



**UNODC**

United Nations Office on Drugs and Crime

# PILOT REVIEW PROGRAMME: COUNTRY

## *UNITED MEXICAN STATES*

*Review of the Implementation of Articles 5, 10, 12  
(paragraphs 1 and 2), 16 (paragraphs 1, 3, 4, 5 and 10)  
and 18 (paragraphs 9 and 13) of the United Nations  
Convention against Transnational Organized Crime*

Reviewing Countries:  
PERU & INDONESIA

## **A. Introduction**

Article 32 of the United Nations Convention against Transnational Organized Crime (UNTOC) establishes a Conference of the Parties with a mandate to, inter alia, promote and review the implementation of the Convention. In accordance with Article 32, paragraph 3 of the Convention, the Conference shall agree upon mechanisms for achieving its objectives, including reviewing periodically the implementation of the Convention.

In its decision 4/1, the Conference of the Parties decided that it was necessary to explore options regarding an appropriate and effective review mechanism, and requested the Secretariat to assist interested States parties in assessing their implementation of the provisions of the Convention and the Protocols thereto. The Conference further decided to convene an open-ended intergovernmental meeting of experts to make recommendations to the Conference on the appropriate mechanism, which should allow the Conference to discharge fully and efficiently its mandate. The experts agreed that it would be appropriate, in view of the tenth anniversary of the Convention, to reinforce the implementation of the Convention and its Protocols. They decided that interested States parties might work to explore, together with the Secretariat, ways and means of reviewing their implementation of the Convention and its Protocols.

The “Pilot Review Programme”, of which this report forms a part, was established to assist interested States parties to undertake a detailed evaluation of their compliance with selected provisions of the UNTOC Convention. Such efforts are only useful in addressing implementation gaps in those countries. They lead to a constructive exchange of expertise and best practices and provide the basis for testing the feasibility and modalities of a review mechanism. Through information on lessons learned and experience acquired under the project, the Conference will be in a better position to make informed decisions on the review mechanism it may wish to establish.

The Pilot Review Programme is organized in two complementary tracks: a peer review track and an expert review track. Both tracks share the same starting ground, the self-assessment of their implementation by the participating States. However, the peer review track has a country-level focus, while the expert review track aims at analysing general trends and making general recommendations. This report is the result of the peer review process. Based on the self-assessment provided by the country under review, members of the review team engaged in an active dialogue with the country under review, discussing preliminary findings and requesting additional information. Where requested, country visits were conducted by experts from the two reviewing States and of two UNODC staff in order to engage in a detailed discussion on the implementation of the Convention and to assist the preparation of recommendations.

## **B. Process**

The following review of United Mexican State’s (Mexico) implementation of the United Nations Convention against Transnational Organized Crime is based on the self assessment report received from Mexico, the outcome of the active dialogue between the Mexico and the experts from Peru and Indonesia, and an on-site visit held in Mexico from 30 August to 1 September 2010.

## **C. Executive summary**

Mexico has fully adopted the measures required in accordance with articles 10, 12 (paragraphs 1 and 2), 16 (paragraphs 1, 3, 4, 5 and 10) and 18 (paragraphs 9 and 13) of the United Nations Convention against Transnational Organized Crime.

Mexico has partially adopted the measures required in accordance with article 5.

## **D. Implementation of the United Nations Convention against Transnational Organized Crime**

### **1. Ratification of the Convention**

The Organized Crime Convention was signed by Mexico on 12 December 2000.<sup>1</sup> It was subsequently ratified on 4 March 2003 without reservation or declaration.<sup>2</sup>

### **2. The Mexican legal system**

According to the Constitution of the United Mexican States of 1917, Mexico is a federal republic of 31 States and one federal district.

#### **Executive Branch**

The President of Mexico holds the titles of Chief of State, Head of Government as well as Commander-in-Chief of the Mexican military forces. The President appoints Cabinet officials. Legislative power is vested in a bicameral congress (Congreso de la Unión) divided into the Senate (Cámara de Senadores) and the Chamber of Deputies (Cámara de Diputados).

#### **Legislative Branch**

The legislative branch of government is the law making branch. This branch receives assistance from the executive branch by its proposal of laws and at times by its rejection of laws passed by the legislative branch. In theory, the power of introducing bills is shared with the executive, although in practice the executive initiates about 90 percent of all legislation. The legislative branch of the federal government is comprised of the Senate and the Chamber of Deputies. The proposals of law must pass both chambers before being brought to the President for his ratification.

According to article 50 of the Political Constitution of the United Mexican States, the legislative branch of the United Mexican States is vested in a General Congress which shall be divided into two Houses, one of the deputies and the other one of senators.

The House of Deputies shall be composed of 300 representatives from the Nation who shall be elected every three years by relative majority in single-member election districts and by 200 deputies elected by proportional representation, through the system of regional lists in five multi-member election districts. Furthermore, for each incumbent deputy, there shall be a substitute.

The Senate House shall be composed of one hundred and twenty eight senators of whom two shall be elected in each State and in the Federal District under the principle of relative majority and one shall be apportioned to the first minority. For each incumbent senator and alternate one shall be elected. The Senate House shall be totally renewed every six years.

Senators and deputies to the Congress of the Union may not be re-elected for the immediately following term.

With reference to article 73 of the Third section of the Political Constitution of the United Mexican States, the Congress of the Union shall have the powers to establish the crimes and felonies against the Federation and set the corresponding penalties, to issue a general law about kidnapping, that describes at least the guilty acts and their penalties, the distribution of competences and the ways of enhancing coordination between the Federation, the Federal district, the States and Municipalities; as well as to pass laws regarding organized crime. Federal authorities may also take cognizance of crimes under

<sup>1</sup> UN Doc. No. C.N.1342.2000.TREATIES-103 [Depositary Notification].

<sup>2</sup> UN Doc. No. C.N. C.N.182.2003.TREATIES-4 [Depositary Notification]; [Decreto por el que se aprueba la Convención de las Naciones Unidas contra la Delincuencia Organizada Transnacional](#), DOF 12/2/2002.

local jurisdiction, when these are connected with federal crimes. In concurring matters considered in this Constitution, federal laws shall establish the cases in which local authorities shall be able to solve federal crimes. (XXI)

### **Judiciary Branch**

The federal judiciary is governed by Articles 94 through 107 of the Constitution and the Organic Law of the Federal Judiciary. The judicial branch of the Mexican government is divided into federal and state systems. Mexico's highest court is the Supreme Court of Justice (Suprema Corte de Justicia de la Nación) which has final appellate jurisdiction over both state and federal courts in matters of civil, criminal, administrative and labour law, and exclusive jurisdiction over constitutional matters. The Supreme Court of Justice is comprised by eleven judges appointed by the President with Senate approval. The Supreme Court of Justice interprets laws and judges cases of federal competency. Mexico has a civil law structure that allows for judicial review of legislative acts.

### **Federal Judicial System**

The crimes listed in the Mexican federal law, which fall under organized crime, include: terrorism; drug trafficking; currency counterfeiting; trafficking in arms, smuggling of migrants, organs; corruption of minors; kidnapping; and vehicle theft. Some of these crimes (e.g., terrorism and drug trafficking) are reserved for federal law (fuero federal), others (e.g., kidnapping and vehicle theft) are included in state law (fuero común) as well, which frequently creates conflicts over jurisdiction.

### **Attorney General**

The Attorney General of Mexico is the head of the Office of the General Prosecutor, an institution belonging to the Federal executive branch that is responsible for the investigation and prosecution of federal crimes. The office is governed mainly by the Constitution of Mexico and the Organic Law of the Attorney General's Office. The Office of the General Prosecutor is the main institution dedicated to combat Organized Crime. The Attorney General is a member of the President's Cabinet.

The Attorney General's Office is organized into several subordinate entities, including the entity that is specialized in Organized Crime.

The Office of the Attorney General is designated as the central authority in matters of mutual legal assistance.

### **The criminal justice system and recent institutional reforms**

The legal system of Mexico is a hybrid system. While it incorporates some aspects of common law and accusatory-style systems, it draws primarily from traditional European code-based, inquisitorial systems. In June 2008, the National Congress amended the Federal Constitution and introduced an adversal criminal procedure, which will be introduced gradually and progressively in the different States by 2016.

Mexico's legal system is based on Spanish civil law. The Constitution is at the top of the country's legal hierarchy, subordinated by international treaties and federal and state law. The President of Mexico has the power to celebrate international treaties, as well as to terminate, denounce, suspend, modify, amend, withdraw reservations and formulate interpretative statements about them, subject to approval by the Senate. The Senate maintains the power of ratification. International treaties provisions are self executing as long as they do not contradict Mexican Law. In such case, a legislative amendment is required.

The Mexican Civil Code (Código Civil para el Distrito Federal en Materia Común y para Todo la Republica en Materia Federal) is the country's principal civil law instrument. Mexico's federal criminal law is set out in the Federal Penal Code (Codigo Penal Federal- Last Reform: D.O.F 14 August 1931) and the Federal Code of Criminal Procedure (Código Federal de Procedimientos Penales). Federal crimes include police evasion, organized crime, bribery, public theft and unlawful enrichment. Other legal instruments relevant to combating organized criminal activity include the Federal Law against Organized Delinquency (D.O.F of November 7, 1996- Last reform D.O.F of 23-01-2009), the Law of asset Forfeiture of (2008).

The most recent amendments included a reform of the definition of organized crime, and a new constitutional framework that will gradually (2008-2016) transform the criminal justice system from inquisitorial to accusatorial. At the end of 2009 eight states had passed legislation and were at various stages of training and implementation, three states were legislating reforms, and seven states sought assistance to consider the reforms. All state and federal jurisdictions must now legislate to conform to the new judicial system and implement oral trial procedures by 2016. Under the old system, still being used by the federal government, the federal district, and 22 states, a typical trial consists of a series of fact-gathering hearings during which the court receives documentary evidence or testimony. A judge in chambers reviews the case file and then issues a final, written ruling. The record of the proceeding is not available to the general public; only the parties involved have access to the official file and only by special motion.

Constitutional reforms associated with the new justice system were ratified by the congresses of 24 states in support of its passage.

At the end of 2009 the Federal Congress had not passed criminal procedural code legislation necessary for the implementation of the reforms at the federal level yet.

### **3. Legal Issues**

#### **International cooperation**

International treaties signed by the President and approved by the Senate, together with the Federal Constitution and the laws of the National Congress, constitute the supreme law of the nation<sup>3</sup>. In November 1999, the Supreme Court clarified that international treaties are immediately below the Federal Constitution but above federal and local laws in the legal hierarchy. This interpretation was based on the reasoning that international agreements are entered into by the Mexican state as a whole, and all authorities are responsible for the obligations assumed before the international community. International treaties are therefore a part of national legislation and can be the basis for legal action. The Federal Constitution authorizes only the President, as the head of state, and the Senate, as the body of representatives of the federal entities, to enter Mexico into international obligations.

#### **Jurisdiction**

Under the Convention against Transnational Organized Crime, Mexico may assert jurisdiction over trafficking crimes committed within its territory (territorial jurisdiction) and trafficking crimes committed outside its territory (extraterritorial jurisdiction). Issues of jurisdiction in Mexico are regulated by the Federal Criminal Code, the Federal Criminal Procedure Code, and the General Law on the Judicial Power of the Federation.

#### **Extradition**

Extradition may be accomplished either solely on the basis of the Convention against Transnational Organized Crime or on the basis of a separate bilateral or multilateral extradition treaty (UNTOC art. 16.).

The extradition procedure in Mexico is regulated by the Federal Constitution, the Law on Judicial Power, the Law on Attorney General and its Regulations, and the Law on International Extradition. In addition, Mexico has bilateral extradition treaties with 26 countries including its neighbours (the U.S., Guatemala and Belize), but does not make extradition conditional upon the existence of a treaty.

If no treaty exists between Mexico and another country, the procedure for extradition is governed by the Law on International Extradition. Mexico allows the extradition of its nationals in specific cases and upon the approval of the Mexican government. Please see more on the current practice under 5.4.

<sup>3</sup> FEDERAL CONST. art. 133.

In practice, extradition requests are filed with the Legal Department of Ministry for Foreign Affairs. They are processed through the Office of the Attorney General, and a final determination is made by a judge. While no specific time limit for the execution of an extradition request from beginning to end is established in the law on International Extradition, the process takes at least 6 months, given the time prescribed for the detention of the person, obtaining legal assistance and making objections, and for appealing the decision<sup>4</sup>. In practice, the procedure often takes more than a year, and has taken up to 5-10 years in some cases.

#### **4. Institutional framework**

##### **-Ministry of Public Security (Secretaria de Seguridad Publica, SSP)-**

The SSP is an umbrella agency which coordinates actions that follow through on the executive's strategies. The SSP oversees multiple divisions including: Strategy and Police Intelligence, Crime Prevention, Directorate General of Transparency and Regulatory Improvement.

##### **-Federal Police-**

The SSP also oversees the Federal Police, which was formed to, and is primarily responsible for, combating drug trafficking and organized criminal activities in Mexico. The Federal Police engage in enforcement activities including the use of special investigative techniques. The Federal Police are the primary enforcement mechanism on the ground currently combating organized crime and the drug trade.

##### **-The National Mexican Military-**

The Mexican military collaborates with the Federal Police on combat missions taken against organized criminal organizations. Additionally, military intelligence collaborates with the Federal Police intelligence, Ministerial Federal Police, and National Security and Investigation Center (CISEN), to compile intelligence regarding organized criminal activities within Mexico.

##### **National Security and Investigation Center (CISEN)-**

Under the Office of the President, the CISEN provides intelligence regarding organized crime activities to law enforcement.

##### **- Federal Attorney General's Office (Procureria General de la Republica, PGR)-**

The Federal Attorney General is the head of the Office of the General Prosecutor, the prosecutorial arm of the executive branch. The Attorney General is a member of the President's cabinet.

**The Secretariat of Public Security (Secretaria de Seguridad Pública - SSP)** – is a Secretariat of the Executive Branch established in 2000. It is part of the Cabinet of the President and is composed of different deputy-ministries.

The sub Attorney's General Office of organized crime is divided in six units ( kidnapping, health, terrorism, proceeds of crime, trafficking in minors and car thefts) that investigate organized crime.

##### **- Ministerial Federal Police-**

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<sup>4</sup> Id. art 16.

**Federal Police** was established with the new SSP in 2000. Before there was no Federal Police in Mexico.

Within PGR, this police force is the primary investigative arm of the Attorney general's office.

**- Unit of Specialized Investigation on Organized Crime (SIEDO)-**

Also within PGR, SIEDO is structured specifically to resist corruption, SIEDO is a specialized unit that investigates and prosecutes organized crime related activities.

**- National Migration Institute-**

Collaborates with Federal police and Federal Investigation Agency to combat organized crime elements associated with human trafficking and illegal migration.

**- Customs and Tax Inspection-**

Customs has recently been moved to the Operadores de Comercio Exterior or OCE Agency. Customs acts as the first point of contact for illicitly trafficked materials. Currently, Customs is fighting corruption within its own organization, but continues to fight the flow of firearms, drugs, humans, and the like across Mexico's borders.

## 5. Review of implementation of selected articles

### 5.1 Article 5

#### *Criminalization of participation in an organized criminal group*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
- (i) 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;
  - (ii) 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;
- (b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

#### a. Summary of the main requirements

In accordance with article 5, paragraph 1, States Parties are required to establish the following offences as crimes:

- a) Either or both of the following:

- (i) Agreeing with one or more persons to commit a serious crime for a financial or other material benefit;
  - (ii) The conduct of a person who, with knowledge of the aim and general criminal activity of an organized criminal group or its intention to commit the crime, takes an active part in: a. Criminal activities of the organized criminal group; or b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the criminal aim;
- b) Organizing, directing, aiding abetting, facilitating or counselling the commission of a crime involving an organized criminal group.

Article 5, paragraph 2 states that the knowledge, intent, aim, purpose or agreement may be inferred from objective factual circumstances.

Paragraph 3 of article 5 provides that States that require the involvement of organized criminal groups for the offence of agreeing to commit a serious crime must: a) ensure that domestic law covers all serious crimes involving organized criminal groups; and b) inform the Secretary –General of the United Nations in that regard.

#### **b. Findings and observations of the review team concerning article 5**

Article 16 (9) of the Constitution of the United Mexican States defines organized crime as a factual organization of three or more individuals, to commit crimes in a permanent or reiterated form.<sup>5</sup> The definition is similar to the one in article 2(a) of the Convention against Transnational Organized Crime, but does not require that the criminal group seeks a financial or other material benefit. In other words, the definition is broader.

Mexican legislation criminalizes conspiracy as well as the commission of crimes by an organized criminal group (criminal association) as set forth respectively in article 5.1 (a) (i) and article 5.1 (ii) of the Organized Crime Convention.

#### Conspiracy

Mexico criminalizes conspiracy and introduces a list of predicate offences linked to organized crime. The list is contained in the Federal Law against Organized Crime.

Conspiracy is an independent offence which requires for being punishable the mere agreement to belong to the group and to aim at the commission of any of the specified offences. In addition to the mere agreement, the offence can be coupled with any of its predicate offences. In practice the provision of article 2 of the Federal law against Organized Crime is often applied in connection with other serious offences, such as drug offences (classified by Mexican law as offences against public health). Kidnapping occurs almost always in connection with trafficking in firearms, trafficking in drugs often occurs with trafficking in firearms and sometimes with kidnapping. It is considered an aggravating circumstance, if the person commits more than one offence listed in article 2.

According to article 2 of the Federal Law against Organized Crime, “when three or more persons agree to organize themselves or get organized to commit in a permanent or reiterated form, conducts that individually or related to others, have as a purpose or result the commission of any of the following offences, those persons shall be punished for that sole fact, as members of organized crime:

- I. Terrorism, as foreseen in articles 139 to 139 *ter* and international terrorism as foreseen in articles 148 Bis to 148 Quáter; drug related felonies, as foreseen in articles 194 and 195, first paragraph; falsification and alteration of currency, as foreseen in articles 234, 236 and 237; money laundering, as foreseen in article 400 Bis; and the offence as foreseen in article 424 Bis. All those articles come from the Federal Penal Code;

<sup>5</sup> Decree reforming the Constitution of the United States of Mexico, adopted June 18, 2008, D.O..

- II. Firearms- gathering and trafficking-, as foreseen in articles 83 bis and 84 of the Federal Law of Firearms and Explosives;
- III. Smuggling of migrants, as foreseen in article 138 of the General Population Law;
- IV. Trafficking in human organs, as foreseen in articles 461, 462 and 462 bis of the General Law of Health, and
- V. Corruption of minors or persons who lack capacity to understand the meaning of the fact or persons who do not have capacity to resist it, foreseen in article 201; Pornography of minors or persons who lack capacity to understand the meaning of the fact or persons who do not have capacity to resist it, as foreseen in article 202; Sexual tourism against minors or persons who lack capacity to understand the meaning of the fact or persons who do not have capacity to resist it, as foreseen in articles 203 and 203 BIS; Pandering minors or persons who lack capacity to understand the meaning of the fact or persons who do not have capacity to resist it, as foreseen in article 204; Sexual exploitation of minors or persons who lack capacity to understand the meaning of the fact or persons who do not have capacity to resist it, as foreseen in article 205; Sexual exploitation, as foreseen in article 207; assault, as foreseen in articles 286 and 297; abduction, as foreseen in article 366; trafficking in minors or persons who lack capacity to understand the meaning of the fact, as foreseen in article 366 Ter, and robbery of vehicles, as foreseen in article 376 bis and 377 of the Federal Penal Code, or corresponding provisions of state penal law.
- VI. Trafficking in persons, as foreseen and sanctioned in articles 5 and 6 of the Law to Prevent and Sanction Trafficking in Persons.”

The current list of predicate offences included in the Federal Law on Organized Crime is considered by the authorities as sufficient to tackle organized crime groups, even though important UNTOC offences, such as money laundering, corruption and obstruction of justice are not explicitly included in the list of predicate offences. The fact of being a public official is per se an aggravating circumstance in the commission of these and other offences.

### Criminal association

In addition to conspiracy, the Mexican penal code establishes also the general offence of criminal association (*asociación delictuosa*), which applies to a group of three or more persons, who – unlike article 2 - can commit any kind of offences foreseen in the penal code and not only the offences related to organized crime.

Article 13 of Chapter III on Persons Liable for Crimes of the Federal Criminal Code stipulates that the following persons are considered perpetrators: [...]

- V. Those who intentionally lead another person to commit a crime;
- VI. Those that intentionally provide aid or assist another person in the commission of a crime;
- VII. Those who, after commission of the crime, assist the offender in fulfilment of a promise made before the crime, [...].”

Art. 4 and 5 of the Federal Law against Organized Crime implicitly recognize the different levels of participation in an organized crime group, by introducing differentiated sanctions for leaders and directors of the group and for its members. Art. 5 also considers as an aggravating circumstance the fact of being a public official, and foresees the dismissal of the public official.

Furthermore, article 4 of the Federal Law against Organized Crime foresees incremental penalties to members of organized crime with administrative, direction or supervision duties, independently from the offence committed.

Worthwhile of notice is also a relevant legal precedent of the Mexican Supreme Court of Justice related to the nature of the offence of organized crime, which reads as follows:

“According to article 2 of the Federal Law against Organized Crime, the criminal definition (hypothesis) is met when: three or more persons agree to organize themselves or get organized to commit in a permanent or reiterated form, conducts that individually or related to others, have as a purpose or result in the commission of any of the offences defined in the following fractions, presented in a limitative order. Consequently, from the criminal law dogma, said offence can be classified as having a pluri-subjective nature, since it requires a minimum of individuals, that is three individuals; of alternative commission, as it can be reached by the conductible hypothesis of “organizing themselves or by the fact of agreeing to do so”, this with the purpose of conducting actions that for themselves or related to others, which regulates the end or result of committing any of the offences that are described in a limitative manner; therefore, a specific subjective element is required (different from the INTENTION), which translates into that particular purpose; also, it can be classified as those that doctrine defines as “of anticipated or cut result”, as the achievement of the consummation, materialization or simply the exteriorities of the conducts that could INTEGRATE the various offences that abstractly compose the goal intended by the organization are irrelevant for its CONFIGURATION. Moreover, it is an intended offence, where intention shall include the knowledge of the objective aspects and the will of the perpetrator or accept such integration, this is, to know and will of such belongingness to the group that deliberately organizes itself or agrees to do so”.

The United Mexican States notified that there was no information available regarding the compliance of their legislation with article 5.2 of the Organized Crime Convention, with regard to possibility to infer the knowledge, intent, aim, purpose or agreement from objective factual circumstances.

### **Recent legislative developments**

The Mexican State, through the Office of the Attorney General is currently working on the draft initiative, that further strengthens the legislation against organized crime in particular through several provisions of the Federal Law against Organized Crime, the Federal Criminal Code and the Code of Criminal Procedure, which would be amended and modified, with the purpose of penalizing, among others, the following activities:

*Article XXX.- A penalty of XXX to XXX of prison and a fine ranging from XXX to XXX daily minimum wage fine shall be imposed upon the individuals that resolve among themselves to carry out a patron of activity of organized crime and agree the means to carry out their determination.”*

The individuals referred to in the previous paragraph act under a ‘patron of activity of organized crime’ whenever they commit two or more offences referred to in the article of this law (Federal Law against Organized Crime), within a ten year period, to commit any of the following activities:

- I. To receive income, either directly or indirectly, that is derived from those illicit activities.
- II. To use or invest, either directly or indirectly, any part of said income, or the product of said proceeds, in the acquisition of any good or establishment or the operation of any company on any field of activity affecting national or international trade.
- III. Acquire or keep, either directly or indirectly, interest or control of any company involved or whose activities affect national and international trade.
- IV. Direct or participate, either directly or indirectly, in decisions on matters of a corporation or in the collection of illicit proceeds.

Mexico has not received any of the forms of technical assistance offered to help States to adopt and better implement the article 5.2, such as compilation of good practices/ lessons learnt, model legislation, legal assessment, in site assessment of a legal expert, elaboration of an action plan for the application. According to Mexico, the forms of technical assistance needed to help it to adopt and better implement the provision object of this examination would be the use of a model legislation, a legal advice and on- site assistance by a relevant expert.

### **Related legislative reform initiatives**

With the aim to strengthen the overall response against organized crime, the Mexican President has recently sent various bills to the Congress in the areas of money laundering, seizure and confiscation, harmonization of federal and state criminal procedures, human trafficking and firearms :

- Despite predictable difficulties in the short time, the government has passed a draft law to take measures to strengthen the controls and protection of the financial system against organized crime infiltrations by:
  - o prohibiting to purchase real estate with cash. Up to now, purchases of land, ranches, luxury houses, or apartments in tourist areas, can be made with cash in pesos or USD. This provision would be one first restriction to control financial transactions
  - o prohibiting the purchase of articles for more than 100.000 pesos (7500 USD) in cash;.
  - o Another measure proposed to Congress was to give a reporting obligation on economic or financial entities other than the traditional banks obligation to report, public notaries, brokering, sellers of jewellery, aircrafts, boats, cars etc. The aim is to have greater information to analyze and understand criminal organizations;
  - o Creation of seven additional offences to further develop the generic criminal definition of money laundering, to ease the work of prosecutors, which would include new criminal conducts;
  - o Another initiative is to strengthen and improve the 2009 law on asset forfeiture, which currently lacks various safeguards. The introduction of non conviction based confiscation represents a novelty of the Mexican legal system which presents some implementation challenges.
  - o Other measures on criminal forfeiture and abandonment of seized property to make them subject to approval of all federal entities, so as to have a general system, for abandonment and criminal forfeiture.
  
- Mexico has 32 federal entities with different penal codes and procedural penal codes. Where organized crime crosses borders, there is a need for more homogenous procedures. Several new measures and governmental decisions are directed towards a greater homogenization of legislation and criminal procedures between the federal entities.
- Mexico has strengthened its legislation against trafficking in persons and engaged in an aggressive awareness raising campaign;
- Proposals are before the Congress to further federal firearms law, and to criminalize the possession of weapons and of cartouches (the latter is not included in the Protocol against Illicit manufacturing of and Trafficking in Firearms, their Parts and components and Ammunition)

Mexico has adopted most of the measures required in accordance with UNTOC Article 5. With regard to paragraph 2, a draft law is currently pending.
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## 5.2 Article 10

### *Liability of legal persons*

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

#### **a. Summary of the main requirements**

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

- a) Participation in serious crimes involving an organized criminal group;
- b) Offences established in accordance with article 5, 6, 8 and 23 of the Convention;
- c) Protocol offences to the extent States are parties to the Protocols (art.1, para.3, of each Protocol).

For reference, article 5 of the Organized Crime Convention refers to criminalization of participating in an organized criminal group, article 6 to criminalization of the laundering of proceeds of crime, article 8 to criminalization of corruption, and finally article 23 to criminalization of obstruction of justice.

#### **b. Findings and observations of the review team concerning article 10**

In accordance with article 10 (1) of the Organized Crime Convention, the Mexican States has established the liability of legal persons in its legislation as set forth in article 11 of the Federal Criminal Code:

“When any member or representative of a legal entity, or of an association, company or corporation of any kind, except governmental institutions, commits a crime with the means provided by the foregoing entities for the purpose of committing such a crime, in such a way that the offense is committed on behalf of the entity represented or in benefit thereof, the judge may, exclusively in those cases specified by law, order as part of the sentence, the suspension or dissolution of the grouping, when he considers it necessary for public security. Likewise, article 24 (16) of said legislation foresees the suspension or dissolution of legal entities.”

Mexico has never assessed the effectiveness of the measures adopted to comply with article 10.1 of the Organized Crime Convention and would require the assistance in situ by an international expert in order to conduct such an assessment.

According to the Mexican legislation (article 11 of the Federal Criminal Code), the liability of legal persons is of civil and administrative nature. Therefore, the sanction foreseen by article 24 (16) is the suspension or dissolution of the legal entity.

On the issue of criminal liability for legal persons, Mexican legal system has traditionally followed the principle “societas delinquere non potest” (no criminal responsibility for legal entities), inheriting the French- Roman legal tradition on the impossibility for a legal person to bear criminal liability based on that principle, characterized by an individual and personal concept of criminal liability. This principle was adopted by Mexican legislation and therefore criminal liability does not include legal persons.

Although Mexican criminal legislation currently does not foresee a specific provision which determines that the liability of legal persons shall exist independently from that of the individuals who have perpetrated the delinquent actions as required in the article 10(3) of the Organized Crime Convention, the Supreme Court of Justice has ruled as follows:

“It can not be admitted that the persons acting in the name of legal persons do not have liability. If such argument is accepted, the offences committed by the individuals occupying positions in various areas of a legal entity shall remain unpunished, as the penalties should be imposed over the legal person. This is absurd logically and legally speaking. Legal persons do not have an own will, they can only act through physical persons. Therefore, directors, managers, administrators and other representatives of legal entities shall be personally liable for the criminal offences that they commit under their own name or under the ones of the corporation they represent.”

#### **Recent legislative developments**

The Mexican State, through the Office of the Attorney General is currently working on a draft law for the criminal liability of legal persons, which has the objective of regulating criminal liability, investigative procedures, the determination of penalties and the corresponding execution. The draft law makes a clear difference between the liability of natural and legal persons. It includes some exceptions such as the non liability of state institutions. The draft law foresees various sanctions such as the permanent or temporary prohibition to conclude contracts with the State.

The draft law foresee various sanctions such as the permanent or temporary prohibition to conclude contracts with the State.

Mexico has adopted the measures required in accordance with article 10 of the UNTOC. Mexico specified that, in conformity with its legal tradition, it has established the administrative as well as civil liability of legal persons (suspension and dissolution of companies). Furthermore, Mexico is in the process of drafting a law on criminal liability of legal persons.

### 5.3 Article 12 para.1&2

#### *Confiscation and seizure*

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

#### **a. Summary of the main requirements**

States parties must, to the greatest extent possible under their 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 (article 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 and freezing or seizure of the proceeds and instrumentalities of crime covered by the Convention, for the purpose of eventual confiscation (article 12, para.2).

#### **b. Findings and observations of the review team concerning article 12 para.1&2**

In accordance with article 400 of the Federal Criminal Code, the proceeds of crime and instrumentalities used in the commission of offences and proceeds of crimes shall be confiscated if their use is forbidden and also if their use is lawful in the case of intentional offences. Instrumentalities, the assets, objects of or proceeds thereof belonging to a third party can be confiscated in accordance with article 400 of the Federal Criminal Code on concealing or other criminal acts regarding proceeds of crime, regardless of the legal nature and the relationship to the offender:

1. With the intention of profit, after the execution of the crime and without having participated therein, acquires, receives or conceals the product thereof while aware of this circumstance;
2. If the person that received the item through sale, pledge or any other means, had no knowledge of the illicit origin of said item, as a result of not having taken the necessary precautions to ensure that the person from whom the item was received was entitled to dispose of said item.
3. Assists or collaborates in any way with the perpetrator of a crime, with knowledge of these circumstances, through agreement made after the execution of said crime;
4. Conceals or aids in the concealment of the perpetrator of a crime, the effects, objects or instruments thereof, or impedes investigation thereof;
5. Does not provide assistance for the investigation of the crimes or prosecution of the offenders when so required by the authorities;
6. Does not undertake to prevent the consummation of crimes that he knows will be committed or that are being committed by all lawful means available to him and without risk to his person, except when under obligation to confront the foregoing risk;

7. Unlawfully alters, modifies or disrupts the scene, prints or traces of a delinquent act; and
8. Diverts or puts obstacles to the investigation of a criminal act in case or favors the accused so that he flees from the action of justice.

According to the Mexican criminal system, the confiscation can only be ordered by a criminal judge, as set forward by article 182-Q of the Federal Code of Criminal Procedure, which reads:

“The judicial authority shall be able to issue the forfeiture of the properties by means of the judgment in the corresponding criminal process, with exceptions of those properties which were abandoned according to the terms of this code. (Federal Code of Criminal Procedure).”

Likewise, the last paragraph of article 4 of the Federal Law against Organized Crime does also establish the confiscation of the instrumentalities, objects or proceeds of the offences committed by criminal organizations, as well as the assets of which the indicted is the owner, if he does not prove the legal origin proceed of said assets.

With regards to the confiscation of assets for an equivalent value, as of today, there are no provisions in the Mexican legislation for the confiscation of goods of the same or corresponding value when the instrumentalities, objects or proceeds of the crime have disappeared or can not be located. Nonetheless, the Mexican State through the Office of the Attorney General, the Ministry of Public Security, the Ministry of the Interior, the Ministry of Finance and Public Credit is currently drafting an initiative by means of which the possibility to confiscate goods for an equivalent amount shall be brought forward.

Article 24(8) and (18) foresee respectively confiscation of instruments, objects, proceeds of the crime, and confiscation of assets corresponding to illicit enrichment.

With regards to article 12.2 of the Organized Crime Convention, in principle, article 180 of the Federal Code of Criminal Procedures gives the Federal Prosecutor and the Judges the highest faculty for using the means of investigation which- in their opinion- prove the offence and the alleged responsibility of the offender, even though they are not mentioned in the Law, as long as these means are not against the law.

In the Mexican criminal legislation the decision to seize is clearly established. In this sense, article 40 of the Federal Criminal Code states that the competent authorities shall proceed to the immediate seizure of the assets which could be confiscated during the investigation or the criminal proceedings.

In this way, once the Federal Prosecutor notices the existence of proceeds, property, equipment or other instrumentalities, it orders seizure, giving hearing rights to the interested parties (accused, victim or offended and any other third party) so that they can present their legal arguments. In case they do not respond within a ninety day period, the confiscation of the assets in favor of the State shall be ordered.

If the interested parties prove their allegations, the return of the assets is ordered. This applies to cases where the Federal Prosecutor decides not to take legal action, where s/he abstains to request the seizure, when s/he requests the seizure to be raised, or when the judicial authority does not order the confiscation or drops the seizure.

All the proceeds or instrumentalities secured are managed by the Property Management and Alienation Service (SAE) as foreseen in article 6 of the Federal Law for Management and Alienation of Public Sector Property. Nonetheless, as stated in article 1, the SAE can appoint depositaries, liquidators, interveners or administrators, in conformity with various articles, such as article 182-C of the Federal Code of Criminal Procedures. According to this article, if the assets seized have previously been attached, taken under disposal of judicial authorities, embargoed or seized, notification of the new seizure will be made to the authorities who have ordered these actions. The assets will continue

under custody of whoever has been designated for that purpose, and at the disposal of the judicial authority or of the Federal Public Prosecutor for the purposes of the criminal proceedings.

The Mexican legislation foresees the following forms of seizure:

- preventive seizure (aseguramiento);
- confiscation based on judicial decision (conviction based confiscation)
- since 2009, non conviction based confiscation or civil asset forfeiture (extinction de dominio); this form of confiscation has been introduced with the adversarial system and is being applied so far only in states that have already adopted the new criminal procedure.

Mexico has referred to the existence of several cases where judges have already ordered such non conviction based confiscation, using the reversal of the burden of proof in line with article 12(7) of the UNTOC.

The states that already apply adversarial system can already carry out asset forfeiture to cover such criminal offences that are not yet admissible in the rest of the country (eg. a group conducting robbery in houses). The *deferral of the entry into force of the adversarial system is 8 years*.

Mexico has adopted the measures required in accordance with article 12, paragraphs 1 and 2 of the UNTOC.

Mexico has adopted in its criminal law a provision to enable the confiscation of proceeds and instrumentalities of crime.

#### 5.4 Article 16 (paragraphs 1,3,4,5,10)

Paragraph 1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, 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.

Paragraph 3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

Paragraph 4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

Paragraph 5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

Paragraph 10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

**a. Summary of the main requirements**

**Article 16, paragraph 1**, establishes the scope of the obligation to provide extradition. Extradition is to be provided with respect to the offences covered by the Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State party, 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. While this articulation appears complex, it consist of several key components that can be readily differentiated.

For reference, article 3.1 of the Organized Crime Convention set forth that the Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of: a) The offences established in accordance with articles 5,6,8 and 23 of the Convention; and b) Serious crime as defined in article 2 of the Convention; where the offence is Transnational in nature and involves an organized criminal group.

**Article 16, paragraph 3**, obliges States parties to consider the offences described in paragraph 1 as automatically included in all extradition treaties existing between them. In addition , the parties undertake to include them in all future extradition treaties between them.

**Article 16, paragraph 4** set forth that if a State Party makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

**According to article 16, paragraph 5** States that make extradition conditional on the existence of a treaty shall: a) inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to the Convention; and b) if they do not take this Convention as the legal basis for cooperation on extradition , seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

**Finally, article 16, paragraph 10** foresees that a State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

**b. Findings and observations of the review team concerning article 16 (paragraphs 1,3,4,5,10)**

The extradition is foreseen in article 119, third paragraph of the Political Constitution of the United Mexican States, which reads as follows: Extraditions requested by a foreign State shall be processed by the Executive Branch, with the intervention of judicial authorities as provided in this Constitution, in international treaties celebrated theretofore and in laws. In such cases, the Ruling of Judge ordering to comply with the request shall be a sufficient cause to detain the individual for up to sixty calendar days.

Likewise, article 6 of the International Extradition Law foresees that extradition may be granted for offences conducted intentionally or on a lesser standard of negligence. Intentional offences need to be sanctioned in both States (dual criminality) with a penalty of one year of imprisonment. Negligent offences, should be considered severe and with imprisonment penalties in both States.

Organized crimes foreseen in article 2 of the Federal Law against Organized Crime, and related crimes as said forth in article 194-II of the Federal Code of Criminal Procedures are considered severe and the penalty imposed is more than one year of imprisonment. They are therefore subject to extradition.

In Mexico, different branches are responsible for extradition. The Executive Branch is responsible for the administrative aspects, through the Ministry of Foreign Affairs and the Attorney General's Office. The Judicial Branch is responsible for the procedural matters.

Extradition requests are based upon the provisions of the Political Constitution of the United Mexican States and the applicable bilateral Treaty. In the absence of bilateral treaties, Mexico considers the UNTOC Convention as the legal basis for extraditions, according to article 16 paragraph 5 (a) and applicable national legislation.

Mexico requires assistance to evaluate paragraph 1 of article 16. The assistance would consist in training staff of different areas to carry out their own evaluation, and the exchange of experiences with countries that have been nationally and internationally evaluated. **The technical assistance** would take the forms of: compilation of good practices/lessons learned, in site assessment by a legal expert and the elaboration of an action plan for the application.

The bilateral treaties on extradition signed by Mexico do not include an exhaustive list of offences for which the extradition can be granted. On the contrary, according to article 6 of the Mexican International Extradition Law, the legislation establishes a general criteria, as mentioned in the response to the question of article 16 paragraph 1 (a) of the Convention, including organized crime and related offences.

Mexico has concluded bilateral treaties of extradition with many countries such as Costa Rica, Greece, Australia, India, and Spain.

Mexico requires assistance to evaluate paragraph 3 of article 16. The assistance would consist in training staff of different areas to carry out their own evaluation, and the exchange of experiences with countries that have been nationally and internationally evaluated.

The United Mexican States considers the Organized Crime Convention as the legal basis for extradition in respect to any offence to which the article under review applies. Mexico has not had

requests for extradition without a treaty, or based only on UNTOC, although their legal system would allow them to respond positively to such requests using UNTOC as legal basis.

Mexico has the largest number of cases with the US, due to its vicinity, as well as with Spain, Guatemala, Canada.

In order to make extradition proceedings smoother, the ministry for foreign affairs has decided that the requests do not need to contain the evidence of the committed offence or its sanctions. UNTOC is used by Mexico as the legal basis for organized crime cases and for drug related offences, although often combined with other bilateral or regional treaties.

According to article 133 of the Mexican Constitution international treaties to which Mexico is a party shall be the Supreme Law of the Union. Hence, in the absence of a bilateral treaty, Mexico considers the UNTOC Convention as the legal basis for extradition in conformity with article 16 paragraph 5 (a).<sup>6</sup>.

Mexico requires assistance to evaluate paragraph 4 of article 16. The assistance would consist in training staff of different areas to carry out their own evaluation, and the exchange of experiences with countries that have been nationally and internationally evaluated.

**Mexico has expressed interest in receiving technical assistance** in the forms of: compilation of good practices/lessons learnt, in site assessment of a legal expert and the elaboration of an action plan for the application.

During the current government, Mexico has extradited approximately 300 nationals, most of which to the USA. Mexico has over the past years changed its policy with regard to the extradition of nationals, and adopted the measures needed to either extradite or prosecute its nationals who are suspected of having committed any of the offences established under the Organized Crime Convention and its Protocols Thereto.

According to article 14 of the Mexican International Extradition Law, in principle *no* Mexican shall be surrendered to a foreign State but in exceptional cases, and subject to the opinion of the Executive, such extradition of nationals can be granted. The decision of granting the extradition of Mexican citizens is taken at the discretion of the Executive and shall be conducted and justified according to the established legal procedures.

Article 32 of the Mexican International Extradition Law states that: “If the person sought is Mexican and for that sole ground the execution is refused, the Ministry of Foreign Affairs shall notify the decision to the detainee and the Attorney General, putting him as his disposition and sending the file so that the public prosecutor takes legal action before the competent judge if that is the case”.

Mexico has implemented series of mechanisms to gather evidence for the purpose of judging Mexican citizens that shall be judged according to article 4 of the Federal Criminal Code, which establishes the possibility of a trial in Mexico when the offense has been committed abroad.

According to 14 and 16 of the Mexican Constitution, a person can be apprehended by an order of the judge. That is why the extradition procedure is mixed and it requires a judicial order. The person must be brought before a judge and the judge will issue an order and evaluate the constitutional safeguards. This decision is not binding for foreign affairs. If the judge refuses the extradition, foreign affairs can still grant the extradition request. Eventually, the person can still use the *amparo* appeal – revision in last instance. This is a constitutional control and foreign affairs are subject to it.

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<sup>6</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en)

Mexico requires assistance to evaluate paragraph 10 of article 16. The assistance would consist in training staff of different areas to carry out their own evaluation, and the exchange of experiences with countries that have been nationally and internationally evaluated.

Mexico has adopted the measures required in accordance with Article 16, paragraphs 1,3,4,5,10 of the UNTOC. Mexico has adopted measures allowing extradition, which are applied through bilateral and multilateral agreements.

With regard to extradition, Mexico applies a general criteria rather than providing an exhaustive list of extraditable offences. This measure thereof complies with paragraph 3 of Article 16 of the UNTOC.

It is important to mention that Mexico considers the UNTOC Convention as a legal basis for extradition. Since international treaties must be in conformity with the Mexican Constitution, the international treaties Mexico is a party to are considered as supreme law of the Federation.

Mexico has duly notified the Secretary-General of the United Nations that it does not make extradition conditional on the existence of a bilateral treaty, and therefore, that it considers the UNTOC as the legal basis for judicial cooperation on extradition.

Finally, Mexico has established clear rules for extradition of its nationals. Mexico does not allow extradition of its nationals, except on a cases by case basis. Therefore, the Mexican legislation is in conformity with article 16 of the Palermo Convention.

**5.5 Article 18, paragraphs 9 and 13**

*Mutual legal assistance*

Paragraph 9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

Paragraph 13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

**a. Summary of the main requirements**

According to article 18, paragraph 9 of the Organized Crime Convention has the faculty to refuse mutual legal assistance arguing the absence of dual criminality. Nonetheless, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party. Furthermore, in accordance with article 18 , paragraph 13, the State Party shall designate a central authority that shall have the responsibility and power to receive request for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution.

**b. Findings and observations of the review team concerning article 18, paragraphs 9, 13**

Paragraph 9:

By general rule, Mexico grants legal assistance even in the absence of dual criminality, except in those cases that require the implementation of coercive measures such as seizure or confiscation, among others.

Mexican law does not require that the crime giving rise to the international legal assistance request be defined in similar terms in both countries. Neither does it require that the crime definition be exactly the same. On the contrary, the laws of both States shall contain provisions punishing the offence in similar circumstances and with an imprisonment penalty of no less than a year.

Moreover, the cooperation shall be denied or deferred to the discretion of the Mexican State, when the crime under investigation has strictly political or military character; when the possibility exists of imposing or executing the dead penalty to the accused within the procedure for which the assistance was requested; when the execution of the request implies that the Mexican authorities exceed their legal authority; or sovereignty, security, public order or essential public interest could be affected.

Mexico does not have a law regulating mutual legal assistance. According to article 133 of the Constitution, international treaties signed by the President and approved by the Senate are considered the supreme law of the Union. Consistently, the Supreme Court of Justice has issued the following criteria:

“According to the interpretation of the above mentioned article, the principle of constitutional supremacy implicit in the text of said article clearly means that the Constitution of the Republic, the general laws of the Federal Congress and the International Treaties that are in accordance with the Constitution, conform the “Supreme Law of the Union”, this is that they constitute a superior legal order, of national character, in which the Constitution is above them and below the international treaties and the general laws”.

In this sense, Mexico can provide international legal assistance through bilateral agreements or, in their absence, based on UNTOC. These proceedings are carried out by the Mexican Attorney General’s Office. This was informed to the UN Secretary General and is published in the official UNODC website<sup>7</sup>.

Paragraph 13.

The designated central authority for this purpose is the Mexican Attorney General’s Office, through the General Division of Extradition and Mutual Legal Assistance.

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<sup>7</sup> See: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en).

This was informed to the UN Secretary General and is published in the official UNODC website.<sup>8</sup>

Article 35, fraction VI of the Rule of the Organic Law of the Office of the General Attorney (of 2003) states that the General Division of Extraditions and Mutual Legal Assistance has the faculty to intervene in the enforcement of international agreements and treaties related to legal assistance, asset recovery, execution of criminal decisions and other issues competent of the Attorney General's Office, and to supervise that other administrative units of the institution comply with the international instruments in their respective areas of competence.

In conformity with the established procedure, requests for legal assistance are submitted directly to the designated Mexican Central authority: Attorney General's Office-General Division for Extradition and Legal Mutual Assistance.

When no international agreements exist allowing the Central Authority to process the request for legal assistance, the request shall be submitted through diplomatic channels to the Ministry of Foreign Affairs, who will submit it to the Attorney General's Office.

Mexico agrees that in urgent circumstances, requests for mutual legal assistance and related communications be addressed to it through the International Criminal Police Organization provided that the requesting authority quickly confirms its request.

Mexico has adopted the measures required in accordance with article 18, paragraphs 9 of the UNTOC. Refusal on the ground of absence of dual criminality is not often practiced.

Nevertheless, Mexico does not allow exceptions in specific cases relating to its sovereignty and public interests, military or political crimes, or cases requiring implementation of precautionary measures as well as cases where the defendant faces the death penalty.

Finally, Mexico has designated a single central authority which deals with mutual legal assistance (Directorate General of extradition and Legal Assistance from the Office of the Attorney General of the Republic) . This central authority has been duly notified to the Secretary- General of the United Nations.

## **6. Overall findings of the review team concerning the implementation of the relevant Convention articles by Mexico**

Mexico has adopted the legislation in accordance with the provisions of the UNTOC under review. Concerning the provisions which have not yet been fully covered by its national legislation, Mexico reported the existence of draft legislations for this purpose.

Mexico has also identified the legal texts containing UNTOC provisions such as: the Political Constitution of the Mexican United States, the Federal Criminal Code, the Federal Code of Criminal Procedure, the Federal Act against Organized Delinquency, the International Extradition Act, the Federal Asset Forfeiture and, the Federal Law for the Management and the Disposal of Public Sector Assets .

<sup>8</sup> See: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII12&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII12&chapter=18&lang=en).

## **7. Technical assistance needs**

**As for technical assistance:** Throughout the review, Mexico has indicated technical assistance needs such as: the assessment of the effectiveness of its national laws, exchange of experiences and best practices with other States and training programs for their relevant practitioners.