

## Ghana's contributions to the Chair's guiding questions on procedural measures

### First Group of Questions

**1. Under which chapter should "Jurisdiction" be addressed (in this regard, Member States have made proposals under all three chapters: criminalization, general provisions and procedural measures and law enforcement)?**

a. Madam Chair in relation to question 1 given that Jurisdiction establishes a series of criteria under which each member state would be required to establish Jurisdiction over the criminal offences that should be adopted and enumerated in the future convention, Jurisdiction could be a section under procedural measures and law enforcement investigations. The reason being that jurisdiction need to be established prior to commencing criminal investigations for which a procedural power may apply. Madam Chair Jurisdiction under UNTOC is addressed under the broad heading of Criminalisation and Law Enforcement; however given that our future convention may likely have a separate section on Criminalisation and a Separate section on Procedural Measures, we believe Jurisdiction would be better placed under Procedural Measures and Law Enforcement Investigations.

b.

**2. Question 2 should the basis to establish jurisdiction include a State Party being the object/target of a crime (which was included in UNCAC but not UNTOC).**

On question 2, Madam Chair, if a state party becomes an object/target of a cybercrime, the magnitude of the devastating effects would most likely be greater than a situation where the target is an individual; accordingly due to the aggravating circumstance we are of the view that the provision on Jurisdiction should address this matter as was addressed in UNCAC.

**3. Question 3 Should the article on jurisdiction also cover extradition-related matters, i.e. jurisdiction when extradition is not possible (aut dedere aut judicare)?**

a. On question 3, Madam Chair, if the convention does not cover extradition related matters regarding circumstances where extradition is not possible we would have a gap in the Convention. Ghana therefore is of the view that, the article on Jurisdiction should cover extradition-related matters where extradition is not possible. The provision may be drafted to allow for parties that find it impossible to extradite a national to have the jurisdiction or legal mandate to undertake investigations and proceedings domestically instead; we are however opened to listen to views from other distinguished delegates on this matter.

**4. Question 4: what is the scope of the chapter on procedural measures and law enforcement? Should it apply only to the list of offences established by the convention(in its chapter on criminalisation)? Could it also apply to other offences? Why would such enlargement to other offences be necessary?**

a. On question 4 , The powers and procedures established under the future convention should apply to criminal offences established under the future UN convention, other criminal offences committed by means of a computer system and the collection of evidence in electronic form of a criminal offence. This ensures that evidence in electronic form of any criminal offence can be obtained or collected by means of the powers and procedures set out in the future convention. This enlargement is necessary as it ensures an equivalent or parallel capability for the obtaining or

collection of computer data as exists under traditional powers and procedures for non-electronic data.

b.

5. **Question 5; which conditions and safeguards should procedural measures be subject to?**
6. **Question 6; should specific international or regional human rights treaties be referenced under this chapter, in particular under a provision on conditions and safeguards? If so, what are the specific human rights treaties that should be referenced (regional v global treaties?) should there be also a reference to universal legal principle (e.g. necessity, proportionality), and which ones could be agreed upon.**

- a. Madam Chair, in response to question 5 and 6, Considering that some of these procedural measures and powers may be intrusive in nature and has the tendency of being abused, we are of the view that such procedural powers should be subject to conditions and safeguards provided for under domestic laws which shall provide for the adequate protection of human rights and liberties including rights arising pursuant to obligations a member state has undertaken under international treaties which should include the International Bill of Human Rights including the 1948 Universal Declaration on Human Rights, the 1966 United Nations International Covenant on Civil and Political Rights and other applicable international human rights instruments which shall incorporate the principle of proportionality and necessity and ensuring judicial oversight. Such conditions and safeguards shall as appropriate in view of the nature of the procedure or power concerned, inter alia, include judicial or other independent supervision, grounds justifying application and limitation of the scope and the duration of such power or procedure. Additionally, to the extent that it is consistent with the public interest, in particular the sound administration of justice, the impact of the powers and procedures upon the rights, responsibilities, and legitimate interests of third parties should be considered.