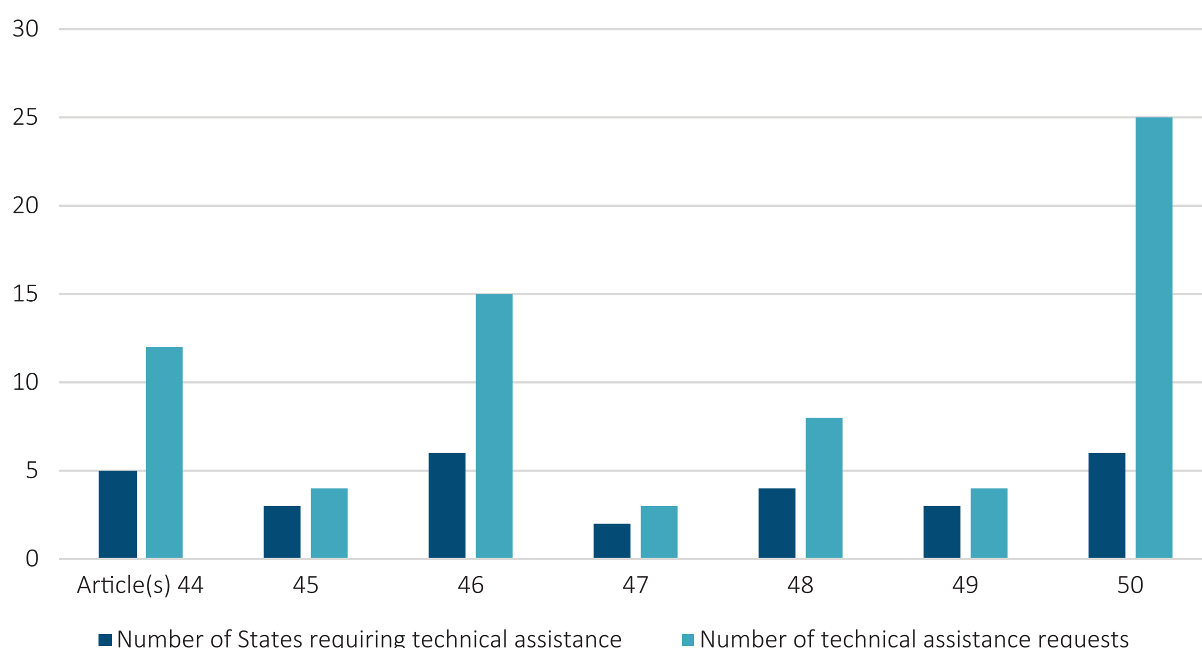
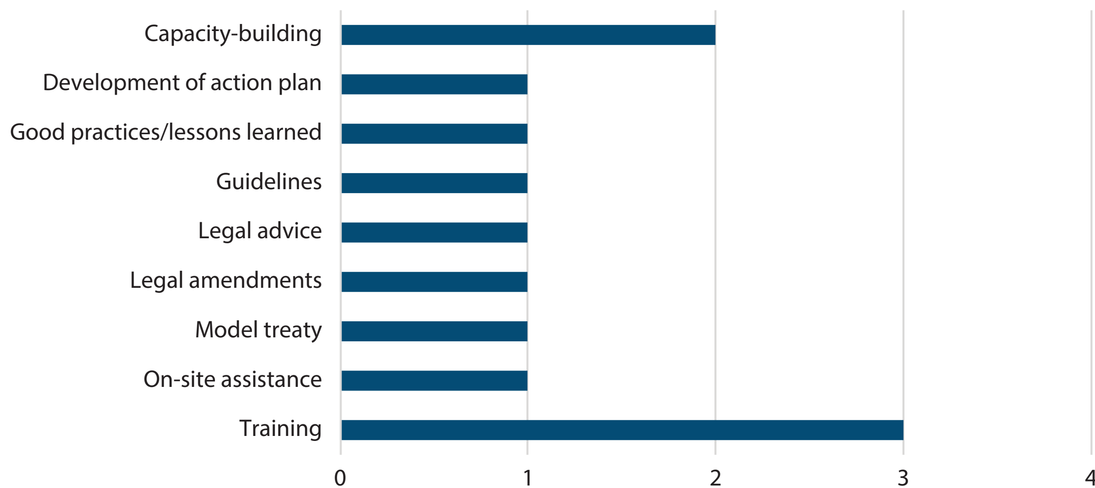


Tabla 7: Technical assistance needs for chapter IV, by article of the Convention

Article of the Convention	*Number of States parties requiring technical assistance*	*Number of technical assistance requests*	*Technical assistance requirements*
44	5	12	Provision of guidelines; legal amendments consistent with treaty obligations; training programmes, workshops and courses; multi-disciplinary training in extradition proceedings; capacity-building; model treaties; summary of good practices and lessons learned; legal advice; on-site assistance by an expert; development of an action plan.

Article of the Convention	*Number of States parties requiring technical assistance*	*Number of technical assistance requests*	*Technical assistance requirements*
45	3	4	Model treaties; training programmes, workshops and courses; summary of good practices and lessons learned; capacity-building.
46	6	15	Drafting legislation on mutual legal assistance; summary of good practices and lessons learned; model treaty; training activities and courses; capacity-building programmes; capacity-building; legal advice; on-site assistance by an expert.
47	2	3	Summary of good practices and lessons learned; training programmes, workshops and courses; legal advice.
48	4	8	Communication channels and exchange of personnel; training programmes, workshops and courses; capacity-building; management of central database or information portal; public information sharing among agencies; development of implementation action plan; summary of good practices and lessons learned.
49	3	4	Summary of good practices and lessons learned; training programmes, workshops and courses; generic technical assistance.
50	6	25	Summary of good practices and lessons learned; model laws, agreements and arrangements; capacity-building for different institutions; admissibility of evidence; use, design and management of special investigative techniques; international cooperation; specialized anti-corruption unit; on-site assistance by an expert; development of an implementation plan; strengthening of institutional and legal frameworks on special investigative techniques and other forms of technology.

Figure 7: Technical assistance requests for article 44



Extradition and transfer of sentenced persons

Article 44: Extradition

Five States parties[76] made 12 technical assistance requests on the implementation of article 44. Cambodia and the Philippines requested technical assistance on specific issues related to legal and operational matters:

- Cambodia requested the provision of guidelines on the application of discretionary prosecution in the case of an extradition request which is denied, with an emphasis on Cambodian citizens who cannot be extradited; and
- The Philippines asked for assistance with amendments to its extradition laws to ensure consistency with treaty obligations.

The Philippines and Viet Nam requested training-related assistance:

- The Philippines asked for multi-disciplinary training of participants in extradition proceedings, especially judges training through judicial academy; and
- Viet Nam asked for training activities and courses to enhance the professional skills of relevant public officials. Specifically, it noted that training in terms of expertise skills and foreign languages would be of assistance.

Lao PDR and the Philippines requested assistance on capacity-building:

- Lao PDR asked for capacity-building assistance for authorities responsible for extradition; and
- The Philippines requested capacity-building programmes for authorities responsible for international cooperation in criminal matters, as it sought to amend Philippine extradition laws to align with the Convention.

Viet Nam asked for model treaties on the implementation of article 44. Lao PDR requested: a summary of good practices and lessons learned; legal advice; on-site assistance by a relevant expert; and the development of an action plan to address implementation gaps.

76 Cambodia, Lao PDR, Myanmar, the Philippines, Viet Nam.

Figure 8: Technical assistance requests for article 45

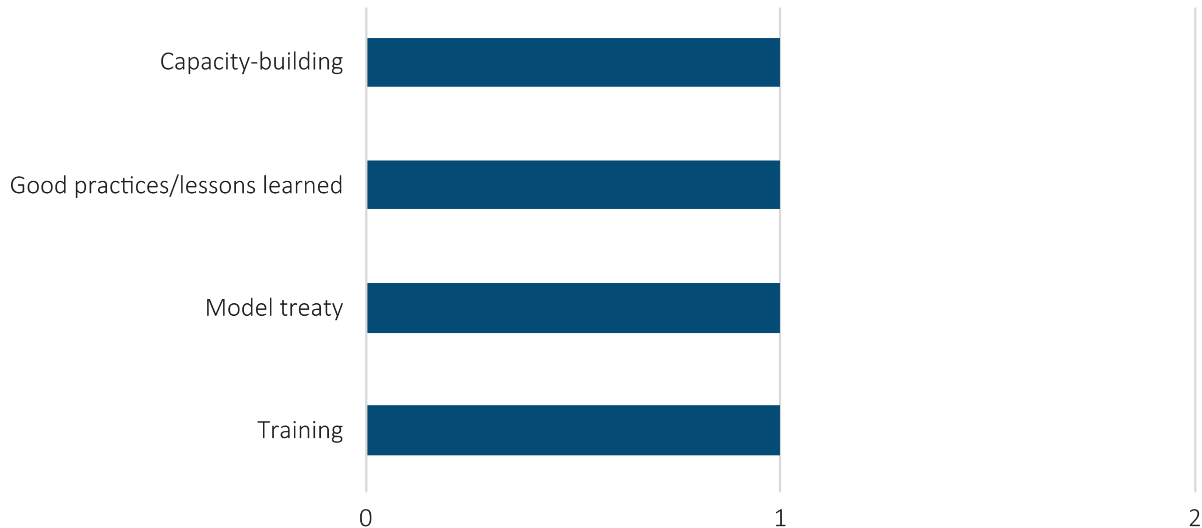
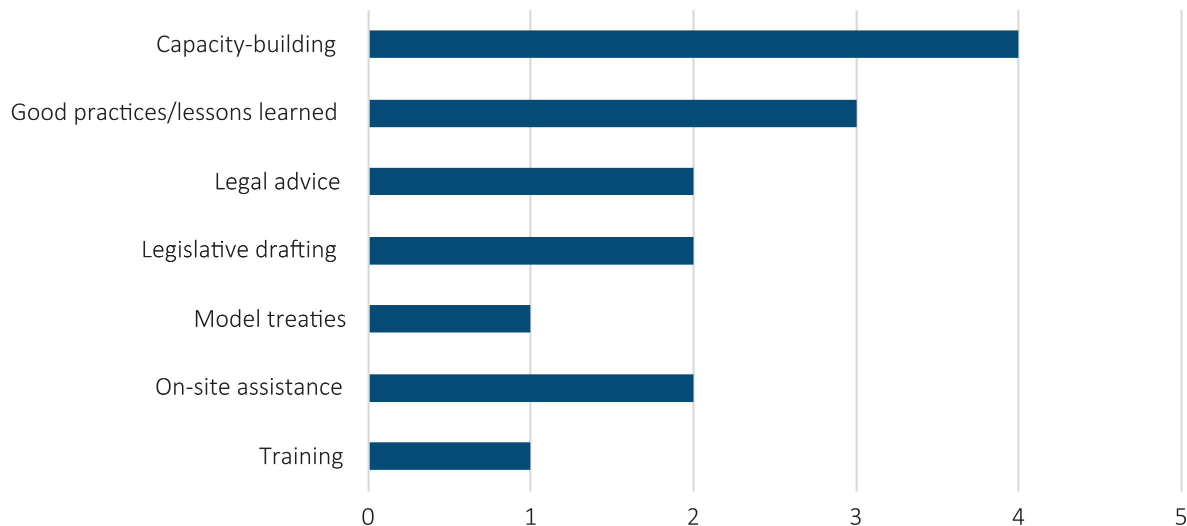


Figure 9: Technical assistance requests for article 46



Article 45: Transfer of sentenced persons

Three States parties[77] made a total of four technical assistance requests on the implementation of article 45.

For example, Viet Nam asked for model treaties for the implementation of article 45. The Philippines asked for a summary of good practices and lessons learned and capacity-building programmes for its authorities to improve the implementation of article 45.

Mutual legal assistance and transfer of criminal proceedings

Article 46: Mutual legal assistance

Six States parties[78] made a total of 15 technical assistance requests on the implementation of article 46.

Cambodia and the Philippines requested assistance in drafting mutual legal assistance legislation. Indonesia, Lao PDR and Viet Nam asked for a

77 Myanmar, the Philippines, Viet Nam.
78 Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Viet Nam.

summary of good practices and lessons learned concerning the implementation of article 46.

On training and capacity-building:

- Indonesia asked for capacity-building programmes for its competent authorities;
- Lao PDR asked for capacity-building programmes for authorities responsible for mutual legal assistance and capacity-building assistance on technologies and human resources to ensure that coordination and awareness-raising activities are conducted once new mutual legal assistance procedures are implemented; and
- Viet Nam asked for training activities and courses to enhance the professional skills of relevant public officials.

Moreover, Lao PDR and Indonesia asked for legal advice and on-site assistance by a relevant expert, with Lao PDR specifically noting on-site assistance to enhance inter-agency coordination and develop a case tracking system. Lao PDR noted that developing firm procedural processes to handle mutual legal assistance cases would be a priority, including through the adoption of relevant guidelines, and the review of existing treaties to ensure their compliance with the Convention. Indonesia further requested model treaties.

Article 47: Transfer of criminal proceedings

Indonesia and Viet Nam made a total of three technical assistance requests on the implementation of article 47.

Viet Nam asked for a summary of good practices and lessons learned with respect to the implementation of article 47. It also asked for training activities and courses to enhance the professional skills of relevant public officials.

Indonesia made a request for legal advice.

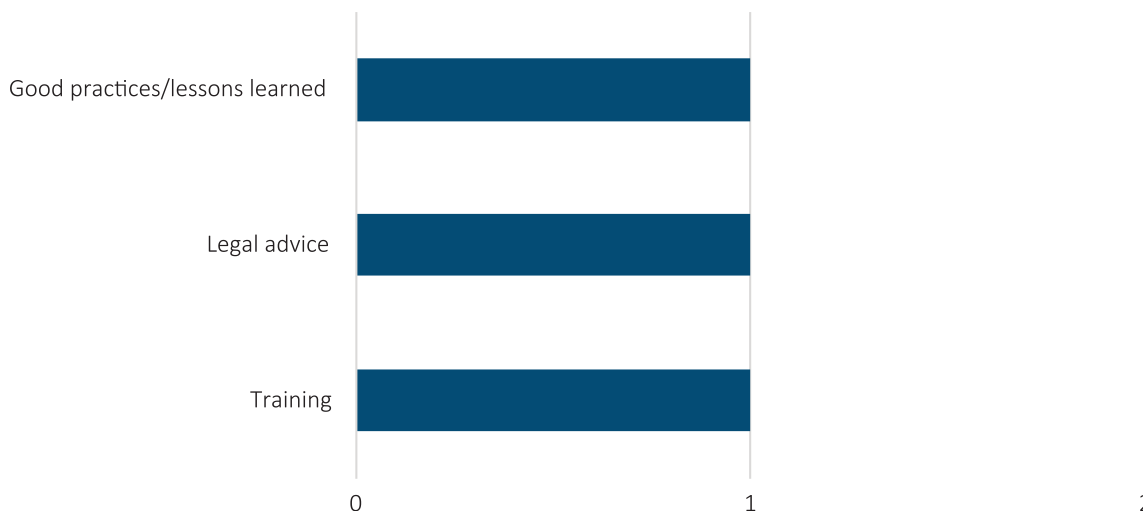
Law enforcement cooperation

Article 48: Law enforcement cooperation

Four States parties[79] made a total of eight technical assistance requests on the implementation of article 48.

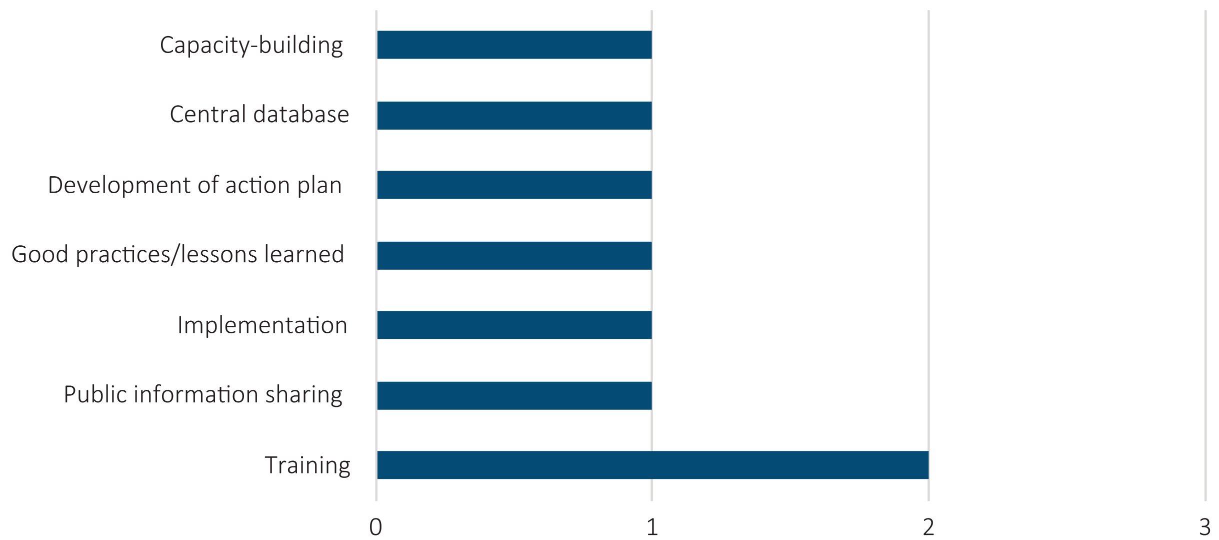
Lao PDR asked for assistance in implementing communication channels and the exchange of personnel to further law enforcement cooperation and capacity-building. The Philippines asked for assistance with: capacity-building; management of a central database or information portal for law enforcement; public information sharing among agencies; and the development of an implementation action plan. Viet Nam requested training activities and courses to enhance the

Figure 10: Technical assistance requests for article 47



79 Lao PDR, Myanmar, the Philippines, Viet Nam.

Figure 11:: Technical assistance requests for article 48



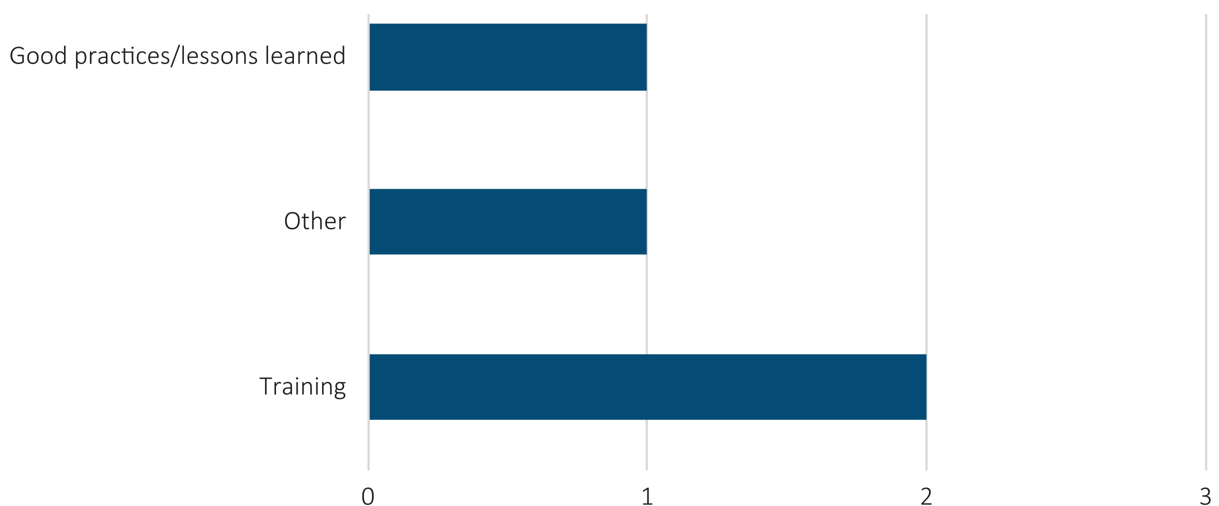
professional skills of relevant public officials, along with a summary of good practices and lessons learned concerning the implementation of article 48.

Article 49: Joint investigations

Three States parties[80] made a total of four technical assistance requests on the implementation of article 49.

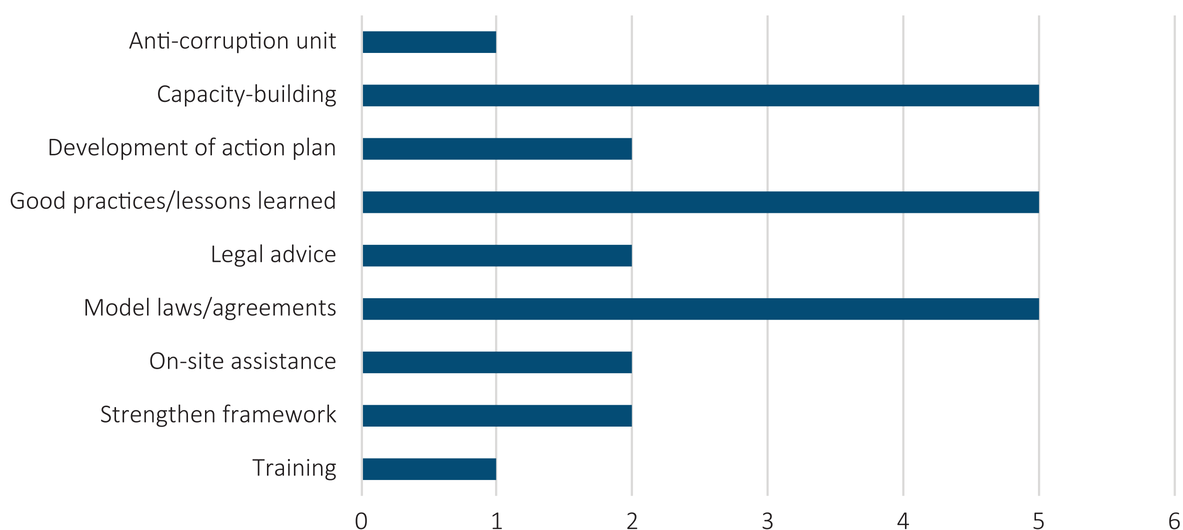
Viet Nam asked for training activities and courses to enhance the professional skills of relevant public officials. Additionally, Viet Nam asked for a summary of good practices and lessons learned with respect to the implementation of article 49. Indonesia made a general request for technical assistance.

Figure 12: Technical assistance requests for article 49



80 Indonesia, Myanmar, Viet Nam.

Figure 13: Technical assistance requests for article 50



Article 50: Special investigative techniques

Six States parties[81] made a total of 25 technical assistance requests on the implementation of article 50.

Five States parties asked for a summary of good practices and lessons learned.[82] All five also asked for a variety of model laws, agreements or arrangements for the implementation of article 50.[83] The Philippines further asked for legal advice to amend its Anti-Wiretapping Law, while Indonesia requested legal advice without further specifying what this advice may focus on.

Four States parties made requests relevant to capacity-building:

- Indonesia requested capacity-building programmes;
- Lao PDR asked for capacity-building for relevant institutions on conducting special investigative techniques and the admissibility of evidence;
- Thailand specifically requested capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques, as well as capacity-building programmes for authorities responsible for international cooperation in criminal or investigative matters; and
- The Philippines requested capacity-building programmes for its authorities responsible for international cooperation in criminal or investigative matters.

Viet Nam asked for training activities and courses to enhance the professional skills of relevant public officials.

On operational matters, the Philippines requested assistance with the creation or operation of a specialized anti-corruption unit in the police. The Philippines and Indonesia also requested on-site assistance by a relevant expert and the development of an implementation action plan.

Timor-Leste asked for technical assistance to strengthen its institutional and legal frameworks on:

- Special investigation techniques in financial investigation fraud in construction and procurement, cybercrime and interviewing techniques; and
- Computer accounting, laboratory forensics and information technology.

81 Lao PDR, Indonesia, the Philippines, Thailand, Timor-Leste, Viet Nam.
82 Lao PDR, Indonesia, the Philippines, Thailand, Viet Nam.
83 Lao PDR, Indonesia, the Philippines, Thailand, Viet Nam.

IV: Outlook and next steps

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The implementation of chapter IV of the Convention differs across the States parties, owing to differences in their legal framework and existing capacities, experience in international cooperation, and pre-existing international arrangements. The reviews identified processes and procedures which were already carried out in practice, but required explicit recognition by legislation or other forms of formalization. Reviewing experts recognized draft laws, took into account recently established frameworks, and praised the ability and willingness of States parties to work with international counterparts, as observed from the low number of refusals in extradition and mutual legal assistance requests. Given the time elapsed since the first cycle of the UNCAC Implementation Review Mechanism and this report, follow-up work is required to track the progress of States parties' implementation of chapter IV.

States parties faced the highest number of challenges in extradition (article 44) and mutual legal assistance (article 46). A common aim of the recommendations was to ensure that all Convention offences are extraditable between States parties, and that mutual legal assistance could be provided in relation to all Convention offences. Where relevant, States parties were encouraged to consider using the Convention as a legal basis for extradition and mutual legal assistance and make the requisite notifications to the Secretary-General of the United Nations.

Implementation was generally lacking in relation to the transfer of criminal proceedings (article 47), and limited experience was observed in relation to the transfer of sentenced persons (article 45). States parties demonstrated a long-standing practice of law enforcement cooperation (article 48), with regional and international involvement in a variety of instruments, some with a specific focus on anti-corruption and anti money-laundering. However, formalization of arrangements on joint investigations (article 49) was limited, and the need for clearer procedures, guidelines, legislation and more international arrangements was observed. These challenges were also noted for the application, regulation and admissibility of evidence where special investigative techniques (article 50) were concerned, where some States parties have minimal experience in such fields.

Overall, States parties should continue to take measures to improve their implementation of chapter IV of the Convention by seeking improvements to their legal framework, operational measures and international arrangements, where necessary. Efforts are further required to ensure more consistent and complete implementation across the region, with the technical assistance requests by States parties serving as a starting point.

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