



UNODC

United Nations Office on Drugs and Crime

Implementation
of the United Nations
Convention against Transnational
Organized Crime:
Needs Assessment Tools



UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Implementation of the
United Nations Convention
against Transnational Organized Crime:
Needs Assessment Tools



UNITED NATIONS
New York, 2016

© United Nations, August 2016. All rights reserved, worldwide.

The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

CONTENTS

Purpose of the tools	v
How to use the tools	vi
Mandatory and non-mandatory provisions	vii
I. SUBSTANTIVE CRIMINAL LAW	viii
Introduction	1
Tool 1. Criminalization of participation in an organized criminal group (article 5)	2
Tool 2. Criminalization of the laundering of proceeds of crime (articles 6 and 7)	7
Tool 3. Criminalization of and measures against corruption (articles 8 and 9)	14
Tool 4. Criminalization of obstruction of justice (article 23)	20
II. PROCEDURAL LAW TO ENSURE EFFECTIVE CRIMINALIZATION	24
Introduction	25
Tool 5. Jurisdiction over offences (article 15)	29
Tool 6. Liability of legal persons (article 10)	29
Tool 7. Prosecution, adjudication and sanctions (article 11)	33
Tool 8. Identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime (articles 12, 13 and 14)	40
Tool 9. Protection of witnesses and victims (articles 24, 25 and 26)	45
Tool 10. Special investigative techniques (article 20)	53
Tool 11. Establishment of a criminal record (article 22)	59
III. LEGISLATIVE AND ADMINISTRATIVE MEASURES TO ENHANCE MUTUAL LEGAL ASSISTANCE AND OTHER FORMS OF INTERNATIONAL COOPERATION	62
Introduction	63
Tool 12. Extradition (article 16)	63
Tool 13. Mutual legal assistance in criminal matters (article 18)	68
Tool 14. Other forms of international cooperation (articles 17, 19, 21 and 27)	73
IV. PREVENTION AND NATIONAL COORDINATION	80
Introduction	81
Tool 15. Prevention (article 31)	81
Tool 16. Data collection, analysis and exchange of information on the nature of organized crime (article 28)	88

Purpose of the tools

The United Nations Convention against Transnational Organized Crime and the Protocols thereto require action by States parties to harmonize their legislation with the Convention requirements. Article 34, paragraph 1, of the Convention calls upon each State party to take “the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention”.¹

The purpose of the present needs assessment tools is to provide guidance in assessing what should be done by States parties in order to ensure that the full potential of the Organized Crime Convention can be realized. The tools are to be used in the delivery of technical assistance, in particular in assessing the needs of States parties for technical assistance, with a focus on implementing legislation. At the domestic level, the tools can also enable experts, in particular policymakers and legislators, to assess the implementation of the Convention. That could include self-assessment. The tools consist of indicators and questions designed to:

- (a) Identify gaps in existing legislation and its implementation;
- (b) Facilitate the formulation and development of technical assistance projects that adequately respond to the gaps and needs identified;
- (c) Facilitate the development of performance indicators for evaluating progress in implementation.

¹ At its meeting held from 28 to 30 October 2013, the Working Group on Technical Assistance recommended, inter alia, that the United Nations Office on Drugs and Crime (UNODC) should continue to provide coordinated technical assistance to States to ensure the effective implementation of the Organized Crime Convention. The Working Group also recommended that UNODC should continue the development of technical assistance tools, for the Convention and the Protocols thereto and on specialized issues, including mutual legal assistance and extradition (see CTOC/COP/WG.2/2013/5).

How to use the tools

Each tool begins with an introductory paragraph, followed by details on the mandatory and non-mandatory provisions of the article or articles covered by that tool, and a succinct explanation of the legal requirements of the article or articles. The following three different sets of questions are included in the tools.



Compliance questions

Compliance questions determine whether or not States are complying with the requirements of the Convention. All tools include a list of core compliance questions. In some instances, secondary compliance questions are also provided, in order to determine the extent to which States are applying the articles in practice.



Key performance indicators

The answers given by States to key performance indicators are essential for the development of technical assistance activities because they identify key requirements, mandatory and optional alike, for the implementation of the relevant provisions of the Organized Crime Convention.



Additional questions

The additional questions are designed to enable further, specific needs for technical assistance and promising practices, as well as difficulties in implementation, to be identified.

Mandatory and non-mandatory provisions

Provisions of the Organized Crime Convention do not all have the same level of obligation. In general, provisions can be grouped into the following three categories:

- (a) Measures that are mandatory (either absolutely or where specified conditions have been met);
- (b) Measures that States parties must consider applying or endeavour to apply;
- (c) Measures that are optional.

In the tools, mandatory provisions are indicated by using the phrase “States parties are required to”. The provisions in which States parties are required to consider something are also indicated as mandatory provisions. This means that States parties are asked to seriously consider adopting a certain measure.

For entirely optional provisions the word “may” is used. Occasionally, States parties are required to choose between two options (for example, in article 5, paragraph 1 (a)). In such cases, States parties are free to opt for either or both options.

I.

Substantive
criminal law

INTRODUCTION

The Organized Crime Convention calls for the establishment of four forms of conduct as criminal offences, when committed intentionally: participation in an organized criminal group (article 5); laundering of proceeds of crime (article 6); corruption (article 8); and obstruction of justice (article 23).

The way in which conduct is established as a criminal offence varies between jurisdictions. Article 11, paragraph 6, of the Convention specifically stresses the principle that “the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party”. However, the criminal offences must be established by legislative measures and not simply by other measures, although these “other measures” may supplement the prescribing legislation.²

Scope

Although the Organized Crime Convention explicitly deals with transnational organized crime, the Convention requires each State party to criminalize certain conduct even if there is no transnational element or organized criminal group involved. According to article 34, paragraph 2, “the offences established in accordance with articles 5, 6, 8 and 23 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group”.

In other words, the criminalization must extend equally to purely domestic crimes, as well as to transnational crimes carried out by an organized criminal group or an individual.

Sanctions

The Organized Crime Convention does not require that the criminalization incorporate a specific sanction, for example, a certain number of years of imprisonment. The determination of the proper level of sanctions is left to each State party, in view of its general penal policy. However, according to article 11, paragraph 1, each State party is required to make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of the Convention “liable to sanctions that take into account the gravity of that offence”.

The level of sanctions will also generally be a factor in international cooperation. Many States will agree to a request for international cooperation (such as extradition and mutual legal assistance) only if the maximum sentence that is applicable to the offence in question is above a certain level, such as two years’ imprisonment.

²See *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 57, footnote 39.

TOOL 1

CRIMINALIZATION OF PARTICIPATION IN AN ORGANIZED CRIMINAL GROUP (ARTICLE 5)

Introduction

Criminalization of participation in an organized criminal group is aimed at targeting the increased public safety threats posed by organized criminal groups. The Organized Crime Convention provides for two different approaches to criminalizing participation in an organized criminal group, and a combination of the two is possible. One is based on the concept of conspiracy (a concept widely used in common law countries) and the other is based on the concept of criminal association (a concept that emerged in civil law countries).

Mandatory provisions

Under article 5, paragraph 1 (a), States parties are required to establish either or both of the acts set forth in its subparagraphs (i) and (ii) as criminal offences in their domestic laws.

Conspiracy

The offence based on the concept of conspiracy is defined in article 5, subparagraph 1 (a) (i), as follows:

Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.

The offence established under article 5, subparagraph 1 (a) (i), is akin to the common law conspiracy model. Liability for the offence is based on an agreement to commit serious crime. The elements of the offence are the agreement to commit a crime and doing so for the purpose of obtaining a financial or other benefit. In essence, liability under article 5, subparagraph 1 (a) (i), arises when two or more persons deliberately enter into an agreement to commit a serious crime for the purpose of obtaining some material benefit. Unlike liability for attempt in certain legal traditions, there is no requirement to demonstrate that the accused came close (“proximate”) to the completion of the substantive offence (or “serious crime”).

Criminal association

The offence based on the concept of criminal association is defined in article 5, subparagraph 1 (a) (ii), as follows:

Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

- a. Criminal activities of the organized criminal group;
- b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.

The offence covered by article 5, subparagraph 1 (a) (ii), adopts a model that attaches criminal liability to intentional contributions to organized criminal groups, not to the pursuit of a preconceived plan or agreement. Under that subparagraph, the accused must have been taking an active part in either the criminal activities of the organized criminal group or other activities of such a group. Determining whether the person concerned has taken an active part is a question of fact and jurisdictions may vary in determining if and when more passive roles suffice to establish that element. The “other activities” may not constitute crimes in themselves, but they may perform a supportive function for the group’s criminal activities and goals.

Secondary liability

Under article 5, paragraph 1 (b), States are required to establish criminal liability to persons who provide advice or assistance with respect to the commission of serious crimes involving an organized criminal group. This specifically includes persons intentionally “organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group”. That paragraph therefore covers the prosecution of leaders, accomplices, organizers and arrangers as well as lower-level participants in the commission of serious crime.

Inference of mental elements

Under article 5, paragraph 2, States are required to have the legal framework to enable the knowledge, intent, aim, purpose or agreement referred to in article 5, paragraph 1, to be inferred from objective factual circumstances. If the legal tradition of a State does not permit such circumstantial evidence to be used to establish such mental state, action must be taken to conform to the requirements of the paragraph.



Core compliance questions

Regardless of whether the State employs a “conspiracy” or a “criminal association” approach:

- Please list and cite the name(s) of legislation that implements article 5 of the Organized Crime Convention and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Does the legislation criminalize all of the following forms of participation?:
“Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group”
 - ▷ If not, which forms are not criminalized?

If the State follows the “conspiracy” approach:

- Does the legislation criminalize conspiracy, meaning an agreement between two or more persons to commit a serious crime?³
- Does the crime of conspiracy extend to agreements on the commission of any serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit?
- Does the legislation require the person to actually take action in carrying out the agreement or the objective of an organized criminal group?

If the State uses the “criminal association” approach:

- Does the legislation criminalize conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in the criminal activities of the organized criminal group?
- Does the legislation criminalize conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in other non-criminal activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the criminal aim?
- Does the legislation define the concept of “organized criminal group”?
 - ▷ If yes, does the definition encompass the elements specified in article 2, paragraph a, of the Organized Crime Convention, namely:
 - (a) Being a structured group of three or more persons;
 - (b) Existing for a period of time;

³A serious crime is defined in the Organized Crime Convention as conduct constituting an offence that is punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

- (c) Acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention or any of its Protocols to which the State is a party;
- (d) Acting with the intention of obtaining, directly or indirectly, a financial or other material benefit.

In relation to training on participation in an organized criminal group:

- Have prosecutors, judges and other relevant professionals received training on the criminalization of participation in an organized criminal group:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions offering training on the criminalization of and measures against participation in an organized criminal group?
- Does multi-agency training on the criminalization of and measures against participation in an organized criminal group take place?
 - If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on the criminalization of and measures against participation in an organized criminal group?
 - If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the criminalization of and measures against participation in an organized criminal group?
- Do any civil society organizations and/or academics give training on organized crime-related matters, crime prevention or related areas such as human rights, including victim issues?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the criminalization of participation in an organized criminal group:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the criminalization of and measures against participation in an organized criminal group?
 - If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on the criminalization of and measures against participation in an organized criminal group?
 - If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the criminalization of and measures against participation in an organized criminal group?
 - If yes, please list in which ways.



Key performance indicators

- In the last 12 months, how many cases of participation in an organized criminal group were reported?
- In the last 12 months, how many of cases of participation in an organized criminal group were cleared?⁴
- In the last 12 months, how many cases of participation in an organized criminal group were forwarded to the prosecutorial service for the presentation of charges?
- In the last 12 months, of the cases of participation in an organized criminal group forwarded to the prosecutorial service, how many did the prosecutorial service decline to prosecute?
- In the last 12 months, how many prosecutions of participation in an organized criminal group resulted in:
 - (a) A conviction?
 - (b) An acquittal?



Additional questions

- What factors have led to successful investigations and/or prosecutions? Please elaborate on promising practices.
- What problems or challenges have been encountered during investigations and/or prosecutions and how were they resolved?

⁴“Cleared” means that the accusation against a person has not been substantiated by evidence and the investigator cannot make a case against the suspect.

TOOL 2

CRIMINALIZATION OF THE LAUNDERING OF PROCEEDS OF CRIME (ARTICLES 6 AND 7)

Introduction

The first time that the concept of the laundering of proceeds of crime (in the context of drug trafficking) was incorporated into a United Nations treaty was in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The Organized Crime Convention expands the scope of the laundering of proceeds of crime to include a broad category of predicate offences.

Mandatory provisions

Under article 6, States parties are required to criminalize two types of conduct, when committed intentionally:

- (a) Conversion or transfer of the proceeds of crime (art. 6, subpara. 1 (a) (i));
- (b) Concealment or disguise of the proceeds of crime (art. 6, subpara. 1 (a) (ii)).

Article 6 also requires States parties, subject to the basic concepts of their domestic legal system, to criminalize two further types of conduct, when committed intentionally:

- (a) Acquisition, possession or use of the proceeds of crime (art. 6, subpara. 1 (b) (i));
- (b) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of the laundering of the proceeds of crime (art. 6, subpara. 1 (b) (ii)).

States parties are required to ensure that knowledge, intent or purpose, required as an element of the four offences related to laundering the proceeds of crime set forth in article 6, paragraph 1, may be inferred from objective factual circumstances (art. 6, para. 2 (f)). Under article 6, paragraphs 2 (a) and (b), States are also required to ensure that the money-laundering offences be applicable to the “widest range of predicate offences” and are required to include as predicate offences the offences established in accordance with articles 5, 8 and 23 of the Convention and the offences established in the Protocols supplementing the Convention to which States are parties, as well as all serious crimes (see article 2, paragraph (b), for the definition of “serious crimes”).⁵

Article 7 of the Organized Crime Convention requires States parties to:

- (a) Establish a regulatory and supervisory regime for banks and non-bank financial institutions and other bodies susceptible to money-laundering that emphasizes

⁵ See also Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: the FATF Recommendations* (Paris, February 2012), p. 34.

requirements for customer identification, record-keeping and the reporting of suspicious transactions;

- (b) Ensure that administrative, regulatory, law enforcement and other authorities have the capacity to cooperate and exchange information at both the national and international levels.

Article 7, paragraph 3, of the Convention also calls upon States parties to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. An example of such an organization is the Financial Action Task Force. Article 7, paragraph 4, requires States parties to endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering. Despite the following measures being optional under the Organized Crime Convention, States are required, under the Financial Action Task Force recommendations and other guidelines, to:

- (a) Consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering;
- (b) Consider implementing feasible measures to detect and monitor the movements of cash and negotiable instruments across their borders, such as reporting requirements for substantial cross-border transfers.



Core compliance questions

- Please list and cite the name(s) of legislation that implements measures to counter money-laundering and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Does the legislation criminalize the conversion or transfer and concealment or disguise of the proceeds of crime?
- Does the legislation criminalize the acquisition, possession or use of property where the person in question knew that such property represented the proceeds of crime?
- Does liability for money-laundering offences extend to participating in, attempting to commit, conspiring to commit and aiding, abetting, facilitating and counselling the commission of such offences?
 - ▷ If not, which of the above-mentioned forms of liability are not criminalized?
- Does the scope of “proceeds of crime” include any property derived from or obtained, directly or indirectly, through the commission of a predicate offence?

- Does the scope of “property” include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets?
 - ▷ If not, which of the above-mentioned forms of assets are not included in the scope of “property”?
- What approach does the legislation provide for in defining the scope of “predicate offences”?
 - (a) All offences;
 - (b) A threshold linked to a category of serious offences;⁶
 - (c) A threshold linked to the penalty of imprisonment applicable to the predicate offence;
 - (d) A list of predicate offences;⁷
 - (e) A combination of these approaches (please specify which).
- Does the scope of “predicate offences” include the offences of participation in an organized criminal group, corruption and obstruction of justice, established in accordance with articles 5, 8 and 23 of the Convention, as well as offences established by the Protocols thereto to which the State is a party?
 - ▷ If not, which of the above-mentioned offences are not included in the scope of “predicate offences”?
- Does the scope of “predicate offences” include offences committed outside of the jurisdiction of the State party, to the extent that relevant conduct is a criminal offence under the domestic legislation of the State where it is committed and would be a criminal offence under the domestic legislation of the State implementing or applying article 6, had it been committed there?
- Are money-laundering provisions applicable to persons who have committed the predicate offence (self-laundering), or are predicate offences and money-laundering punished separately?
- Are banks and non-bank financial institutions and other bodies susceptible to money-laundering required to ensure effective customer identification and other customer due diligence measures?
 - ▷ If yes, what measures, and are beneficial owners covered?⁸
 - ▷ Are banks and non-bank financial institutions required to keep accurate records?⁹

⁶The threshold or all-serious-crime approach, in accordance with the definition of “serious crime” under article 2, paragraph (b), of the Organized Crime Convention, means that the legislation defines predicate offences as any offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

⁷The list approach means that the legislation includes a list of specific predicate offences, which includes, at a minimum, a comprehensive range of offences associated with organized criminal groups.

⁸Required measures may include the identification of document holders of accounts and all parties to financial transactions and the retention of records with sufficient information to identify all parties, the nature of the transaction, specific assets, the amounts or values involved and the source and destination of all funds or other assets. Customer due diligence requirements should be implemented in line with recommendations 10, 11, 22 and 23 of the Financial Action Task Force (*International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*).

⁹For guidance on record-keeping requirements, see Financial Action Task Force recommendation 11.

- ▷ Are banks and non-bank financial institutions required to have a mechanism for reporting suspicious transactions?¹⁰
- Does the legislation define the concept of “reporting of suspicious transactions”?
- Do competent authorities provide guidelines to banks and non-bank financial institutions on the detection of suspicious transactions?
 - ▷ If yes, please list the relevant competent authorities and the instruments that they issue, e.g. regulations, decrees, guidelines, etc.
- Has a financial intelligence unit been established?
 - ▷ If yes, has the established financial intelligence unit sought membership in the Egmont Group?¹¹
 - ▷ If so, is the financial intelligence unit a member of the Egmont Group?
 - ▷ What type of financial intelligence unit was established?
 - (a) Administrative;
 - (b) Law enforcement;
 - (c) Judicial;
 - (d) A hybrid (please specify).
 - ▷ What are its resources?
 - ▷ How does it operate?
 - ▷ To which agencies does it disseminate information?
- Does the financial intelligence unit have access, on a timely basis, to financial, administrative and law enforcement information to achieve its objectives in assessing the suspicious transaction?
- Does the financial intelligence unit provide reporting entities with adequate guidance or instructions on reporting a suspicious transaction?
- Do regulators and staff of the financial intelligence unit have powers to inspect records and to compel record-keepers to produce records?¹²
- Are financial institutions protected against civil and other claims for disclosing client records to regulators and financial intelligence units?
- Which reporting entities are protected against such claims in the State?
- Are reporting entities, including banks, required to report suspicious transactions?
- Does such an obligation apply to, inter alia, the following?
 - (a) Proceeds of all offences that are required to be included as predicate offences under Financial Action Task Force recommendation 3 (see the glossary entry

¹⁰For guidance on reporting requirements, see Financial Action Task Force recommendation 20.

¹¹For guidance on financial intelligence units, see Financial Action Task Force recommendation 29 and the interpretive note thereto.

¹²Bank and other commercial secrecy and legal privilege should not be an obstacle to the obtaining of information for a money-laundering investigation (see Financial Action Task Force recommendations 9 and 40).

for “designated categories of offences” in *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*);

- (b) Funds suspected to be linked or related to the financing of terrorism;
 - (c) All suspicious transactions, including attempted transactions, regardless of whether the transaction involves tax matters.
- Are enhanced customer due diligence measures in place for dealings with politically exposed persons, as defined in Financial Action Task Force recommendation 12?
 - ▷ If yes, are both domestic and international politically exposed persons covered?
 - ▷ If yes, are persons who are or have been entrusted with prominent functions by an international organization covered?
 - Does the State have policies and procedures in place to address the risks associated with non-face-to-face business relationships or transactions?
 - Are measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation?
 - Have measures been implemented to establish a regime for banks and financial institutions to deter and detect money-laundering?
 - Are there special provisions to counter money-laundering in relation to offences related to organized crime?
 - Are investigators authorized to conduct financial investigations?
 - Are investigators equipped to conduct financial investigations?
 - Do investigators cooperate with financial intelligence units?
 - ▷ If yes, during which stage(s) and to what extent?
 - Have measures been implemented to ensure that the authorities dedicated to combating money-laundering can cooperate and exchange information at both the national and international levels?
 - Have other measures been implemented to detect and monitor cross-border cash flows?
 - What is the situation in the State with respect to informal money or value transfer systems, such as hawala or *hundi*?
 - Is the State a member of the Financial Action Task Force?
 - Is the State a member of another regional group to counter money-laundering (Financial Action Task Force-style regional body)?
 - Has the State undergone a mutual evaluation by its peers (in the context of Financial Action Task Force or a Financial Action Task Force-style regional body)?
 - ▷ If yes, when was the assessment carried out?
 - ▷ What deficiencies were identified?
 - ▷ What steps have been taken to remedy those deficiencies?

In relation to training on the criminalization of the laundering of proceeds of crime:

- Have prosecutors, judges and other relevant professionals received training on the criminalization of the laundering of the proceeds of crime:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are investigators trained to conduct financial investigations?
- Are there any training institutions offering training on the criminalization of laundering the proceeds of crime?
- Does multi-agency training on the criminalization of the laundering of proceeds of crime take place?
 - If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on the criminalization of the laundering of proceeds of crime?
 - If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the criminalization of the laundering of proceeds of crime?
- Do any civil society organizations or academics give training on matters related to countering money-laundering?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the criminalization of the laundering of proceeds of crime:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the criminalization of the laundering of proceeds of crime?
 - If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on the criminalization of the laundering of proceeds of crime?
 - If yes, please list the training received and from which countries or regions.
- Does the State require technical assistance on the criminalization of the laundering of proceeds of crime?
 - If yes, please list the main technical assistance needs.



Key performance indicators

- In the last 12 months, how many suspicious transactions were reported to the financial intelligence unit?
- In the last 12 months, how many financial investigations were conducted?
 - ▷ How many of those financial investigations were done in parallel to investigations into predicate offences?
- In the last 12 months, how many money-laundering cases have been referred by financial investigators to prosecutors?
 - ▷ How many of those cases were cleared?¹³
- In the last 12 months, of the cases of money-laundering forwarded to the prosecutorial service, how many have the prosecutorial service declined to prosecute?
- In the last 12 months, how many prosecutions of money-laundering have resulted in:
 - (a) A conviction?
 - (b) An acquittal?



Additional questions

- What factors have led to successful investigations and/or prosecutions? Please elaborate on promising practices.
- What problems or challenges have been encountered during investigations and/or prosecutions and how were they resolved?

¹³“Cleared” means that the accusation against a person has not been substantiated by evidence and the investigator cannot make a case against the suspect.

TOOL 3

CRIMINALIZATION OF AND MEASURES AGAINST CORRUPTION (ARTICLES 8 AND 9)

Introduction

Organized criminal groups frequently make use of corruption in the course of their operations. Bribery and other acts of corruption are used to create or exploit opportunities for criminal operations and to protect those operations from interference by criminal justice systems and other control structures. For organized criminal groups, corruption reduces risks, increases criminal profits and is less likely to attract the same attention and punishment as attempts to influence public officials through intimidation or violence.

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem. The Convention covers five main areas: prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange. The Organized Crime Convention recognizes that corruption is a method used by organized criminal groups and it is a key enabler of the activities of such groups.

Mandatory provisions

Article 8, paragraph 1, of the Organized Crime Convention requires States parties to criminalize two types of conduct, when committed intentionally:

- (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (active bribery);
- (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (passive bribery).

In addition, States are required to establish as a criminal offence the participation as an accomplice in the commission of an offence of corruption.

During the negotiation process for the drafting of the Organized Crime Convention, the provision on the establishment of the offence of corruption was the subject of extensive debate, mainly because it was deemed a limited effort against a much broader phenomenon. In view of the fact that corruption is one of the methods used in organized crime and in the activities of organized criminal groups, the approach finally selected was to include a provision in the Organized Crime Convention targeting corruption in the public sector.

This was done on the understanding that the Convention could not cover the issue of corruption in a comprehensive manner and a separate international instrument would be needed for that purpose.

The subsequent negotiations for the elaboration of such an instrument led to the adoption by the General Assembly of the Convention against Corruption.

Under article 9 of the Organized Crime Convention, States parties are required to adopt legislative, administrative or other measures, as appropriate and consistent with their legal systems, in order to:

- (a) Promote integrity;
- (b) Prevent, detect and punish corruption of public officials;
- (c) Ensure effective action by national authorities in the prevention, detection and punishment of the corruption of public officials.

Finally, article 9, paragraph 2, requires States parties to provide anti-corruption authorities with sufficient independence to deter undue influence.



Core compliance questions

- Is the State a party to the Convention against Corruption?¹⁴
- Has the State been reviewed under the Mechanism for the Review of Implementation of the United Nations Convention against Corruption?
 - ▷ If yes, what were the main findings regarding the implementation of articles 15, 16 and 27, paragraph 1, of the Convention, which correspond to the criminalization requirements set out in article 8, paragraphs 1, 2 and 3, of the Organized Crime Convention?
- Please list and cite the name(s) of legislation that implements anti-corruption measures and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Does the legislation criminalize:
 - (a) The promise, offering or giving to a public official of an undue advantage in order that the official act or refrain from acting in the exercise of his or her official duties (active bribery)?
 - (b) The solicitation or acceptance by a public official of an undue advantage in order that the official act or refrain from acting in the exercise of his or her official duties (passive bribery)?

¹⁴For the ratification status of the Convention against Corruption, see www.unodc.org/unodc/en/treaties/CAC/signatories.html.

- Does the legislation define the concept of “public official”?
- Does the scope of the provisions criminalizing corruption include both action and refraining from action by officials in the exercise of their official duties?
- Does the legislation extend the concept of “public official” to include a foreign public official or international civil servant?
- Does the legislation define “undue advantage” to include both tangible and intangible advantages?
- Does the legislation establish other forms of corruption as criminal offences (art. 8, para. 2)?
 - ▷ If yes, are the following corruption-related offences, which are covered by the Convention against Corruption, established as criminal offences in the legislation?
 - (a) Embezzlement, misappropriation or other diversion of property by a public official and in the private sector;
 - (b) Trading in influence;
 - (c) Abuse of functions;
 - (d) Illicit enrichment;
 - (e) Concealment;
 - (f) Bribery in the private sector.
- Does liability for corruption-related offences cover intentionally, knowingly or negligently engaging in prohibited conduct?
 - ▷ Can strict liability be applied?
- Does liability for the offences extend to participating in, attempting, conspiring in, aiding, abetting, facilitating and counselling the commission of those offences?
- Is there a national anti-corruption commission?

In relation to training on the criminalization of and measures against corruption:

- Have prosecutors, judges and other relevant professionals received training on the criminalization of and measures against corruption:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions offering training on the criminalization of and measures against corruption?
- Does multi-agency training on the criminalization of and measures against corruption take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?

- Is the State a beneficiary of internationally provided training activities on the criminalization of and measures against corruption?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the criminalization of and measures against corruption?
- Do any civil society organizations or academics give training on corruption-related matters?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the criminalization of corruption:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the criminalization of and measures against corruption?
 - ▷ If yes, please list in which ways and specify in which countries or regions.
- Has the State received technical assistance on the criminalization of and measures against corruption?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the criminalization of and measures against corruption?
 - ▷ If yes, please list in which ways.

TOOL 3



Secondary compliance questions

- If there is a national anti-corruption commission, what is its remit in dealing with corruption? Does it have a preventive or a law enforcement mandate, or both?
 - ▷ What are the most recent findings of the national anti-corruption commission?
 - ▷ What recommendations has the national anti-corruption commission made (if any) towards improving action to combat corruption in the country?



Key performance indicators

- In the last 12 months, how many cases of active bribery or passive bribery have been reported?
 - ▷ How many of those cases were cleared?¹⁵
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- In the last 12 months, how many cases of embezzlement, misappropriation or other diversion of property by a public official have been reported?
 - ▷ How many of those cases were cleared?
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- In the last 12 months, how many cases of bribery of foreign public officials and officials in public international organizations were reported?
 - ▷ How many of those cases were cleared?
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- In the last 12 months, how many cases of trading in influence were reported?
 - ▷ How many of those cases were cleared?

¹⁵“Cleared” means that the accusation against a person has not been substantiated by evidence and the investigator cannot make a case against the suspect.

- ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- In the last 12 months, how many cases of abuse of functions by a public official were reported?
 - ▷ How many of those cases were cleared?
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- In the last 12 months, how many cases of illicit enrichment by a public official were reported?
 - ▷ How many of those cases were cleared?
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- In the last 12 months, how many cases of bribery in the private sector were reported?
 - ▷ How many of those cases were cleared?
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- Are public officials subject to financial disclosure obligations?
- Does the legislation criminalize the filing of a false financial disclosure form?

- What is the sanction for filing a false financial disclosure form?
- What is the sanction for failing to file a required financial disclosure form?
- Are the provisions penalizing failure to file financial disclosure forms and the filing of false financial disclosure forms enforced?



Additional questions

- What factors have led to successful investigations and/or prosecutions? Please elaborate on promising practices.
- What problems or challenges have been encountered during investigations and/or prosecutions and how were they resolved?

TOOL 4

TOOL 4

CRIMINALIZATION OF OBSTRUCTION OF JUSTICE (ARTICLE 23)

Introduction

Organized criminal groups maintain or expand their wealth, power and influence by seeking to undermine systems of justice. Threats, coercion and violence are often used to pervert the course of justice, for example, by creating or presenting false evidence, giving false testimony or by influencing or intimidating witnesses. No justice can be done if actors in the criminal justice process are intimidated, threatened or corrupted.

Mandatory provisions

Article 23 of the Organized Crime Convention requires the criminalization of the following acts of obstruction of justice:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by the Organized Crime Convention (art. 23, para. (a));
- (b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by the Convention (art. 23, para. (b)).

The offence covered by article 23, paragraph (a), relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States parties are obliged to criminalize the use of both corrupt means, such as bribery, and coercive means, such as the use or threat of violence.

Article 23, paragraph (b), relates to interference with the actions of judicial or law enforcement officials. The requirement extends to force, threats and intimidation that interfere both directly and indirectly with the exercise of official duties by a justice or law enforcement official.



Core compliance questions

- Please list and cite the name(s) of legislation that criminalizes the obstruction of justice and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Does the legislation criminalize:
 - (a) The use of physical force, threats or intimidation (coercive means) to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by the Organized Crime Convention?
 - (b) The promise, offer or giving of an undue advantage (corrupt means) to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by the Convention?
 - (c) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by the Convention? This may include situations involving intimidation of jurors, court reporters, translators and others who may be associated with the administration of justice (i.e. a justice official)?
 - (d) Force, threats and intimidation that interfere both directly and indirectly with the exercise of official duties by a justice or law enforcement official?

In relation to training on the criminalization of the obstruction of justice:

- Have prosecutors, judges, law enforcement personnel and/or other relevant professionals received training on the criminalization of obstruction of justice:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?

TOOL 4

- Are there any training institutions offering training on the criminalization of and measures against the obstruction of justice?
- Does multi-agency training on the criminalization of and measures against the obstruction of justice take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on the criminalization of and measures against the obstruction of justice?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the criminalization of and measures against the obstruction of justice?
- Do any civil society organizations or academics give training on matters relating to the criminalization of and measures against obstruction of justice?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the criminalization of and measures against the obstruction of justice:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the criminalization of and measures against the obstruction of justice?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on the criminalization of and measures against the obstruction of justice?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the criminalization of and measures against the obstruction of justice?
 - ▷ If yes, please list in which ways.



Key performance indicators

- In the last 12 months, how many cases of obstruction of justice were reported?
 - ▷ How many of these cases were cleared?¹⁶
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?
 - ▷ How many cases did the prosecutorial service decline to prosecute?

¹⁶“Cleared” means that the accusation against a person has not been substantiated by evidence and the investigator cannot make a case against the suspect.

- ▷ How many prosecutions resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- Have the sentences for obstruction of justice resulted in prison time consecutive (as opposed to concurrent) to that served as the result of conviction for other criminal conduct?



Additional questions

- What factors have led to successful investigations and/or prosecutions? Please elaborate on promising practices.
- What problems or challenges have been encountered during investigations and/or prosecutions and how were they resolved?

TOOL 4

II.

Procedural law
to ensure effective
criminalization

INTRODUCTION

The Organized Crime Convention contains several provisions to ensure its effective application and operation and, in particular, its criminalization requirements. This includes provisions relating to jurisdiction to prosecute and punish offences covered by the Convention (art. 15), liability of legal persons for offences covered by the Convention (art. 10), provisions relating to prosecution, adjudication and sanctions (art. 11), confiscation and seizure of proceeds of crime (art. 12), protection of witnesses and victims (arts. 24-26), special investigative techniques (art. 20) and the establishment of a criminal record (art. 22).

TOOL 5

JURISDICTION OVER OFFENCES (ARTICLE 15)

Introduction

Offenders frequently commit crimes in the territories of more than one State and try to evade national regimes by moving between States. The main concern of the international community is that no serious crimes go unpunished and that all parts of the crime are punished wherever they took place. Jurisdictional gaps that enable fugitives to find safe havens need to be reduced or eliminated. In cases where a criminal group is active in several States that may have jurisdiction over the conduct of the group, the international community seeks to ensure that there is a mechanism available for those States to coordinate their efforts. The jurisdiction to prosecute and punish such crimes is addressed in article 15 of the Convention.

Mandatory provisions

Article 15, paragraph 1, of the Organized Crime Convention requires States parties to assert jurisdiction over the offences established in accordance with the Convention when they are committed:

- (a) In their territory (territoriality principle);
- (b) On board a ship flying their flag (flag principle);
- (c) On board an aircraft registered under their laws (flag principle).

In addition, under article 15, paragraph 3, in cases where an alleged offender is in the territory of a State party and the State party does not extradite him or her solely on the ground that he or she is one of its nationals (see art. 16, para. 10), that State party must be able to assert jurisdiction over the commission of the following, even when committed outside its territory:

- (a) Offences established in accordance with articles 5, 6, 8 and 23 of the Convention, when they involve an organized criminal group;

TOOL 5

- (b) Serious crime that involves an organized criminal group, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State party and the requested State party;
- (c) Offences established in accordance with the Protocols supplementing the Convention to which States are parties.

Also, under article 15, paragraph 5, the Convention requires States parties that become aware that other States parties are investigating or prosecuting the same offence to consult those other parties and, as appropriate, coordinate their actions. In some cases, such coordination will result in one State party deferring to the investigation or prosecution of another. In other cases, the States parties concerned may be able to advance their respective interests through the sharing of the information they have gathered. In yet other cases, States parties may each agree to pursue certain actors or offences, leaving other actors or related conduct to the other States parties. The obligation to consult is operational in nature and may not require any domestic implementing legislation. Those steps also need to be taken into consideration when criminal proceedings are transferred between States parties and when States parties intend to engage in joint investigations.

Non-mandatory provisions

Article 15, paragraph 2, sets forth a number of further bases for jurisdiction that States parties may wish to consider when:

- (a) The offence is committed against one of their nationals (art. 15, para. 2 (a)) or against a habitual or permanent stateless person resident in their territory. This may also extend to offences against nationals committed abroad (the so-called “passive personality principle”);
- (b) The offence is committed by one of their nationals or by a habitual resident in their territory (art. 15, para. 2 (b)—the so-called “active personality principle”);
- (c) The offence relates to activities outside their territory of an organized criminal group aimed at the commission of a serious crime inside their territory (art. 15, subpara. 2 (c) (i)—the so-called “protection principle”);
- (d) The offence consists of participation in money-laundering outside their territory aimed at the laundering of criminal proceeds in their territory (art. 15, subpara. 2 (c) (ii));
- (e) The alleged offender is present in its territory and the State party does not extradite him or her (art. 15, para. 4).



Core compliance questions

- Please list and cite the name(s) of legislation that asserts jurisdiction over the offences established on the basis of the Organized Crime Convention and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Has the legislation established jurisdiction:
 - (a) In accordance with the territoriality principle (cases where the offence is committed in the territory of the State)?
 - (b) In accordance with the flag principle (cases where the offence is committed on board a vessel that is flying the flag of the State or an aircraft that is registered under the legislation of the State at the time that the offence was committed)?
 - (c) Under article 15, paragraph 3, in cases where an alleged offender is in the territory of a State and the State does not extradite him or her solely on the ground that he or she is their national (see art. 16, para. 10)?
- Subject to article 4, on the protection of sovereignty, has the legislation established jurisdiction in accordance with the following principles:
 - (a) The passive nationality principle (art. 15, para. 2 (a))?
 - (b) The active nationality principle (art. 15, para. 2 (b))?
 - (c) The protection principle (art. 15, para. 2 (c) (i))?
- Has the legislation established jurisdiction in accordance with the principle “extradite or prosecute”, also known as *aut dedere aut judicare* (art. 15, para. 4)?
- Has the legislation established universal jurisdiction over certain conduct, in line with some agreements, such as Security Council resolutions?¹⁷
- Does the territorial jurisdiction of the State include territorial waters (see United Nations Convention on the Law of the Sea)?
- Can jurisdiction be exercised on the high seas?
 - ▷ How is that stipulated in the national legal framework?

In relation to training on jurisdiction over the offences established on the basis of the Organized Crime Convention:

- Have prosecutors, judges and other relevant professionals received training on jurisdiction over offences covered by the Organized Crime Convention:
 - (a) In the last year?
 - (b) In the last one to two years?

¹⁷See, for instance, Security Council resolution 1267 (1999).

TOOL 5

- (c) In the last two to five years?
- (d) More than five years ago?
- Are there any training institutions offering training on jurisdiction over the offences covered by the Organized Crime Convention?
- Does multi-agency training on jurisdiction over the offences covered by the Organized Crime Convention take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities relating to jurisdiction over the offences covered by the Organized Crime Convention?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities relating to jurisdiction over the offences covered by the Organized Crime Convention?
- Do any civil society organizations or academics give training on matters relating to jurisdiction over offences covered by the Organized Crime Convention?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on matters relating to jurisdiction over offences under the Organized Crime Convention:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance in matters relating to jurisdiction over offences covered by the Organized Crime Convention?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on matters relating to jurisdiction over offences covered by the Organized Crime Convention?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on matters relating to jurisdiction over offences covered by the Organized Crime Convention?
 - ▷ If yes, please list in which ways.



Key performance indicators

- In the last 12 months, how many cases involving an offence related to organized crime that was committed outside the territory of the State were prosecuted on the basis of the passive or active personality or protection principles?
- In the last 12 months, how many cases did the prosecutorial service decline to prosecute?

- In the last 12 months, how many times were consultations held with other States over multiple jurisdiction issues in order to coordinate their actions?¹⁸
- In the last 12 months, in how many cases was universal jurisdiction applied?
- In the last 12 months, in how many cases did domestic courts rely on evidence from foreign jurisdictions?
- In the last 12 months, in how many cases did domestic courts examine the application of the Convention or its Protocols in any judicial proceeding?



Additional questions

- What factors have led to successful investigations and/or prosecutions in cases where issues arose from multiple jurisdictions? Please elaborate on promising practices.
- What problems or challenges have been encountered during investigations and/or prosecutions of cases with multiple jurisdictions and how were they resolved?

TOOL 6

TOOL 6

LIABILITY OF LEGAL PERSONS (ARTICLE 10)

Introduction

Serious and organized crime is frequently committed through or under the cover of legal entities, such as companies or charitable organizations. Complex corporate structures can effectively hide the true ownership, clients or particular transactions related to crimes ranging from smuggling and trafficking to money-laundering and corruption. Individual executives may reside outside the State where the offence was committed and the responsibility of specific individuals may be difficult to prove. In order to remove this instrument and shield of transnational organized crime, the Organized Crime Convention requires the establishment of liability for legal entities. Article 10, on the liability of legal persons, is an important recognition of the role that legal persons may play in the commission and facilitation of transnational organized crime.

¹⁸ Actions surrounding the investigation, prosecution and adjudication of cases covered by the Organized Crime Convention and its Protocols.

Mandatory provisions

Article 10 of the Organized Crime Convention requires the establishment of liability for legal entities, consistent with the State party's legal principles, for the following:

- (a) Serious crimes (as defined in article 2, paragraph (b), of the Convention), involving an organized criminal group;
- (b) Offences established in accordance with articles 5, 6, 8 and 23 of the Convention;
- (c) Offences covered under the three Protocols to the Convention to which States are parties (article 1, paragraph 3, of each Protocol).

Article 10, paragraph 2, of the Convention provides that the liability required may be criminal, civil or administrative. The obligation to provide for the liability of legal entities is mandatory. There is no obligation, however, to establish criminal liability, in view of the divergent approaches followed in different legal traditions.¹⁹

Under article 10, paragraph 3, the liability of legal entities must be established without prejudice to the criminal liability of the natural persons who have committed the offences. The liability of legal persons who perpetrated the acts, therefore, is in addition to any liability of natural persons. When an individual commits crimes on behalf of a legal entity, it must be possible to prosecute and sanction both the individual and the legal entity.

Article 10, paragraph 4, requires that States parties ensure that legal persons held liable in accordance with article 10 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 18, paragraph 2, of the Convention requires States parties to afford requesting States parties the fullest extent of mutual legal assistance possible under their relevant laws in relation to offences for which a legal person may be held liable.



Core compliance questions

- Please list and cite the name(s) of legislation, jurisprudence or administrative instruments on liability of legal persons and, where necessary, indicate the relevant parts (chapter, article, section, paragraph, etc.).

¹⁹The approaches adopted by common and civil law jurisdictions on the issue of criminal liability of legal persons have differed notably over the years. The first attempts to impose corporate criminal liability were made by common law countries following standing principles in tort law. In doing so, and at a jurisprudence level, the English courts, for example, followed the doctrine of vicarious liability, in which the acts of a subordinate are attributed to the corporation. On the other hand, the incorporation of corporate criminal liability into the criminal codes of civil law jurisdictions has met a wide range of criticism, because the continental European legal systems are based on the principle of individual guilt. The principle that corporations cannot commit crimes (*societas delinquere non potest*) was widely accepted. A sui generis approach is followed in the German legal system where, without taking recourse to criminal law itself, an elaborate structure of administrative sanctions imposed by administrative bodies has been developed, which includes provisions on corporate criminal liability.

- Can legal persons be held criminally responsible for the commission of offences established in accordance with the Organized Crime Convention and the Protocols thereto to which the State is a party?
 - ▷ If not, can legal persons be subject to administrative or civil liability?
- Do the legislation, jurisprudence or administrative instruments define the concept of legal persons?
- Has liability of legal persons been established for legal entities in accordance with article 10 of the Organized Crime Convention?
- Has liability of legal persons been established without prejudice to the criminal liability of the natural persons who have committed the offence and vice versa?
- Are the measures that have been developed for the protection of natural persons available to legal persons (e.g. the privilege against self-incrimination)?
- Do investigative authorities have the necessary powers to obtain access to relevant documents held by organizations?
- Do the rules of trial procedure accommodate an artificial person (e.g. a director appearing as a representative)?

In relation to training on the establishment of liability of legal persons:

- Have prosecutors, judges and other relevant professionals received training on the liability of legal persons:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions, universities or educational centres offering training on the liability of legal persons?
- Does multi-agency training on the liability of legal persons take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on the establishment of liability of legal persons?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the establishment of liability of legal persons?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the establishment of the liability of legal persons:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the establishment of the liability of legal persons?

- ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on the establishment of the liability of legal persons?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the establishment of the liability of legal persons?
 - ▷ If yes, please list in which ways.



Secondary compliance questions

- If the legislation defines the concept of legal persons, does this definition exclude certain entities, for example, State-owned corporations or local authorities?
- Please list the sanctions available for legal persons, separating criminal, civil and administrative sanctions.



Key performance indicators

- In the last 12 months, in how many organized crime-related cases was a legal person investigated?
 - ▷ In how many of those cases did the prosecutor bring criminal charges against legal persons?
 - ▷ How many cases did the prosecutorial service decline to prosecute?
 - ▷ How many of these cases resulted in:
 - (a) A conviction?
 - (b) An acquittal?
- In the last 12 months, in how many organized crime-related cases were civil or administrative measures directed against legal persons?
- In the last 12 months, how many organized crime-related cases led to confiscation being directed against legal persons?
 - ▷ What was confiscated?
- In the last 12 months, in how many organized crime-related cases were other sanctions directed at legal persons?
 - ▷ What was the sanction applied?



Additional questions

- What factors have led to successful investigations and/or prosecutions? Please elaborate on promising practices.
- What problems or challenges have been encountered during investigations and/or prosecutions and how were they resolved?

TOOL 7

PROSECUTION, ADJUDICATION AND SANCTIONS (ARTICLE 11)

Introduction

A concerted, global strategy against organized crime consists of interlinked components, such as harmonizing the legal provisions regarding serious crimes committed by organized criminal groups, detection of offences and identification and arrest of offenders; enabling the assertion of jurisdiction; and facilitating the smooth coordination of national and international efforts. Yet, those measures alone are not sufficient. After all of the above has taken place, it is also necessary to ensure that the prosecution and sanctioning of offenders around the world is also comparatively proportionate and consistent with the harm they have caused and with the benefits they have derived from their criminal activities.

The penalties and the purposes of punishment provided for similar crimes in various jurisdictions differ significantly. That divergence reflects different national traditions, priorities and policies. It is essential, however, to ensure that a level of deterrence is applied in order to avoid the perception that certain types of crimes “pay”, even if the offenders are convicted. In other words, the sanctions must clearly outweigh the benefits of the crime.

Mandatory provisions

Article 11 of the Convention requires that States parties:

- (a) Ensure that offences covered by the Convention are subject to adequate sanctions that take the gravity of each offence into account (art. 11, para. 1);
- (b) Endeavour to ensure that any discretionary powers they may have are exercised to maximize the effectiveness of law enforcement and of deterrence (art. 11, para. 2);

TOOL 7

- (c) Take appropriate measures to ensure the presence of defendants at criminal proceedings (art. 11, para. 3);
- (d) Ensure that its courts or other competent authorities bear in mind the grave nature of the four main offences covered by the Convention when considering early release or parole (art. 11, para. 4);
- (e) Establish, where appropriate, long domestic statute of limitation periods for the commencement of proceedings for offences covered by the Convention, and a longer period where the alleged offender has evaded the administration of justice (art. 11, para. 5).



Core compliance questions

- What sanctions do the following offences carry?
 - (a) Participation in an organized criminal group;
 - (b) Money-laundering;
 - (c) Corruption;
 - (d) Obstruction of justice.
- How do the sanctions for the crimes listed above compare with the sanctions for other serious crimes?
- Does the prosecution have discretionary prosecutorial powers?
 - ▷ If yes, how is this articulated?
- Does the legislation provide for conditions for the release of the defendant pending trial or appeal?
- Does the legislation relating to early release or parole take into consideration the grave nature of the offences covered by the Convention?
- If a statute of limitation applies in the prosecution of criminal matters, does it take into consideration the grave nature of the offences covered by the Convention?²⁰

In relation to the prosecution of organized crime:

- Is there a strategy for the prosecution service on countering transnational organized crime?
 - ▷ If yes, please indicate the title of the strategy and the date it was issued.
 - ▷ Which government entity, agency or unit prepared the strategy?
 - ▷ Whose input was sought?
 - ▷ Who approved the strategy?

²⁰The Convention encourages those States parties that have a statute of limitations to establish a long period of limitation for offences covered by the Convention (art. 11, para. 5).

- ▷ How many years does the strategy cover?
- ▷ Which of the following does the strategy aim to improve?
 - (a) The day-to-day functioning of the prosecution service;
 - (b) Case management, including the development of case screening mechanisms;
 - (c) Timely resolution of the caseload and reduction of any backlogs that may exist;
 - (d) Capacity to handle specialized or complex crimes;
 - (e) Services or support provided to victims;
 - (f) Accountability to the public;
 - (g) Other aspects of the prosecution service (please specify).
- Is the prosecution service able to assemble a multidisciplinary team to prosecute complex cases?
- What is the role of prosecutors in investigations?
 - ▷ Does the prosecutor investigate cases?
 - ▷ Does the prosecutor provide advice during investigations?
 - ▷ Does the prosecutor direct investigations?
- Are there resources or mechanisms available for long-term or complex investigations?
- Has the prosecution service organized separate units or specialized prosecutors to prosecute cases relating to any of the following?
 - (a) Offences related to organized crime;
 - (b) Financial crimes;
 - (c) Corruption;
 - (d) Misconduct by officials, including lawyers and police officers;
 - (e) Obstruction of justice.

In relation to prosecution in general:

- Does the prosecutor have discretion over whether to pursue charges?
 - ▷ If yes, on what basis may this discretion be exercised?
 - ▷ What happens to cases that the prosecutor declines to prosecute?
- Does a prosecutor need to provide a reason for declining to prosecute or withdrawing a criminal case?
 - ▷ If yes, does this occur in practice?
 - ▷ Are the prosecutor's reasons published?
- Up to what point in the criminal justice process may a prosecutor exercise the discretion to decline or withdraw a case?

- At what point may only a judge dismiss a criminal case?
- Can a decision to proceed, decline to prosecute, withdraw or dismiss the case be overruled by any of the following?
 - (a) A member of the executive branch;
 - (b) A member of the prosecution service;
 - (c) A member of the judiciary;
 - (d) A government minister.
- Does the prosecutor have the legal authority to conditionally dismiss a case?
 - ▷ If yes, at what stages of the proceedings?
 - ▷ For what types of crimes?
 - ▷ For what type of offender?
- Does the legislation or regulatory framework give guidance on the conditional dismissals of cases?
 - ▷ If yes, does a judge have to approve such a dismissal?
 - ▷ What record is made of the agreement?
 - ▷ Who verifies fulfilment of the conditions?
- Does the prosecutor have the legal authority to negotiate plea agreements, if there is a legal basis for plea agreements?
 - ▷ If yes, to what extent is the prosecutor's discretion to negotiate a plea controlled by a regulatory framework?
 - ▷ What are the limitations of that framework?
 - ▷ Does the prosecutor have an obligation to make a plea offer?
 - ▷ Does the prosecutor have a legal obligation to consult or inform the victim about a plea offer or agreement?
- For the purposes of providing access to evidence (discovery), is it a policy to facilitate the early acceptance of plea offers (rather than on the day of trial)?

In relation to courts, adjudication and sanctions:

- Is there a strategy for the courts on countering transnational organized crime?
 - ▷ If yes, please indicate the title of the strategy and the date it was issued.
 - ▷ Which government entity, agency or unit prepared the strategy?
 - ▷ Whose input was sought?
 - ▷ Who approved the strategy?
 - ▷ How many years does the strategy cover?
 - ▷ How will the strategy improve the following?
 - (a) The integrity of judicial processes and functions;

- (b) The day-to-day functioning of the courts;
 - (c) Case management, including the development of case screening mechanisms;
 - (d) The timely resolution of the caseload and reduction of any backlogs that may exist;
 - (e) The court's capacity to handle specialized or complex organized crime cases;
 - (f) Services or support provided to victims and witnesses;
 - (g) Protection for judges and other court officials;
 - (h) Other (please specify).
- What types of sentences does the current legislation provide for the various offences related to organized crime?
 - Who determines sentences (for example, sentencing courts or individual judges)?
 - What are the principles of sentencing?
 - ▷ Where are they articulated?
 - What are the aggravating circumstances in relation to sentencing?
 - Is it possible to impose higher penalties for repeat offenders?
 - Are there formal or informal sentencing guidelines or criteria for offences related to organized crime?
 - Are victims heard in relation to sentencing?
 - Which authorities have the legal power or discretion to impose sanctions?
 - Does the legislation permit sentencing courts to prohibit the offender from engaging in certain types of occupations or trades?

In relation to training on combating organized crime:

- Have prosecutors, judges and other relevant professionals received training on prosecution, adjudication and sanctions in relation to the Organized Crime Convention:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Does the State train specialized prosecutors and judges to deal with cases relating to offences covered by the Organized Crime Convention and its Protocols?
 - ▷ If yes, how many specialized prosecutors are there?
 - ▷ How many specialized judges are there?
 - ▷ How many cases are treated by the specialized prosecutors and judges?
- What are the measures taken to support the specialized prosecutors and judges?

- Are there any training institutions offering training on prosecution, adjudication and sanctions in relation to the Organized Crime Convention?
- Does multi-agency training take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities related to combating organized crime?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities related to combating organized crime?
- Do any civil society organizations or academics give training on matters relating to prosecution, adjudication and sanctions related to combating organized crime?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on combating organized crime:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on prosecution, adjudication and sanctions in relation to combating organized crime?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on prosecution, adjudication and sanctions in relation to combating organized crime?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on prosecution, adjudication and sanctions in relation to combating organized crime?
 - ▷ If yes, please list in which ways.



Key performance indicators

- In the last 12 months:
 - ▷ How many cases of organized crime were reported?
 - ▷ How many of those cases were investigated?
 - ▷ How many of those cases were cleared?²¹
 - ▷ How many cases were forwarded to the prosecutorial service for the presentation of charges?

²¹ “Cleared” means that the accusation against a person has not been substantiated by evidence and the investigator cannot make a case against the suspect.

- ▷ In how many cases did the prosecutor decline to file charges?
- ▷ How many charges were filed?
- ▷ How many prosecutions resulted in the following?
 - (a) Convictions;
 - (b) Acquittals;
 - (c) Discharges;
 - (d) Dismissals;
 - (e) Withdrawals.
- In the last 12 months, how many appeals involving offences related to organized crime were initiated by convicted persons?
- In the last 12 months, how many appeals involving offences related to organized crime were initiated by the prosecution service?
- In the last 12 months, how many convictions or acquittals for offences related to organized crime were overturned on appeal?
- What were the main reasons for cases being overturned on appeal?
- How long do court proceedings for offences related to organized crime generally take before trial courts, starting from arrest to the final judgment?
- How long do court proceedings for offences related to organized crime generally take before appellate courts, starting from the date of appeal to the final judgment?
- What percentage of organized crime prosecutions result in a conviction for at least one of the charges, and what percentage results in full acquittals?
- Over the past 12 months, how many times did the prosecutor send the case back for additional investigation instead of declining to prosecute?



Additional questions

- What factors have led to successful investigations and/or prosecutions? Please elaborate on promising practices.
- What problems or challenges have been encountered during investigations and/or prosecutions and how were they resolved?

TOOL 8

IDENTIFICATION, TRACING, FREEZING OR SEIZURE OF ASSETS AND CONFISCATION OF PROCEEDS OF CRIME (ARTICLES 12, 13 AND 14)

Introduction

Criminalizing the conduct from which substantial illicit profits are made does not always adequately punish or deter organized criminal groups. Even if arrested and convicted, some offenders will be able to enjoy their illegal gains for personal use and for maintaining the operations of their criminal enterprises. In those cases, the perception would remain that crime pays and that criminal justice systems have been ineffective in removing the means for the continued activities of criminal groups.

Practical measures to keep offenders from financially profiting from their crimes are necessary. One of the most important such measures is ensuring that States have strong confiscation regimes that provide for the identification, freezing, seizure and confiscation of illicitly acquired funds and property. Effective and efficient measures targeting the proceeds of crime can serve as a powerful deterrent and contribute significantly to the restoration of justice by removing the incentives for offenders to engage in illegal activities in the first place. Specific international cooperation mechanisms are also necessary to enable countries to give effect to foreign freezing and confiscation orders and to provide for the most appropriate use of confiscated proceeds and property.

Mandatory provisions

Confiscation and seizure (article 12)

Article 12 contains a number of measures relating to the confiscation, freezing and seizure of proceeds of crime. Under the article, a State party must, to the greatest extent possible under its domestic system, have the necessary legal framework to permit:

- (a) The confiscation of proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds (art. 12, para. 1 (a));
- (b) The confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (art. 12, para. 1 (b));
- (c) The identification, tracing, freezing and/or seizure of the proceeds and instrumentalities of crimes covered by the Convention, for the purpose of eventual confiscation (art. 12, para. 2);
- (d) The application of confiscation powers to transformed or converted property and proceeds intermingled with legitimately obtained property (to the value of the proceeds in question) and to benefits or income derived from the proceeds (art. 12, paras. 3-5);

- (e) The courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Bank secrecy shall not be a legitimate reason for failure to comply (art. 12, para. 6).

International cooperation for purposes of confiscation (article 13)

Article 13 sets forth procedures for international cooperation in confiscation matters. These are important powers, as criminals frequently seek to hide proceeds and instrumentalities of crime, as well as evidence relating thereto, in more than one jurisdiction in order to thwart law enforcement efforts to locate and gain control over them. A State party that receives a request from another State party is required under article 13 to take particular measures to identify, trace and freeze or seize proceeds of crime for the purpose of eventual confiscation.

Under article 13, a State party, to the greatest extent possible under its system, is required:

- (a) Either to submit to its competent authorities another State party's request for confiscation, for the purpose of obtaining an order of confiscation and giving effect to it, or to submit to its competent authorities, with a view to giving effect to it, a confiscation order issued by another State party (art. 13, para. 1);
- (b) Upon request of another State party, to take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities relating to offences covered by the Convention for the purpose of eventual confiscation (art. 13, para. 2);
- (c) To furnish copies of its laws and regulations that give effect to article 13 to the Secretary-General (art. 13, para. 5).

Article 13 also sets forth the types of information required for various types of requests (art. 13, paras. 3 (a)-(c)), and States parties are also required to consider concluding bilateral or multilateral agreements to enhance the effectiveness of international cooperation in that area (art. 13, para. 9).

Disposal of confiscated proceeds of crime or property (article 14)

Article 14 addresses the final stage of the confiscation process: the disposal of confiscated assets. To the extent permitted by its domestic law and if requested by a requesting State party under article 13, the confiscating State party must give priority consideration to returning the proceeds or property to the requesting State so that it can give compensation to victims or return the proceeds or property to the legitimate owners (art. 14, para. 2).

Non-mandatory provisions

Article 12, paragraph 7, furthermore calls upon States parties to consider the possibility of reversing the burden of proof, i.e. requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation.



Core compliance questions

- Please list and cite the name(s) of legislation that implements identification, tracing, freezing or seizing of assets and confiscation of proceeds of crime and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Does the legislation allow for the confiscation, to the greatest extent possible, of proceeds of crime from offences covered by the Convention, or of property the value of which corresponds to that of such proceeds?
- Does the legislation define the concept of “proceeds of crime” to include any property derived from or obtained, directly or indirectly, through the commission of an offence?
- Does the legislation allow for the confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention?
- Does the legislation allow for the confiscation of property into which the proceeds of crime have been converted, as well as intermingled proceeds of crime up to their assessed value?
- Does the legislation define the scope of “property” to include all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets?
- Does the legislation ensure that bank records, financial records and commercial records are subject to compulsory production?
 - ▷ If yes, does the legislation state that bank secrecy is not a bar to such compulsory production?
- Does the legislation allow for the possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation?
- Does the legislation state that seizure, freezing and confiscation do not prejudice the rights of bona fide third parties?
- Is the State able to submit to its competent authorities another State party’s request for confiscation, for the purpose of obtaining an order of confiscation and giving effect to it?
- Is the State able to submit to its competent authorities, with a view to giving effect to it, a confiscation order issued by another State party?
- Upon the request of another State party, is the State able to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities relating to offences covered by the Convention for the purpose of eventual confiscation?

- Is priority consideration given to returning proceeds or property to the requesting State for compensation of or return to victims?
- Is priority consideration given to returning confiscated proceeds or property to victims, or using it to compensate them?
- What is the legal framework regarding asset recovery, confiscation and forfeiture?
- What are the treaties to which the State is a party that create obligations with respect to asset confiscation and forfeiture?
- What mechanisms exist to identify, trace, seize or freeze property or assets, including bank, financial or commercial records, as well as equipment and other instrumentalities used in or destined to be used in the commission of crimes?
- What bank secrecy legislation exists that may impede investigations or become a basis for refusing a request for cooperation?
- Are agencies able to use investigative strategies that target the assets of organized crime through interconnected financial investigations?
- Is there national capacity to engage in active and continuous exchanges of relevant financial intelligence and analyses with other States?
- Is informal (as opposed to formally requested) exchange of information prohibited between the State and other jurisdictions?
- Are there dispositions in national legislation that allow for confiscation or forfeiture of assets proceedings that are independent from other criminal proceedings?
- Has the State entered into bilateral or other agreements for asset-sharing among States involved in tracing, freezing and confiscation of assets originating from organized criminal activities?
- What is the legal authority of law enforcement agencies to seize property used in the commission of criminal offences?
- Are there any data on the confiscation of crime-related assets that was facilitated by international cooperation?
- Are there any data on the value of assets seized or recovered and on how those assets were distributed or returned?

In relation to training on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime:

- Have prosecutors, judges and other relevant professionals received training on identification, tracing, freezing or seizing of assets and confiscation of proceeds of crime:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?

TOOL 8

- Are there any training institutions offering training on identification, tracing, freezing or seizing of assets and confiscation of proceeds of crime?
- Does multi-agency training on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime?
- Do any civil society organizations or academics give training on matters relating to seizure, freezing and confiscation of assets and proceeds of crime?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the identification, tracing, freezing or seizure of assets and confiscation of proceeds of crime?
 - ▷ If yes, please list in which ways.



Key performance indicators

- What is the value of property and other assets confiscated in the last 12 months in relation to organized crime offences?
- What type of property and other assets did those confiscations include?
- How much of that property and other assets was returned to the requesting States?
- How much of that property and other assets was returned to victims?
- How much of those assets was given as a contribution to the United Nations Crime Prevention and Criminal Justice Trust Fund for use against organized crime?



Additional questions

- Explain why the legal framework regarding asset recovery, confiscation and forfeiture is either adequate or inadequate.
- What problems have been encountered in seeking or offering international cooperation in relation to crime-related assets?
- Has the State implemented reverse burden of proof (i.e. requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation)?
- What factors have led to successful seizures, freezing and confiscation of the proceeds of crime? Please elaborate on promising practices.
- What problems or challenges have been encountered during seizures, freezing and confiscation of the proceeds of crime and how were they resolved?

TOOL 9

PROTECTION OF WITNESSES AND VICTIMS (ARTICLES 24, 25 AND 26)

Introduction

The ability to provide effective protection to witnesses, as well as assistance and protection to victims, is critically important to ensuring the successful investigation into and prosecution of offences covered by the Organized Crime Convention. Articles 24 and 25 of the Convention deal with measures relating to victim assistance and the protection of victims and witnesses.

Article 26 provides for measures to encourage the cooperation of persons who have participated in an organized criminal group but decide to cooperate with authorities in investigations into or prosecutions of organized criminal groups. Such persons may be called “collaborators of justice” or “informants”. The measures include forms of leniency or immunity from prosecution, as well as measures to protect such persons. The ability to provide effective protection to persons who are or have been members of an organized criminal group and who wish to cooperate with law enforcement authorities is critical. Provision of such protection is unlikely to be possible without a witness protection programme.

TOOL 9

Mandatory provisions

Articles 24 and 25 of the Organized Crime Convention require States parties to ensure effective protection of witnesses as well as assistance to and protection of victims. In terms of witnesses, this may include physical protection, domestic or foreign relocation or special arrangements for giving evidence. In addition, States are required to establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention and provide opportunities for victims to present views and concerns at an appropriate stage of criminal proceedings, subject to domestic legislation.

Under article 24, each State party is required to take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by the Convention and, as appropriate, for their relatives and other persons close to them. Those measures may include:

- (a) Establishing procedures for the physical protection of such persons, such as relocating them and permitting limitations on the disclosure of information concerning their identity and whereabouts;
- (b) Providing evidentiary rules, when consistent with a fair trial, to permit witness testimony to be given in a manner that ensures the safety of the witness, such as allowing witnesses to testify outside of the court room by closed-circuit television or other remote means, or inside the courtroom but behind a screen or other barrier; allowing witnesses to testify with a pseudonym; use of voice distortion and facial disguise; allowing the Court to appoint a lawyer to cross-examine the witness in certain circumstances; attendance of support persons; the imposition of publication bans; sealing the records of the trial; and excluding some or all members of the public from the courtroom.

Article 24, paragraph 2, provides that the measures implemented should be without prejudice to the rights of the defendant. For example, in some States, the giving of evidence without the physical presence of the witness or the non-disclosure of identity has to be reconciled with constitutional or other rules granting the accused the right to confront his or her accuser as well as the principle that court proceedings be open to public. In cases where those interests conflict with measures taken to protect the identity or other information about a witness for safety reasons, the courts may be called upon to fashion solutions specific to each case that meet basic requirements regarding the rights of the accused while not creating a substantial risk of disclosing information that could identify sensitive investigative sources or endanger witnesses or informants.

When it comes to victims, article 25, paragraph 1, requires States parties to take appropriate measures within their means to provide assistance and protection to victims of offences covered by the Convention, in particular in cases of threats of retaliation or intimidation. It should be noted that the expression “within its means” represents a recognition of the material costs associated with protecting victims and the technical knowledge that is required.

Article 25, paragraph 2, requires that at least some appropriate procedures are established to provide access to compensation or restitution. This does not mean that victims are guaranteed compensation or restitution, but that legislative or other measures must provide for procedures whereby it can be sought or claimed.²²

Article 25, paragraph 3, also requires that victims are to be given an opportunity to express their views and concerns at appropriate stages of criminal proceedings.

Article 26 requires States parties to encourage persons who participate or who have participated in organized criminal groups to supply information about those groups that could be useful to competent authorities for investigative and evidentiary purposes. Article 26 identifies four distinct categories of information that could be collected from informants:²³

- (a) The composition and structure of organized criminal groups;
- (b) Links with other organized criminal groups;
- (c) Offences committed by organized criminal groups, or that they may commit;
- (d) Resources and/or proceeds of crime belonging to organized criminal groups.

Article 26, paragraphs 2 and 3, require States parties to consider mitigating the punishment of or providing immunity of prosecution to accused persons who participate or who have participated in organized criminal groups if they provide substantial cooperation in the investigation or prosecution of an offence covered by the Convention.

In many countries, the concept of immunity from prosecution is seen to be in conflict with the principle of mandatory prosecution, according to which the prosecutor is required to bring charges whenever there is cause to believe that an identified person is guilty of an offence. In such countries, it is only the court that may decide on the outcome. Correspondingly, in many countries, mitigation of punishment is seen to be the prerogative of the court, and thus the police or the prosecutor, for example, would not have the competence to promise lesser punishment. However, other countries have had positive experience with extending the promise of mitigation of punishment or immunity from prosecution to cooperating persons and, for that reason, the possibility was included in the Organized Crime Convention.

Non-mandatory provisions

Article 26, paragraph 5, calls upon States parties to consider entering into agreements or arrangements on international cooperation, in line with article 26, paragraphs 2 and 3, when a person in one State party can provide substantial cooperation to the competent authorities of another State party.

²² Article 6, paragraph 6, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which was drafted later than the Organized Crime Convention, is clearer, referring to measures that offer victims of trafficking in persons the possibility of obtaining compensation.

²³ Informants are also referred to in the European Union as “justice collaborators”; in North American terminology they may be known as “cooperating witnesses”. See United Nations Office on Drugs and Crime, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (Vienna, 2008).



Core compliance questions

- Please list and cite the name(s) of legislation that protects witnesses and victims and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Please list and cite the name(s) of legislation that provides assistance to victims and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Please list and cite the name(s) of legislation that involves measures to enhance cooperation with law enforcement authorities and, where necessary, indicate the relevant parts (chapter, article, section, etc.).

In relation to supporting and rendering services to victims and witnesses:

- Are there formal support services for victims and witnesses?
- Are there informal support services for victims and witnesses?
- Do non-governmental organizations or other civil society organizations provide services for victims and is there a mechanism for referral to such services?
- Are liaison officers designated to support visitors and families in cases of a sensitive and emotional nature?
- Does the legislation place obligations on the prosecuting authority towards victims of crime or witnesses in criminal cases?
- Does the prosecution service's policy include:
 - (a) The provision of services to victims, including, in particular, the poor and the elderly?
 - (b) Reducing inconvenience to and protecting witnesses?

In relation to providing information to victims:

- Are victims given information about the services that are available, including about the protective measures they may request?
 - ▷ If yes, how is this information given to them?
 - ▷ Who gives them this information?
- Are victims kept informed about cases, including verdicts and sentences and the release of the convicted?
 - ▷ If yes, how are they kept informed?
- Is there a system or mechanism in place that provides notice to victims about hearings that may have been scheduled or whose time or date may have changed?
 - ▷ If yes, who is responsible for the system or mechanism (the court, the prosecution service, etc.)?

In relation to protection of witnesses:

- Does the State have a witness protection programme?
- Are there special waiting areas in the court where the prosecution's witnesses can wait prior to a court hearing in order to minimize the possibility of intimidation by the accused and his or her family and friends?
- Indicate which of the following measures are available to protect witnesses and victims of offences related to organized crime:
 - (a) Protective or no-contact orders;
 - (b) Conditions of bail;
 - (c) Close physical protection;²⁴
 - (d) Concealment of identity from the suspect;
 - (e) Measures to shield or cloak identity during testimony;
 - (f) Relocation;
 - (g) Closing the court;
 - (h) Giving of evidence from behind a screen or other barrier;
 - (i) Giving of evidence via video link or other remote means;
 - (j) Giving of evidence by the submission of pre-recorded evidence;
 - (k) Suppression or non-publication of identity;
 - (l) Use of voice distortion and facial disguise;
 - (m) Attendance of support persons;
 - (n) Sealing of records of the trial;
 - (o) Other (please specify).
- Is physical protection available for police officers, prosecutors and judges?
- Does the State have the capacity to offer effective physical protection to victims and witnesses before and after a trial?
- Can the witness or victim request a protective measure or an order for anonymity where there is serious risk to him or her or to close family members?
- If evidence is pre-recorded, does the defence have the right to always be present during the giving of evidence in order to exercise the right of the accused to examine the witnesses against him or her?

In relation to compensation for victims:

- Under the legislation, are crime victims entitled to seek restitution or compensation?
- Does the State have a compensation fund that may be relied upon in instances where the defendant is ordered to pay but has no means to do so?
- Do victims receive assistance or can they obtain representation through any court-related service?

²⁴Physical protection may involve witnesses staying at police stations or safe accommodation elsewhere.

In relation to international cooperation in the protection of victims and witnesses:

- Has the State entered into international law enforcement cooperation agreements to protect victims or witnesses of transnational organized crime?
- Are agencies able to:
 - (a) Assist other States in safely repatriating victims, particularly children?
 - (b) Offer international assistance in evaluating the threat against a witness or victim? Can they promptly communicate information concerning potential threats and risks to other jurisdictions?
- Is the State able to offer:
 - (a) Assistance to other jurisdictions in relocating witnesses and ensuring their ongoing protection?
 - (b) Protection to witnesses who are returning to a foreign State in order to testify and collaboration in the safe repatriation of those witnesses?
 - (c) Protection to prisoners who will be or have been witnesses in cases in other States?
- Are data available on international cooperation in the protection of witnesses and victims?
 - If yes, what types of data are available?

In relation to enhancing cooperation with law enforcement authorities:

- Do the law enforcement authorities or prosecutors have the authority, in appropriate cases, to assure an accused person of mitigated punishment if he or she provides substantial cooperation in an investigation or prosecution?
- Do the law enforcement authorities or prosecutors have the authority, in appropriate cases, to assure an accused person of immunity from prosecution if he or she provides substantial cooperation in an investigation or prosecution?
- Does the legislation of the State allow for the provision of immunity, including conditional immunity, to a person who provides substantial cooperation in an investigation or prosecution?
- Does the legislation of the State allow for the provision of transactional immunity (leniency in sentencing) if truthful and complete testimony is given?

In relation to training on the protection of witnesses and victims:

- Have prosecutors, judges, law enforcement personnel and/or other relevant professionals received training on the protection of witnesses and victims:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?

- Are there any training institutions offering training on protection of witnesses and victims?
- Does multi-agency training take place on the protection of witnesses and victims?
 - If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- What training is received by investigators designated as liaison officers to support visitors and families in cases of a sensitive and emotional nature?
- Is the State a beneficiary of internationally provided training activities on the protection of witnesses and victims?
 - If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the protection of witnesses and victims?
- Do any civil society organizations or academics give training on matters relating to the protection of witnesses and victims?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the protection of witnesses and victims:

- Is there a body that coordinates technical assistance on victim assistance and victim and witness protection in the State?
- Does the State provide technical assistance on the protection of witnesses and victims?
 - If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on the protection of witnesses and victims?
 - If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the protection of witnesses and victims?
 - If yes, please list in which ways.



Secondary compliance questions

In relation to how informants/justice collaborators/cooperating witnesses are managed:

- Are all investigators permitted to employ informants/justice collaborators/cooperating witnesses or is it restricted to specially selected officers?
- Is the identity of an informant/justice collaborator/cooperating witness protected when giving testimony in court?

- Is there a policy on the protection and court testimony of informants/justice collaborators/cooperating witnesses?
- Are informants/justice collaborators/cooperating witnesses reimbursed?



Key performance indicators

- In the last 12 months, how often did the courts use protective measures for victims?
- In the last 12 months, what were the three most commonly used types of protective measures for victims used by the courts?
- In the last 12 months, how many victims were provided assistance services through informal means?
- In the last 12 months, how many victims were provided assistance services through formal means?
- In the last 12 months, how many victims and witnesses used the services of a secure waiting area?
- In the last 12 months, how many victims received compensation or restitution for organized crimes?
- In the last 12 months, how many witnesses of organized crime offences were given physical protection for more than five days?
- In the last 12 months, how many persons were accorded a mitigated punishment in return for substantive cooperation with law enforcement authorities?
- In the last 12 months, how many persons were provided immunity from prosecution in return for substantive cooperation with law enforcement authorities?



Additional questions

- Does a witness have the right to have a lawyer present during the interview?
- If the witness is a child, does the legislation require that his or her parent, guardian or other responsible person is present?
- How are interviews recorded (e.g. by audio or video recording; or transcribed or summarized)?
- What factors have led to successful protection of victims and witnesses? Please elaborate on promising practices.

- What problems or challenges have been encountered in the protection of victims and witnesses and how were they resolved?
- What problems or challenges have been faced in the use of informants and how were they resolved?
- Please elaborate on other promising practices with regard to developing information on organized criminal groups.

TOOL 10

SPECIAL INVESTIGATIVE TECHNIQUES (ARTICLE 20)

Introduction

Article 20 of the Organized Crime Convention endorses the use of special investigative techniques such as controlled delivery,²⁵ electronic surveillance and undercover operations.

Special investigative techniques are methods for gathering information that are applied by law enforcement officials for the purpose of detecting and investigating crimes and suspects without alerting the target persons. The techniques are especially useful when dealing with sophisticated organized criminal groups because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence for use in prosecutions. In many cases, less intrusive methods will simply not prove effective or cannot be carried out without unacceptable risks to those involved.

Controlled delivery is useful in particular in cases where contraband is identified or intercepted in transit and then delivered under surveillance with the aim of identifying the intended recipients or monitoring its subsequent distribution throughout a criminal organization. Legislative provisions are often required to permit such a course of action, as allowing or facilitating the delivery of contraband by a law enforcement officer or other person may normally be a crime under domestic law.

Undercover operations may be used where it is possible for a law enforcement officer or other person to infiltrate an organized criminal group to gather evidence. Electronic surveillance in the form of listening devices or the interception of communications performs a function similar to undercover operations, but can allow for the collection of a broader range of evidence and may be the preferred investigative method where a criminal group cannot be penetrated by an outsider or where physical infiltration or surveillance would represent an unacceptable risk to the investigation or the safety of investigators. Given its intrusiveness, electronic surveillance is generally subject to strict judicial control and statutory safeguards to prevent abuse.

²⁵ Article 2, paragraph (i), of the Convention provides that “‘controlled delivery’ shall mean 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 to the investigation of an offence and the identification of persons involved in the commission of the offence”.

Since special investigative techniques such as controlled deliveries and undercover operations frequently require the cooperation and collaboration of multiple law enforcement agencies in different countries, international cooperation is essential to facilitate the smooth conduct of such operations. It is important to note that, while some forms of special investigative techniques may be legal in some jurisdictions, they may be unacceptable in others. The same is true for the admissibility of evidence gathered through the use of special investigative techniques.

Mandatory provisions

Article 20, paragraph 1, requires States parties to allow for the appropriate use of the special investigative technique of controlled delivery and, where they deem appropriate, other special investigative techniques, such as electronic surveillance, undercover operations and other forms of surveillance.

Article 20, paragraph 3, provides that, in the absence of an agreement or arrangement,²⁶ decisions to use such special investigative techniques at the international level must be made on a case-by-case basis. This formulation requires a State party to have the ability to cooperate on a case-by-case basis.

Non-mandatory provisions

Under article 20, paragraph 2, States parties are encouraged to conclude appropriate bilateral and multilateral agreements or arrangements for using special investigative techniques in the context of cooperation at the international level.



Core compliance questions

- Does the State permit the use of special investigative techniques, on the understanding that the use of such techniques may be restricted?
- Is there legislation on the use of special investigative techniques?
- Please list and cite the title(s) of legislation that authorizes special investigative techniques and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- What controls exist to ensure the proper implementation of special investigative techniques:
 - (a) Prior authorization?
 - (b) Supervision during the investigation?
 - (c) After-the-fact review or report?

²⁶ Article 20, paragraph 2, encourages States parties to put into place agreements or arrangements permitting the use of special investigative techniques in support of international cooperation.

- Does the State permit, on a case-by-case basis, international cooperation with respect to special investigative techniques, where not contrary to the basic principles of the domestic legal system?
- Does the State use the least intrusive special investigative technique available, thus applying the principle of proportionality?
- How is proportionality in the appropriate use of special investigative techniques ensured?
- Are any of the following special investigative techniques deployed?
 - (a) Interception of telecommunications;
 - (b) Interception of e-mail traffic;
 - (c) Interception of post/mail;
 - (d) Use of listening devices;
 - (e) Use of assumed personal and company identities;
 - (f) Covert search of letters, packages, containers and parcels;
 - (g) Simulation of a corruption offence;
 - (h) Covert real-time monitoring of financial transactions;
 - (i) Disclosure of financial data;²⁷
 - (j) Use of tracking and positioning devices;
 - (k) Other techniques (please describe).
- What preconditions must be satisfied before the special investigative techniques above can be used?
 - ▷ Who authorizes their use: prosecutor, judge or senior police officer?
 - ▷ Are there time limits within which they must be used?
 - ▷ Is there any independent oversight and monitoring of the techniques?
- Can the evidence gained through special investigative techniques be used as evidence in court?
 - ▷ Are there special rules of evidence that apply?
 - ▷ If yes, what are those special rules of evidence?
- Can the information gained through special investigative techniques be disseminated as necessary?
- Does the legislation define the concept of entrapment (by which a law enforcement body encourages or offers opportunities for someone to commit a criminal act)?
- Are officers using special investigative techniques protected from civil and criminal liability?

²⁷ This measure is carried out through obtaining information on deposits, accounts or transactions from a bank or another financial institution.

In respect of controlled delivery:

- Is there a legal basis for conducting controlled delivery operations?
 - ▷ If yes, is the legislation specific to investigations into offences related to organized crime?
- Have investigators of offences related to organized crime relied on the legal basis to actually undertake controlled deliveries?
- In the absence of a legal basis, is it possible to conduct controlled delivery operations based on agreements with prosecutorial or judicial authorities?
- Do national legislation or regulations allow for the substituting (in whole or in part) of detected contraband before an actual controlled delivery is conducted?
 - ▷ If yes, can such records be accepted for the purpose of evidence in court?
- Which agency takes the lead with regard to controlled deliveries?
- What are the preconditions for the use of controlled delivery?
- Is authorization from a judicial or other independent source required?
- What are the limits and conditions for controlled delivery orders?
- Have standard operating procedures been developed to support swift and efficient controlled deliveries?

In respect of electronic and other forms of surveillance:

- Is there a legal basis for conducting surveillance operations?
 - ▷ If yes, is the legislation specific to investigations into offences related to organized crime?
- Have investigators of offences related to organized crime relied on the legal basis to actually undertake surveillance?
- In the absence of a legal basis, is it possible to conduct surveillance operations based on agreements with prosecutorial or judicial authorities?
- Which agency takes the lead with regard to surveillance operations?
- What are the preconditions for conducting surveillance operations?
- Is authorization from a judicial or other independent source required?
- What are the limits and conditions for surveillance orders?
- Have standard operating procedures been developed to support efficient surveillance operations?

In respect of undercover operations, in which investigators infiltrate criminal networks or pose as offenders:

- Is there a legal basis for conducting undercover operations?
 - ▷ If yes, is that legislation specific to investigations into offences related to organized crime?

- In what kind of cases and in which format are undercover operations allowed?
- Have investigators of offences related to organized crime relied on the legal basis to actually undertake undercover operations?
- In the absence of a legal basis, is it possible to conduct undercover operations based on agreements with prosecutorial or judicial authorities?
- Which agency takes the lead with regard to undercover operations?
- What are the preconditions for conducting undercover operations?
- Is authorization from a judicial or other independent source required?
- What are the limits and conditions for undercover operation orders?
- Are there guidelines on the use of undercover officers?
 - ▷ If yes, are those guidelines public?
- Have standard operating procedures been developed to support efficient undercover operations?

In relation to training on special investigative techniques:

- Have law enforcement personnel and/or other relevant professionals received training on special investigative techniques:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Is training on special investigative techniques mandatory for certain law enforcement personnel and/or other relevant professionals?
 - ▷ If yes, which law enforcement personnel and/or other relevant professionals?
- Are there any training institutions offering courses on special investigative techniques?
- Does multi-agency training on special investigative techniques take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on special investigative techniques?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on special investigative techniques?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on special investigative techniques:

- Is there a body that coordinates technical assistance in the State?

- Does the State provide technical assistance on special investigative techniques?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on special investigative techniques?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on special investigative techniques?
 - ▷ If yes, please list in which ways.



Key performance indicators

- In the last 12 months, how many controlled deliveries were conducted?
- In the last 12 months, how many telephone interceptions (wiretaps) were conducted?
- In the last 12 months, how many forms of interception (e.g. e-mail, post/mail) were used?
- In the last 12 months, how many undercover operations were authorized?
- In the last 12 months, what percentage of law enforcement personnel and/or other relevant professionals were trained with respect to special investigative techniques?
- In the last 12 months, how many requests for use of special investigative techniques were denied by the relevant authority?



Additional questions

- What factors have led to successful use of special investigative techniques? Please elaborate on promising practices.
- What problems or challenges have been faced in the use of special investigative techniques?
- What technology is used by criminal groups operating in the State that is technically difficult to monitor or beyond the scope of existing legislation?
- What mechanisms exist in order to amend or enhance existing legislative authorities on special investigative techniques?

ESTABLISHMENT OF A CRIMINAL RECORD (ARTICLE 22)

Introduction

Members of transnational organized crime groups operate throughout the world and may commit offences in the jurisdictions of many different States. By sharing information on an alleged offender's criminal record, States help to ensure that the greatest possible body of relevant evidence is available to the State prosecuting the individual.

Evidence of prior convictions can have a prejudicial effect in that it can lead the court or jury to think that the individual must have committed the crime because he or she has committed another crime. However, there are circumstances in which it may be relevant to bring evidence that a suspect has been convicted of an offence in another jurisdiction.

Mandatory provisions

Article 22 contains no mandatory provisions.

Non-mandatory provisions

Under article 22, States parties may adopt legislative or other measures as may be necessary to take into consideration any previous conviction in another State of an alleged offender. The purpose is to use such information in criminal proceedings.



Core compliance questions

- Does the State have criminal records?
 - ▷ If yes, does the State provide information about an offender's criminal record to other States upon request?
 - ▷ Has the State requested information about an offender's criminal record from other States?
- In seeking such information, does the State determine whether the probative value of the evidence on prior convictions outweighs the likely prejudicial effect that the evidence may have on the proceedings?
 - ▷ If yes, how is that determination carried out?



Key performance indicators

- Within the last 12 months, in how many instances did the State request information on criminal records?
- Within the last 12 months, in how many instances did the State receive requests for information on criminal records?



Additional questions

- Has the State adopted measures that allow it to take into consideration an alleged offender's previous convictions?
- What factors have led to successful establishment of a criminal record? Please elaborate on promising practices.
- What problems or challenges have been faced in the establishment of a criminal record?

III.

Legislative and administrative measures to enhance mutual legal assistance and other forms of international cooperation

INTRODUCTION

Comprehensive, multi-agency and flexible cross-border cooperation is essential to ensuring the appropriate investigation and prosecution of transnational organized crime. International cooperation in criminal justice occurs when States share information, resources, investigators and prosecutors to achieve the common goal of combating organized criminal groups and their criminal activities.

International criminal justice cooperation may be formal or informal. Formal cooperation can be based on treaties, such as the Organized Crime Convention or other international, regional or bilateral treaties. Informal cooperation generally involves direct officer-to-officer or agency-to-agency contact across borders. It generally is not dealt with by legislation but may sometimes be based on a memorandum of understanding between the cooperating States or their agencies.

The Organized Crime Convention contains a range of measures to enable and facilitate international cooperation between States, which are further discussed in the present chapter. Those measures include extradition (article 16), the transfer of sentenced persons (article 17), mutual legal assistance (article 18), joint investigations (article 19), the transfer of criminal proceedings (article 21) and law enforcement cooperation (article 27).

TOOL 12

TOOL 12

EXTRADITION (ARTICLE 16)

Introduction

Extradition is a formal and, most frequently, treaty-based process²⁸ leading to the return or delivery of fugitives to the jurisdiction in which they are wanted in relation to criminal activities.

In the past, extradition treaties commonly contained a list of extraditable offences. Those set lists create difficulties every time a new type of crime emerges, with the advancement of technology and social and economic changes. For that reason, more recent extradition treaties adopt a threshold or minimum penalty definition of extraditable offences.

Mandatory provisions

Under article 16, States parties are required to make the following offences extraditable:

- (a) Offences established in accordance with articles 5, 6, 8 and 23 of the Convention where the person who is to be extradited is located in the territory of the requested party and which involve an organized criminal group;

²⁸ In some instances, extradition may take place voluntarily and without a treaty between the States concerned. This, however, does not occur frequently.

- (b) Serious crimes, where the person who is to be extradited is located in the territory of the requested party and where the offence involves an organized criminal group;
- (c) Offences established in accordance with the Protocols to which the State is a party, where the person who is to be extradited is located in the territory of the requested party and which involve an organized criminal group.

The extradition obligation applies provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State party and the requested State party. That dual criminality requirement will automatically be satisfied with respect to the offences established in accordance with the Convention, since all States are obliged to criminalize such conduct. With respect to requests relating to offences that constitute serious crimes, no obligation to extradite arises unless that dual criminality requirement is fulfilled.



Core compliance questions

- Please list and cite the name(s) of legislation that provides for extradition and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Which of the following are legal bases for extradition?
 - (a) Treaty;
 - (b) Multilateral agreement;
 - (c) Bilateral agreement;
 - (d) Comity;
 - (e) Reciprocity;
 - (f) Other (please specify).
- Does the State take the Organized Crime Convention as a legal basis for extradition?
- Has the State designated a central authority with the responsibility and power to draft and receive extradition requests and either to execute them or to transmit them?
 - If yes, has the Secretary-General been notified of that, as well as of the language(s) acceptable to the State in that regard?²⁹
- Do the relevant officials informally consult with foreign counterparts in advance of making requests for extradition?

²⁹Please refer to the United Nations Office on Drugs and Crime directory of competent national authorities (available at www.unodc.org/cld/index-sherloc-cna.aspx) to search for the central and competent national authorities of which the United Nations Secretariat has been notified.

- Have steps been taken to make sure that other States are aware of the national legal requirements for extradition?
 - ▷ If yes, do those steps include developing guidelines, simple forms, templates, checklists or procedural guides on the requirements that must be met in order to obtain assistance?
- On which of the following grounds may/must extradition be refused?
 - (a) Political offences;
 - (b) Requests for nationals of the requested State;
 - (c) Human rights concerns;
 - (d) Other (please specify).
- If the State denies an extradition request on the grounds that the person in question is a national, does it submit the case for domestic prosecution at the request of the requesting State?
- Can extradition be refused on the sole ground that the offence in question is a fiscal offence?
- Prior to refusing extradition, does the State, where appropriate, consult with the requesting State to provide it with the opportunity to present information and views on the matter?
- Is there a tracking or monitoring system in place for outgoing and incoming requests?
- Does national legislation allow for the temporary surrender³⁰ of persons sought by a requesting State?
- Does the State provide for a less lengthy judicial review process for extradition requests in comparison with the judicial review process for domestic criminal cases?
- Does the State provide for a less cumbersome judicial review process for extradition requests in comparison with the judicial review process for domestic criminal cases?

In relation to training on extradition:

- Have prosecutors, judges and other relevant professionals received training on extradition:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions offering courses on extradition?
- Does multi-agency training on extradition take place?

³⁰ Temporary surrender enables persons to be present in the requesting State for prosecution or for an appeal, then be returned to the requested State to complete his or her original sentence.

- ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on extradition?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on extradition?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on extradition:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on extradition?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on extradition?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on extradition?
 - ▷ If yes, please list in which ways.



Key performance indicators

- In the last 12 months, how many times was the Organized Crime Convention used as a legal basis for the following?
 - (a) Requesting extradition;
 - (b) Executing extradition requests.
- Are time limits provided for considering extradition requests?
 - ▷ What are those time limits?
- In the last 12 months, how many times did consent surrender occur?³¹
- In the last 12 months, how many times did the State extradite someone suspected of committing an offence covered by the Convention?
- In the last 12 months, how many times did the State request the extradition of someone suspected of committing an offence covered by the Convention?
- In the last 12 months, how many requests for extradition were refused by the State in relation to offences defined in the Convention?

³¹ Consent surrender is a simplified process for the surrender of a person sought, whereby the person sought voluntarily consents to face trial or punishment in the requesting State after provisional arrest and the presentation of a formal extradition request. The person foregoes the protection of the full extradition process, and he or she is surrendered without formal determination of his or her liability to be surrendered.

- In the last 12 months, how many times did the State receive requests for transfers of proceedings, after extradition was refused on the basis that the person sought was a national?
- In the last 12 months, how many times did the State make requests for transfers of proceedings, after extradition was refused on the basis that the person sought was a national?
- In the last 12 months, how many requests for extradition were ignored by the State, owing to incomplete or incorrectly submitted requests?
- Please indicate how often the following obstacles are faced when dealing with extradition casework:³²
 - (a) Weak or outdated extradition laws and treaties;
 - (b) Widely differing preconditions between countries for granting extradition;
 - (c) Length, complexity, cost and uncertainty of extradition process;
 - (d) Lack of awareness of national or international extradition law and practice, of the grounds for refusing an extradition request, of how extradition could be improved or of what alternatives exist to extradition and how they work;
 - (e) Language obstacles, such as interpretation errors arising from translating extradition requests and attached materials under tight deadlines;
 - (f) Communication and coordination problems, both between domestic agencies and between States;
 - (g) Prejudice to the success of an extradition request arising from premature arrest;
 - (h) Burdensome evidentiary requirements of requested States that are not familiar to or not well understood by requesting States, or seemingly more relevant to deciding the person's guilt or innocence (an issue reserved to the courts of the requesting State);
 - (i) Non-extradition of nationals (however defined), or those who obtain citizenship by deception, and limitations on their effective prosecution in the refusing State;
 - (j) Lack of trust among States about the integrity of each other's justice systems;³³
 - (k) Wide scope being given to the grounds of refusal for political or politically motivated offences or discrimination, and too little attention given to putting in safeguards to build trust, or to alternatives, such as prosecuting the person in the requested State or an acceptable third country in lieu of extradition, where the domestic law of the requested State so allows;
 - (l) Delaying tactics, such as frivolous or irrelevant defence requests for further information;
 - (m) Abuse of privileges and immunities, such as inappropriate grant or maintenance of diplomatic immunity or asylum;

³² Grading scale: 0 = never, 1 = rarely, 2 = sometimes, 3 = frequently, 4 = always.

³³ Although an offence may be serious and requires justice to be brought, doubts over the observance or protection of human rights in some requesting States or the independence or integrity of their judges or prosecutors too often leads to reluctance or refusal to extradite to those States.

- (n) Inflexible prosecution practices in requested States following receipt of an extradition request, including mandatory local investigation and prosecution triggered by the receipt of the request relating to the extraditable offences and local prosecution of offences that are minor compared with the offences for which extradition is sought;
- (o) Partial, repeated or uncoordinated appeals throughout the extradition process;
- (p) Failure of extradition owing to preventable problems arising in transit States.



Additional questions

- What factors have led to successful extradition practices? Please elaborate on promising practices.
- What other problems and challenges have been faced and how were they resolved?

TOOL 13

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (ARTICLE 18)

Introduction

National authorities increasingly need the assistance of other States for the successful investigation, prosecution and punishment of offenders, particularly those who have committed transnational offences. The ability to assert jurisdiction and secure the presence of an accused offender in its territory accomplishes an important part of the task, but does not complete it. The international mobility of offenders and the use of advanced technology, among other factors, make it more necessary than ever for law enforcement and judicial authorities to collaborate and assist the State that has assumed jurisdiction over the matter.

In order to achieve that goal, States have enacted laws to permit them to provide such international cooperation and have increasingly resorted to treaties related to mutual legal assistance in criminal matters. Such treaties commonly list the kind of assistance to be provided, the rights of the requesting and requested States relative to the scope and manner of cooperation, the rights of alleged offenders and the procedures to be followed in making and executing requests.

Mandatory provisions

Article 18, paragraph 1, requires States parties to provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings that relate to offences covered by the Convention as provided for in article 3. This means:

- (a) Offences established in accordance with articles 5, 6, 8 and 23 that are transnational (defined in article 3, paragraph 2) and involve an organized criminal group (defined in article 2, paragraph (a));
- (b) A serious crime (defined in article 2, paragraph (b)) that is transnational and involves an organized criminal group;
- (c) Offences established in accordance with the three Protocols to the Convention.

Under article 18, paragraph 2, States parties are required to provide mutual legal assistance with respect to investigations, prosecutions and judicial proceedings regarding the conduct of legal persons.

States parties are required by article 18, paragraph 3, to provide the following specific types of mutual legal assistance:

- (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;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State party.

Where there is no mutual legal assistance treaty in force between a State party seeking cooperation and the State party from whom cooperation is sought, article 18, paragraph 7, requires States parties to apply the rules of mutual legal assistance set forth in article 18, paragraphs 9-29.

Finally, article 18, paragraph 8, provides that States shall not decline to render mutual legal assistance pursuant to article 18 on the ground of bank secrecy. It is significant that this paragraph is not included among the paragraphs that apply in the absence of a mutual legal assistance treaty. Instead, States are obliged to ensure that no such ground for refusal may be invoked under their mutual legal assistance laws or treaties. Cooperation among States in the exchange of financial information is crucial in order to effectively prosecute financial crimes and to confiscate or arrange for the forfeiture of proceeds of crime. Therefore,

financial investigators need to be able to identify and trace the financial assets of members of criminal groups across bank accounts and through other forms of fiduciary holdings.



Core compliance questions

- Please list and cite the name(s) of legislation that provides for mutual legal assistance with regard to criminal offences and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Which of the following are legal bases for mutual legal assistance?
 - (a) Treaty;
 - (b) Multilateral agreement;
 - (c) Bilateral agreement;
 - (d) Comity;
 - (e) Reciprocity;
 - (f) Other (please specify).
- Does the State take the Organized Crime Convention as a legal basis for mutual legal assistance?
- Has the State designated a central authority with the power to receive and execute or transmit requests for mutual legal assistance?
 - ▷ If yes, has the Secretary-General been notified of it, as well as of the language(s) acceptable to the State in that regard?³⁴
- Do the relevant officials informally consult their foreign counterparts in advance of making requests for mutual legal assistance?
- Have steps been taken to make sure that other States are aware of the State's national legal requirements in relation to mutual legal assistance?
 - ▷ If yes, do those steps include developing guidelines, simple forms, templates, checklists or procedural guides on the requirements that must be met in order to obtain assistance?
- On which of the following grounds may/must mutual legal assistance be refused?³⁵
 - (a) Prejudice to sovereignty, security, *ordre public* or other essential interests;
 - (b) Political nature of the offence;
 - (c) Fiscal nature of the offence;

³⁴ Please refer to the United Nations Office on Drugs and Crime directory of competent national authorities (available at www.unodc.org/cld/index-sherloc-cna.aspx) to search for the central and competent national authorities of which the United Nations Secretariat has been notified.

³⁵ Please indicate "may" or "must" for each of the grounds.

- (d) Offence related to military law;
 - (e) Discrimination (race, sex, religion, ethnicity, etc.);
 - (f) Cruel, inhumane or degrading penalties;
 - (g) *Ne bis in idem* (double jeopardy);
 - (h) Likelihood of death penalty;
 - (i) Lack of dual criminality;
 - (j) Lack of reciprocity;
 - (k) Lack of formal mutual assistance treaty or arrangement;
 - (l) Contradiction of data protection laws;
 - (m) Other (please specify).
- Does the State deny mutual legal assistance on the ground of bank secrecy?
 - Does the State render mutual legal assistance to requesting States in relation to offences for which a legal person may be held criminally liable, regardless of whether the criminal liability of legal persons is an established legal principle in the State?
 - For the purposes listed in article 18, paragraph 3, of the Organized Crime Convention, are the following measures possible?
 - (a) Spontaneous transmission of information;
 - (b) Testimony by videoconference in cases where it is impossible or undesirable for a witness to travel.
 - Prior to refusing mutual legal assistance, does the State, where appropriate, consult with the requesting State to provide it with the opportunity to present information and views on the matter?
 - Is there a tracking or monitoring system in place for outgoing and incoming requests?

In relation to training on mutual legal assistance:

- Have prosecutors, judges and other relevant professionals received training on mutual legal assistance:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions offering training on mutual legal assistance?
- Does multi-agency training on mutual legal assistance take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on mutual legal assistance?

- ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on mutual legal assistance?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on mutual legal assistance:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on mutual legal assistance?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on mutual legal assistance?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on mutual legal assistance?
 - ▷ If yes, please list in which ways.



Key performance indicators

- In the last 12 months, how many times was the Organized Crime Convention used as a legal basis for the following?
 - (a) Requesting mutual legal assistance;
 - (b) Executing mutual legal assistance.
- Are time limits provided for considering mutual legal assistance requests?
 - ▷ What are those time limits?
- In the last 12 months, how many times did the State provide mutual legal assistance to a requesting State in relation to offences covered by the Convention?
- In the last 12 months, how many times did the State refuse requests for mutual legal assistance in relation to offences covered by the Convention?
- In the last 12 months, how many times did the State refuse mutual legal assistance on the ground of absence of dual criminality?
- In the last 12 months, how many times did the State grant mutual legal assistance in the absence of dual criminality?
- In the last 12 months, how many requests for mutual legal assistance were ignored by the State, based on incomplete or incorrectly submitted requests?
- In the last 12 months, how many foreign confiscation orders were enforced in the State?
- Of those foreign confiscation orders received within the last 12 months, how many of them have yet to be enforced in the State?

- In the last 12 months, how many confiscation orders from the State were enforced in a requesting State?
- Of those confiscation orders sent within the last 12 months, how many of them have yet to be enforced in a requesting State?
- In the last 12 months, how many hearings have taken place by videoconference in cases where it was not possible or desirable for the individual in question to appear in person in the territory of the requesting State party?



Additional questions

- What factors have led to successful requests for mutual legal assistance? Please elaborate on effective practices.
- What problems and challenges have been faced when requesting and/or providing mutual legal assistance and how were they resolved?

TOOL 14

TOOL 14

OTHER FORMS OF INTERNATIONAL COOPERATION (ARTICLES 17, 19, 21 AND 27)

Introduction

The Convention provides for a number of other mandatory and non-mandatory mechanisms to facilitate international cooperation. Discussed in the present chapter are the transfer of sentenced persons (article 17), joint investigations (article 19), the transfer of criminal proceedings (article 21) and law enforcement cooperation (article 27).

Mandatory provisions

Joint investigations (article 19)

Although mutual legal assistance can significantly facilitate the investigation and prosecution of transnational organized crime, closer cooperation in the form of joint investigations, with personnel from two or more States, may prove more effective, especially in complex cases.

Under article 19, States parties are required to consider concluding bilateral or multilateral agreements or arrangements regarding the establishment of joint investigative bodies, while ensuring that the sovereignty of the State party in whose territory a joint investigation is to take place is fully respected.

Transfer of criminal proceedings (article 21)

Under article 21, States parties are required to consider transferring the criminal proceedings for the prosecution of an offence covered by the Organized Crime Convention in cases where such a transfer is in the interests of the proper administration of justice, especially in cases in which several States are involved.

Law enforcement cooperation (article 27)

Article 27, paragraph 1, establishes the scope of the obligation to cooperate. States parties are required to cooperate closely with one another in terms of law enforcement (police-to-police) cooperation in a number of ways, which are described in article 27, paragraph 1 (a)-(f).

The general obligation to cooperate is not absolute; rather, it is to be conducted in a manner consistent with domestic legal and administrative systems. Subject to that general limitation, States parties are to strengthen the channels of communication among their respective law enforcement authorities (art. 27, para. 1 (a)); undertake specific forms of cooperation in order to obtain information about persons, the movements of proceeds and instrumentalities of crime (art. 27, para. 1 (b)); provide to each other items or quantities of substances for purposes of analysis or other investigative purposes (art. 27, para. 1 (c)); promote exchanges of personnel, including the posting of liaison officers (art. 27, para. 1 (d)); exchange information on a variety of means and methods used by organized criminal groups (art. 27, para. 1 (e)); and conduct other cooperation for the purposes of facilitating early identification of offences (art. 27, para. 1 (f)).

Non-mandatory provisions

Transfer of sentenced persons (article 17)

Under article 17, States parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by the Organized Crime Convention in order that they may complete their sentences there.



Core compliance questions

- Please list and cite title(s) of the legislative or other authority that authorizes or permits law enforcement cooperation under article 27 and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Please list and cite the title(s) of the legislative or other authority that permits joint investigations under article 19 and, where necessary, indicate the relevant parts (chapter, article, section, etc.).

- Please list and cite the title(s) of the legislation that permits the transfer of sentenced persons under article 17 and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Please list and cite the title(s) of the legislation that permits the transfer of criminal proceedings under article 21 and, where necessary, indicate the relevant parts (chapter, article, section, etc.).

In relation to joint investigations and law enforcement cooperation:

- Is there a legislative or other authority permitting the State to engage in joint investigations with other States into offences covered by the Organized Crime Convention?
- Are bilateral or multilateral agreements or arrangements in place on the establishment of joint investigations?
- How does the State define joint investigations?
- What are the main attributes of a joint investigation as authorized by the State?
- Do joint investigations, as permitted by the State, permit the exchange of evidence outside of a mutual legal assistance request?
- Are channels of communication established between competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by the Convention?
- Have communication and coordination channels been established with the competent authorities, agencies and services of other States?
- Has the State posted personnel and other experts, including liaison officers, in other States?
- Are foreign law enforcement liaison officers posted in the State?
- With respect to offences covered by the Convention and its Protocols, is it possible to cooperate with other States on the following?
 - (a) The identification of the whereabouts and activities of persons suspected of involvement in offences covered by the Convention or the location of other persons concerned;
 - (b) The movement of proceeds of crime or property derived from the commission of offences covered by the Convention;
 - (c) The movement of property, equipment or other instrumentalities used or intended for use in the commission of offences covered by the Convention.
- Does the State exchange information with other States on specific means and methods used by organized criminal groups, for example modus operandi, routes, means of concealing their activities and early identification of the offences covered by the Convention and its Protocols?
- Is the State a party to any international agreement concerning law enforcement cooperation and the sharing of information?

- Do competent national authorities have access to the databases of international law enforcement organizations?
 - ▷ If yes, does that access enable direct and real-time connection via secured telecommunications systems?
- Do competent national authorities make use of the facilities of other States, such as forensic labs, evidence and analytical expertise?
- Have law enforcement agencies been involved in international joint investigation bodies?
- If each law enforcement body is responsible for managing its own information and intelligence, is there a set of common standards for the following?
 - (a) Collection, evaluation and analysis of information;
 - (b) Recording and logging of information;
 - (c) Security standards;
 - (d) Reports and briefings.

In relation to the transfer of proceedings:³⁶

- Is the transfer of criminal proceedings to a foreign jurisdiction possible and permissible under domestic legislation?
- Does the State receive requests for the transfer of criminal proceedings?
 - ▷ How are those requests processed?
- Does the State make requests for the transfer of criminal proceedings?
 - ▷ How are those requests processed?

In relation to transfer of sentenced persons:³⁷

- Is the State a party to any treaty (multilateral or bilateral) that enables the transfer of sentenced persons to and from another State?
- Is the transfer of sentenced persons to a foreign jurisdiction possible and permissible under domestic legislation?
- Does the legislation state that:
 - (a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State party from which the person was transferred?
 - (b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States?

³⁶ For more information, see United Nations Office on Drugs and Crime, *Model Legislative Provisions against Organized Crime* (Vienna, 2012), p. 103.

³⁷ For more information, see United Nations Office on Drugs and Crime, *Handbook on the International Transfer of Sentenced Persons*, Criminal Justice Handbook Series (Vienna, 2012).

- (c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person?
- (d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State to which he or she was transferred?

In relation to training on other forms of international cooperation:

- Have law enforcement personnel and/or other relevant professionals received training on joint investigative techniques:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions offering training on joint investigative techniques?
- Have law enforcement personnel and/or other relevant professionals received training on the transfer of sentenced persons?
- Are there any training institutions offering training on the transfer of sentenced persons?
- Have law enforcement personnel and/or other relevant professionals received training on the transfer of criminal proceedings?
- Are there any training institutions offering training on the transfer of criminal proceedings?
- Does multi-agency training take place on law enforcement cooperation?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on forms of international cooperation?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on forms of international cooperation?
- Do any non-governmental organizations or academics give training on joint investigation matters?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on promoting other forms of international cooperation:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on other forms of international cooperation?

- ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on other forms of international cooperation?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on other forms of international cooperation?
 - ▷ If yes, please list in which ways.



Secondary compliance questions

- If legislation, agreements or policies on international law enforcement cooperation are inadequate, what kind of legislation, agreements or policies would be required to facilitate international law enforcement cooperation?
- Has the State been able to undertake joint investigations by agreement on a case-by-case basis in the absence of bilateral or multilateral agreements?



Key performance indicators

- With how many States does the State engage in international law enforcement cooperation through formal agreements?
- With how many States does the State engage in international law enforcement cooperation through informal channels?
- In the last 12 months, how many joint investigations did the State participate in?
- In the last 12 months, how many cases were solved in the State thanks to joint investigation efforts?



Additional questions

- What factors have led to successful international law enforcement cooperation, including joint investigations? Please elaborate on promising practices.
- What problems or challenges have been encountered during international law enforcement cooperation, including joint investigations, and how were they resolved?

IV.

Prevention and
national coordination

INTRODUCTION

The establishment of specific criminal offences and a focus on effective law enforcement, prosecution and adjudication are vital to combating organized crime. However, it is also vital that criminal justice responses are complemented by an equally strong focus on preventing transnational organized crimes from happening in the first place. The objective of preventing such crime from occurring is at the very heart of the Organized Crime Convention. As stated in article 1, the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively. States must endeavour to include a substantial proactive crime prevention component in their legislation, policies and programmes relating to the Convention.

The following chapter sets out the Convention requirements in relation to prevention (art. 31) and the collection, exchange and analysis of information (art. 28). Although not explicitly mentioned in the Convention, the significance of national cooperation to combat organized crime is also outlined in the present chapter.

TOOL 15

PREVENTION (ARTICLE 31)

Introduction

“Prevention is the first imperative of justice.”³⁸ The objective of article 31 is to prevent transnational organized crime from occurring, which is at the very heart of the Organized Crime Convention. In so doing, States must endeavour to include a proactive crime prevention component in their policy and other frameworks.

The concept of crime prevention can potentially have many different meanings. According to the Guidelines for the Prevention of Crime, “crime prevention” comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes.³⁹ In the Guidelines, the importance of the following seven principles that are fundamental to effective crime prevention is stressed:

- (a) Government leadership: all levels of government should play a leadership role in developing effective and humane crime prevention strategies and in creating and maintaining institutional frameworks for their implementation and review;
- (b) Socioeconomic development and inclusion: crime prevention considerations should be integrated into all relevant social and economic policies and programmes, including those addressing employment, education, health, housing and urban planning, poverty, social marginalization and exclusion;

³⁸ Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 4.

³⁹ Economic and Social Council resolution 2002/13, annex, para. 3.

- (c) Cooperation and partnerships: these should be an integral part of effective crime prevention, given the wide-ranging nature of the causes of crime and the skills and responsibilities required to address them;
- (d) Sustainability and accountability: crime prevention requires adequate resources, including funding for structures and activities, in order to be sustained;
- (e) Knowledge base: crime prevention strategies, policies, programmes and actions should be based on a broad, multidisciplinary foundation of knowledge about crime problems, their multiple causes and promising and proven practices;
- (f) Human rights, rule of law and a culture of lawfulness: the rule of law and those human rights which are recognized in international legal instruments to which Member States are parties must be respected in all aspects of crime prevention;
- (g) Interdependency: national crime prevention diagnoses and strategies should, where appropriate, take account of the links between local criminal problems and international organized crime.

Mandatory provisions

Article 31, paragraph 1, requires States parties to endeavour to develop national projects and to establish and promote best practices on preventing transnational organized crime.

Under article 31, paragraph 2, States parties are required to endeavour to reduce, in accordance with fundamental principles of domestic law, existing or future opportunities for organized criminal groups to participate in lawful markets using the proceeds of crime, through measures that focus on:

- (a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
- (b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;
- (c) The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;
- (d) The prevention of the misuse of legal persons by organized criminal groups, through such measures as:
 - (i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;
 - (ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by the Organized Crime Convention from acting as directors of legal persons incorporated within their jurisdiction;

- (iii) The establishment of national records of persons disqualified from acting as directors of legal persons;
- (iv) The exchange of information contained in the records referred to in subparagraphs (i) and (iii) above with the competent authorities of other States parties.

Article 31, paragraph 3, requires States parties to endeavour to promote the reintegration of people convicted of offences covered by the Organized Crime Convention into society.

Article 31, paragraph 4, requires States parties to endeavour to periodically evaluate their relevant legal instruments and administrative practices in order to detect their vulnerability to misuse by organized criminal groups.

Article 31, paragraph 5, requires States parties to endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organized crime.

Article 31, paragraph 6, requires States parties to provide the Secretary-General with the details of national authorities that can assist other States parties in developing preventive measures against transnational organized crime.

Article 31, paragraph 7, requires States parties to collaborate with each other and relevant regional and international organizations, as they deem appropriate, in order to promote and develop the preventive measures outlined above.



Core compliance questions

In relation to strategies, policies or programmes:

- Please list and cite the name(s) of legislation, plans, strategies or programmes that implement measures to prevent transnational organized crime and, where necessary, indicate the relevant parts (chapter, article, section, etc.).
- Do the legislation and/or national crime prevention plans, strategies or programmes address any of the following areas?
 - (a) Prevention of organized criminal groups gaining access to legal markets (such as by strengthening cooperation between law enforcement entities and private entities);
 - (b) Promotion of professional standards to ensure the integrity of public or private entities;
 - (c) Ensuring that criminal groups cannot exploit criminal administrative processes;
 - (d) Prevention of the misuse of legal persons;
 - (e) Reintegration of offenders.

TOOL 15

- Do the national plans, strategies or programmes identify crime problems (trends, causes, types, locations and impacts of crime) and possible interventions?
- Are the national plans, strategies or programmes linked to sectorial policies and strategies?
- Which of the following crime prevention approaches does the strategy encompass?
 - (a) Social development;
 - (b) Community-based;
 - (c) Situational;
 - (d) Social reintegration of offenders.
- Is the strategy based on an analysis of crime problems in terms of vulnerability to crime and victimization of specific population groups?
- Is there a central body or department in charge of implementing national crime prevention plans or coordinating the work of different levels or sectors of government?
- Who are the primary stakeholders concerned with crime prevention?

In relation to prevention of organized criminal groups from gaining access to legal markets:

- Is the private sector involved in crime prevention plans, strategies or programmes?
- What is the role of the police in prevention, i.e.:
 - (a) Do they apply community and problem-oriented policing?
 - (b) Do investigators have protocols enabling cooperation and information exchange with other criminal justice agencies (such as the prison service, customs, financial intelligence units and immigration agencies)?
- Are there protocols in place allowing for cooperation with other public institutions, such as local hospitals, municipal offices and tax authorities?
- Are organizations in the public sector required to assist and facilitate police investigations?
- Is there a code of conduct for the performance of police activity, in particular in relation to any of the following?
 - (a) Obtainment, use and dissemination of information;
 - (b) Interception of mail and telecommunications;
 - (c) Use of intrusive techniques and technical surveillance;
 - (d) Use of police equipment and property;
 - (e) Treatment and detention of prisoners;
 - (f) Interviewing of suspects.

In relation to the reintegration of offenders:

- Is social reintegration addressed in the criminal and criminal procedure codes?

- What is the legal and regulatory framework governing the following?
 - (a) Diversion from prosecution;
 - (b) Alternative sanctions;
 - (c) The probation system;
 - (d) Parole;
 - (e) Conditional release.
- Are social rehabilitation programmes in place in prison settings and for offenders post-release?

In relation to the promotion of public awareness regarding the Organized Crime Convention:

- Are mechanisms in place to involve the media in crime prevention strategies and programmes?
 - ▷ If yes, are there any specific campaigns?

In relation to training on the prevention of organized crime:

- Have law enforcement personnel and/or other relevant professionals received training on crime prevention:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions offering training on crime prevention?
- Does multi-agency training on the prevention of organized crime take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on the prevention of organized crime?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on the prevention of organized crime?
- Do any civil society organizations or academics give training on matters relating to the prevention of transnational organized crime?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the prevention of organized crime:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the prevention of organized crime?
 - ▷ If yes, please list in which ways and specify to which countries or regions.

- Has the State received technical assistance on the prevention of organized crime?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the prevention of organized crime?
 - ▷ If yes, please list in which ways.



Secondary compliance questions

- Does the legal and regulatory framework on prevention of organized crime regulate any of the following?
 - (a) Diversion from prosecution;
 - (b) Alternative sanctions;
 - (c) The probation system;
 - (d) Parole or conditional release.
- Does the State review legislation in order to assess its vulnerability to misuse by transnational organized criminal groups?
- Does the State review administrative practices in order to assess their vulnerability to misuse by transnational organized criminal groups?
- Do the legislation and/or national crime prevention plans, strategies or programmes provide for the involvement of civil society?
- Does a long-term strategy exist that provides for the allocation of finances for the regular monitoring and evaluation of policies and programmes on the prevention of organized crime?
- If there is no national strategy on the prevention of organized crime, how is organized crime prevention defined at the national level?
- Do social inclusion and reintegration programmes exist for released prisoners who had been convicted of offences covered by the Organized Crime Convention?



Key performance indicators

- If a programme on preventing organized crime exists, how many crimes that fall under the category of organized crime were reported to the police in the last 12 months?
- In the last 12 months, how many victimization incidents were reported by respondents to a victimization survey?

- In the last 12 months and based on street crime indexes, by what percentage did street safety and security change in the capital city?⁴⁰
- In the last 12 months and based on home crime indexes, by what percentage did home security change in the capital city? In particular, what was the percentage change in residential burglaries?
- In the last 12 months and based on public crime indexes, by what percentage did public security change in the capital city? In particular:
 - (a) What was the percentage change in rates of crimes occurring in the workplace?
 - (b) What was the percentage change in rates of crimes occurring in urban centres?
 - (c) What was the percentage change in rates of crimes occurring in parks?
 - (d) What was the percentage change in rates of crimes occurring in nightclub districts?
- In the last 12 months, what was the percentage of recidivist offenders in the prison system?
- In the last 12 months, what was the percentage of prisoners released in temporary and early release schemes?
- How many plans, strategies or guidelines on crime prevention were in force in the last 12 months?
- In the last 12 months, was there an increase or a decrease in the resources allocated by the State to undertake research on the root causes of crimes covered by the Organized Crime Convention, in order to inform policies and programmes?



Additional questions

- Do crime problems relating to transnational crime affect local crime conditions (e.g. trafficking in persons, firearms, drugs or smuggling of migrants)?
- Where are the main local crime problems?
 - (a) In urban centres;
 - (b) In suburbs;
 - (c) In lower-income areas;
 - (d) Other areas (please specify).
- Is there concern about internal organized crime (e.g. from rural to urban areas)?

⁴⁰The information may be available from police statistics or victimization surveys.

- Are there areas that are largely controlled by gangs, organized criminal groups or paramilitary groups?
- Is there concern about institutionalized violence (e.g. by the police, in prisons, in schools or in residential care institutions)?
- Is there heavy investment in private security systems and technology among some groups (e.g. closed-circuit television, guards or gated communities in well-off suburbs and residential areas or in city centre business districts and commercial areas)?
- Is there political violence or violence related to conflict and civil unrest?
- What is the level of “informality” of the existing security systems (vigilante groups, security committees, etc.) and is this cause for concern?
- Is cybercrime (including Internet fraud or identity theft) a concern?
- Is there general public confidence and trust in the police and the justice system, and in government and elected officials?
- How far is organized crime a major concern compared with conventional crime?

TOOL 16

TOOL 16

DATA COLLECTION, ANALYSIS AND EXCHANGE OF INFORMATION ON THE NATURE OF ORGANIZED CRIME (ARTICLE 28)

Introduction

The collection and exchange of information are essential to developing a sound, evidence-based policy on preventing and responding to transnational organized crime. Consolidated information on emerging trends in organized crime is indispensable for setting goals, allocating resources and evaluating results.

Article 28 of the Organized Crime Convention encourages States parties to collect data and examine the characteristics and trends in organized crime. It also encourages cooperation between government agencies, academic communities and international and regional organizations in the collection, exchange and analysis of information and data relating to organized crime.

Mandatory provisions

In accordance with article 28, States parties are required to consider:

- (a) Analysing trends in organized crime in its territory, in consultation with the scientific and academic communities (art. 28, para. 1);

- (b) Developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations (art. 28, para. 2);
- (c) Monitoring its policies and measures to combat transnational organized crime, as well as making assessments of the effectiveness and efficiency of those measures (art. 28, para. 3).



Core compliance questions

- Please list recent initiatives by the State that are aimed at implementing article 28 of the Organized Crime Convention.
- Has the State conducted an assessment on transnational organized crime and its impact on State security?
- Has the State conducted a national assessment on organized criminal groups and the extent of their criminal activity?
- Has the State developed any strategy and/or policy in response to those organized crime assessments?
- Has the State designated a national focal point or focal point agency for monitoring organized criminal activity?

In relation to research on the nature of organized crime:

- Is there a national policy, including a mandate, for research on organized crime?
- Is there a mechanism for coordinating research on organized crime?
 - ▷ Who conducts such research?
 - ▷ Are academics and civil society organizations involved?
- Does a State-run database on organized crime exist?
- Is there a mechanism for publishing, releasing and disseminating data and other information related to organized crime?
- Are there budgetary provisions for funding research on organized crime, including grants to academics and independent researchers?

In relation to policy development and coordination on organized crime:

- Is there a national organized crime strategy?
 - ▷ If yes, who is responsible for coordinating and monitoring its implementation and evaluation?
- Are civil societies and academia involved in coordinating and monitoring the implementation and evaluation of the national strategy on organized crime?

- ▷ Are research results used to update or inform policies and programmes on a regular basis?

In relation to training on the collection, exchange and analysis of information on the nature of organized crime:

- Have relevant professionals received training on the collection, exchange and analysis of information on the nature of organized crime:
 - (a) In the last year?
 - (b) In the last one to two years?
 - (c) In the last two to five years?
 - (d) More than five years ago?
- Are there any training institutions offering training on the collection, exchange and analysis of information on the nature of organized crime?
- Does multi-agency training on data collection, exchange and analysis of information on the nature of organized crime take place?
 - ▷ If yes, does it address different groups of stakeholders and different sectorial responsibilities?
- Is the State a beneficiary of internationally provided training activities on data collection, exchange and analysis of information on the nature of organized crime?
 - ▷ If yes, are any vetting procedures in place to determine who receives training?
- Is the State a provider of international training opportunities on data collection, exchange and analysis of information on the nature of organized crime?
- Do any civil society organizations or academics give training on the collection, exchange and analysis of information on the nature of organized crime?

In relation to the technical assistance mandate of the United Nations Office on Drugs and Crime on the collection, exchange and analysis of information on the nature of organized crime:

- Is there a body that coordinates technical assistance in the State?
- Does the State provide technical assistance on the collection, exchange and analysis of information on the nature of organized crime?
 - ▷ If yes, please list in which ways and specify to which countries or regions.
- Has the State received technical assistance on the collection, exchange and analysis of information on the nature of organized crime?
 - ▷ If yes, please list in which ways and specify from which countries or regions.
- Does the State require technical assistance on the collection, exchange and analysis of information on the nature of organized crime?
 - ▷ If yes, please list in which ways.



Key performance indicators

- In the last 12 months, how many research products on organized crime were produced with the participation of State institutions?
- In the last 12 months, how many policies or briefs were developed by the State from research on organized crime?
- In the last 12 months, how many persons were trained on the conduct of research on organized crime?
- In the last 12 months, have State funds been spent on or allocated for research on organized crime?
- In the last 36 months, how many information-sharing protocols were developed by the State?



Additional questions

- What problems or challenges have been faced while developing information on the nature of organized crime and how were they resolved?



UNODC

United Nations Office on Drugs and Crime

Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria
Tel.: [+43-1] 26060-0, Fax: [+43-1] 26060-5866, www.unodc.org