

# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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## Draft report

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### Addendum

## Draft questionnaire on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

<p>Does your country need assistance in providing the information requested in this questionnaire?</p>
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## I. Criminalization requirements under the Convention

### A. Criminalization of participation in an organized criminal group (article 5)

1. Is participation in an organized criminal group criminalized under your domestic legislation?
2. If the answer to question 1 is "Yes", does participation in an organized criminal group consist of:
  - (a) Agreeing with one or more other persons to commit a serious crime for financial or other material benefit (art. 5, para. 1 (a)(i), of the Convention)? and/or
  - (b) Taking an active part in criminal activities of the organized criminal group with knowledge of either the aim and general criminal activity of that group or its intention to commit the crimes concerned, as well as taking an active part in other activities of the organized criminal group in



the knowledge that such participation will contribute to the achievement of the criminal aim of that group (art. 5, para. 1 (a)(ii), of the Convention)?

- (c) If your domestic legislation includes the requirement described under (a) above, does it additionally require that an act was undertaken by one of the participants in furtherance of the agreement or the involvement of an organized criminal group?
3. Does your country's legislation establish as a criminal offence organizing, directing, aiding, abetting, facilitating and counselling the commission of serious crime involving an organized criminal group (art. 5, para. 1 (b), of the Convention)?

Please provide a copy of your country's relevant legislation.

## **B. Criminalization of the laundering of proceeds of crime (article 6)**

4. Is the laundering of proceeds of crime criminalized under your domestic legislation in accordance with article 6, paragraph 1 (a), of the Convention?
5. If the answer to question 4 is "Yes", are all the offences covered by the Convention (and the Protocols) predicate offences under your domestic legislation to the offence of money-laundering (arts. 2, subpara. (h), and 6, para. 2 (a) and (b), of the Convention)?
6. Does your legislation require that the predicate offences be committed in your country or include also offences committed outside your country?
7. If the second option in question 6 is true, under which specific requirements (art. 6, para. 2 (c), of the Convention)?
8. Are the acquisition, possession and use of property, knowing, at the time of receipt, that such property is the proceeds of crime, criminalized under your domestic legislation (art. 6, para. 1 (b)(i), of the Convention)?
9. Are participation in, association with and conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of a money-laundering offence criminalized under your domestic legislation (art. 6, para. 1 (b)(ii), of the Convention)?
10. Does the legislation of your country permit the prosecution and punishment of an offender for both the predicate offence and the laundering of proceeds from that offence (art. 6, para. 2 (e), of the Convention)?
11. If the answer to question 10 is "No", does your country refuse extradition, mutual legal assistance or cooperation for the purposes of confiscation solely on the ground that the relevant request was based on a money-laundering offence, the predicate offence of which was committed by the same person?

Please provide a copy of your country's relevant legislation.

**C. Criminalization of corruption (article 8)**

12. Is active bribery of a public official criminalized under your domestic legislation (art. 8, para. 1 (a), of the Convention)?
13. Is passive bribery of a public official criminalized under your domestic legislation (art. 8, para. 1 (b), of the Convention)?
14. Is participation as an accomplice in bribery offences criminalized under your domestic legislation (art. 8, para. 3, of the Convention)?

Please provide a copy of your country's relevant legislation.

**D. Criminalization of obstruction of justice (article 23)**

15. Is obstruction of justice criminalized under your domestic legislation in accordance with article 23 of the Convention?

Please provide a copy of your country's relevant legislation.

**E. Jurisdiction (article 15)**

16. Does your country have jurisdiction to prosecute the offences covered by the Convention (and the Protocols) when the offences are committed on board a vessel flying its flag or an aircraft registered under its laws (art. 15, para. 1 (b), of the Convention)?
17. Is the establishment of extraterritorial jurisdiction with respect to the offences covered by the Convention (and the Protocols) permitted in your country?
18. If the answer to question 17 is "Yes", does your country have jurisdiction to prosecute the offences covered by the Convention (and the Protocols) when committed outside its territory:
  - (a) By its nationals (or stateless persons who have habitual residence in the country) (art. 15, para. 2 (b), of the Convention)?
  - (b) Against its nationals (art. 15, para. 2 (a), of the Convention)?
19. If the answer to question 17 is "Yes", does your country have jurisdiction to prosecute participation in an organized criminal group committed outside its territory with a view to the commission of a serious crime (art. 2, subpara. (b), of the Convention) within its territory (art. 15, para. 2 (c)(i), of the Convention)?
20. If the answer to question 17 is "Yes", does your country have jurisdiction to prosecute ancillary offences related to money-laundering offences (see question 9 above) committed outside its territory with a view to the commission of the laundering of criminal proceeds in its territory (art. 15, para. 2 (c)(ii) of the Convention)?

21. If your country does not extradite its nationals, is it able to establish jurisdiction over offences covered by the Convention (and the Protocols) when those offences are committed by them outside its territory (*aut dedere aut judicare*) (arts. 15, para. 3, and 16, para. 10, of the Convention)?
22. If your country does not extradite an alleged offender on any other ground, is it able to establish jurisdiction over offences covered by the Convention (and the Protocols) when those offences are committed by that person outside its territory (art. 15, para. 4, of the Convention)?

Please provide a copy of your country's relevant legislation.

#### **F. Liability of legal persons (article 10)**

23. Is liability of legal persons established under your domestic legislation in accordance with article 10 of the Convention?
24. If the answer is "Yes", is this liability:
  - (a) Criminal? or
  - (b) Civil? or
  - (c) Administrative?
25. What kind of sanctions are provided for in your country's legislation (criminal, non-criminal or pecuniary)?

Please provide a copy of your country's relevant legislation.

#### **G. Confiscation and seizure (article 12)**

26. Does your domestic legislation enable confiscation of:
  - (a) Proceeds of crime derived from offences covered by the Convention (and the Protocols) (art. 12, para. 1 (a), of the Convention)?
  - (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (and the Protocols) (art. 12, para. 1 (b), of the Convention)?
  - (c) Proceeds of crime transformed or converted into other property (art. 12, para. 3, of the Convention)?
  - (d) Proceeds of crime intermingled with legitimately obtained property (art. 12, para. 4, of the Convention)?
  - (e) Income or other benefits derived from items described under (a), (c) and (d) above (art. 12, para. 5, of the Convention)?
27. Does your domestic legislation enable the identification, tracing, freezing or seizure of items described under question 26 above for the purpose of eventual confiscation?

28. Does your national legislation permit shifting the burden of proof to the defendant to show that alleged proceeds of crime were derived from legitimate sources (art. 12, para. 7, of the Convention)?
29. Does your domestic legislation permit access by your competent authorities to bank, financial or commercial records for:
  - (a) Investigation or prosecution of offences covered by the Convention (and the Protocols) in your country?
  - (b) Securing confiscation in your country (art. 12, para. 6, of the Convention)?

## **II. International cooperation requirements under the Convention**

### **A. Extradition (article 16)**

30. In your country, is extradition granted:
  - (a) By statute?
  - (b) By treaty or other agreement or arrangement (multilateral or bilateral)?
  - (c) By virtue of reciprocity or comity?
31. If in your country extradition is conditional on the existence of a treaty, does your country take the Convention as the legal basis for cooperation on extradition with other States parties to the Convention (art. 16, para. 5 (a), of the Convention)?
32. If in your country extradition is conditional on the existence of a treaty, are the offences covered by the Convention (and the Protocols) included as extraditable offences in existing (bilateral or multilateral) extradition treaties (art. 16, para. 3, of the Convention)?
33. If in your country extradition is granted by statute, does that statute include all offences covered by the Convention (and the Protocols) as extraditable offences (art. 16, para. 6, of the Convention)?
34. Is the double criminality requirement established in your domestic legal framework for granting an extradition request?
35. Does your domestic legal framework provide for specific evidentiary requirements for granting an extradition request (art. 16, para. 8, of the Convention)?
36. If the answer to question 35 above is “Yes”, please specify.
37. Are simplified extradition proceedings available in your country to facilitate prompt execution of the extradition request where the requested State and/or the fugitive have given consent to the surrender (art. 16, para. 8, of the Convention)?

38. Does your domestic legal framework permit extradition for offences involving fiscal matters (art. 16, para. 15, of the Convention)?
39. Does your domestic legal framework permit extradition of your nationals to another country?
40. If your country does not extradite its nationals, is it able to establish jurisdiction over offences covered by the Convention (and the Protocols) when those offences are committed by them outside its territory (*aut dedere aut judicare*) (arts. 15, para. 3, and 16, para. 10, of the Convention)? (See also question 21.)
41. Is conditional surrender in accordance with article 16, paragraph 11, of the Convention available in your country?
42. If your country does not extradite its nationals, is it able to enforce the sentence that has been imposed to the person sought under the domestic law of the requesting State (art. 16, para. 12, of the Convention)?

## **B. Mutual legal assistance (article 18)**

43. In your country, is mutual legal assistance afforded:
  - (a) By statute?
  - (b) By treaty or other agreement or arrangement (multilateral or bilateral)?
  - (c) By virtue of reciprocity or comity?
44. If in your country mutual legal assistance is conditional on the existence of a treaty, does your country take the Convention as the legal basis for cooperation on mutual legal assistance with other States parties to the Convention?
45. Which of the following types of mutual legal assistance does your country provide (art. 18, para. 3, of the Convention):
  - (a) Taking evidence or statements from persons?
  - (b) Effecting service of judicial documents?
  - (c) Executing searches and seizures, and freezing?
  - (d) Examining objects and sites?
  - (e) Providing information, evidentiary items and expert evaluations?
  - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records?
  - (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes?
  - (h) Facilitating the voluntary appearance of persons in the requesting State party?
46. Is bank secrecy a ground for refusal of a mutual legal assistance request under your domestic legal framework (art. 18, para. 8, of the Convention)?

47. Is the provision of mutual legal assistance subject to the double criminality requirement according to your domestic legal framework (art. 18, para. 9, of the Convention)?
48. If other grounds for refusal of a mutual legal assistance request are provided for in your domestic legal framework, please specify (art. 18, para. 21, of the Convention).
49. What kind of information does your domestic legal framework require for inclusion in a mutual legal assistance request (art. 18, para. 15, of the Convention)?

**C. International cooperation for purposes of confiscation (article 13) and disposal of confiscated proceeds of crime or property (article 14)**

50. Is your country able to confiscate the proceeds of crime, as described under question 26, at the request of another State party?
51. If the answer to question 50 is “Yes”:
  - (a) Is the request submitted to the competent authorities of your country for the purpose of obtaining a domestic order of confiscation (art. 13, para. 1 (a), of the Convention)?
  - (b) Is the request submitted to the competent authorities of your country for direct enforcement (art. 13, para. 1 (b), of the Convention)?
52. Does your domestic legal framework enable the competent authorities to identify, trace and freeze and seize the proceeds of crime, as described under question 26, for the purpose of eventual confiscation, at the request of another State party?
53. If the answer to question 52 is “Yes”:
  - (a) Is the request submitted to the competent authorities of your country for the purpose of obtaining a domestic order to identify, trace and freeze and seize the proceeds of crime for the purpose of eventual confiscation (art. 13, para. 2, of the Convention)?
  - (b) Is the request submitted to the competent authorities of your country for direct enforcement (art. 13, para. 2, of the Convention)?
54. Does your domestic legal framework enable the return of confiscated proceeds of crime and property in accordance with article 14 of the Convention?
55. Are there any agreements or arrangements in place to enable the sharing of proceeds of crime with other States parties?

### **III. Difficulties encountered and assistance required**

#### **A. Difficulties encountered**

56. If domestic legislation has not been adapted to the Convention's requirements on the above-mentioned issues, what steps remain to be taken? (For example, is legislation being drafted? Has legislation been submitted for approval?)
57. Are there any difficulties hampering the adoption of adequate national legislation? Please specify.

#### **B. Need for technical assistance**

58. Does your country require technical assistance to overcome such difficulties?
59. If the answer to question 58 is "Yes", please specify.

#### **C. Technical assistance provided**

60. Does your country provide technical assistance to other countries in the areas covered by this questionnaire:
    - (a) Bilaterally?
    - (b) Through international organizations?Please specify which organizations.
  61. If the answer to question 60 is "Yes", please specify the types of technical assistance provided.
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