

**GHANA'S CONTRIBUTIONS FOR THE PROVISIONS ON INTERNATIONAL COOPERATION, TECHNICAL ASSISTANCE, PREVENTIVE MEASURES, MECHANISM OF IMPLEMENTATION, FINAL PROVISIONS FOR THE FUTURE UN CONVENTION ON COUNTERING THE USE OF ICTs FOR CRIMINAL PURPOSES**

*(Disclaimer) This contribution is without prejudice to any future contributions that Ghana may make during the course of future discussions, including on the present chapters.*

Ghana welcomes the consideration of a global convention to counter the use of ICT for criminal purposes and note that when well elaborated it would complement existing national, regional and international instruments for addressing the cybersecurity challenges of our time and enhancing the safety and security of the cyberspace. To name a few such instruments include the UN Convention against Corruption (UNCAC) and the UN Convention against Transnational Organised Crime (UNTOC), the African Union Convention on Cyber Security and Personal Data Protection (Malabo) and the Convention on Cybercrime (Budapest Convention).

We identify that successful prosecution of cybercrime is a measure of mitigating threats to ICTs and their misuse thereof. Accordingly, the new draft Convention should harmonise national laws on cybercrime, improve investigatory powers and procedures, and promote and enhance international cooperation while protecting the privacy and other fundamental human rights as well as offering measures for sustainable capacity building and technical assistance.

Ghana is of the view that the Convention should criminalise cyber-dependent offences, together with cyber-enabled crimes where the use of a computer increases the scale, scope and speed of the offence.

The Convention should reinforce and enhance international cooperation procedures as well as include other innovative measures to strengthen cross-border investigations of cybercrime and acquisition of electronic evidence.

Additionally, we are of the view that the mandate of the Convention should extend into sustainable capacity building and preventive measures in order to enhance domestic capabilities and enable the sharing of good investigative practices and experiences.

As part of Ghana's contribution to shaping the discussion in the development of the convention we propose the following potential text for further deliberations at the third session of the Ad Hoc Committee.

## **INTERNATIONAL COOPERATION**

### **Article 34<sup>1</sup> General principles relating to international cooperation**

Member States shall co-operate with each other, in accordance with the provisions of this chapter, and through the application of relevant international instruments on international cooperation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation, and domestic laws, to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence or for confiscation and forfeiture of proceeds of crime amongst others.

### **Article 35 Extradition<sup>2</sup>**

1. This article applies to extradition between Member States for the criminal offences covered under this convention and the person who is the subject of request is located in the territory of the requested Member State, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting Member State and the requested Member State.
2. 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 Member States. Member States undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
3. If a Member State that makes extradition conditional on the existence of a treaty receives a request for extradition from another Member State with which it has no extradition treaty, it may

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<sup>1</sup> For easy reference the numbering of the articles continues from Ghana's contribution submitted during the second session of the Ad Hoc Committee

<sup>2</sup> In relation to Extradition Ghana wishes to adopt the provisions under existing legislation, specifically Article 24 of the Budapest Convention and Article 16 of UNTOC. Its text therefore adopted from the articles of UNTOC and the Budapest Convention

consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

4. Member States 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 Member States 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 Member States to this Convention in order to implement this article.
5. Member States that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
6. Extradition shall be subject to the conditions provided for by the domestic law of the requested Member State or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested Member State may refuse extradition.
7. Member States shall, subject to their domestic law, endeavour to expedite extradition procedures and simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
8. Subject to the provisions of its domestic law and its extradition treaties, the requested Member State may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Member State, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
9. A Member State 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 or the Member State deems that it has jurisdiction over the offence shall, at the request of the Member State 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 Member State. The Member States concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

10. Whenever a Member State is permitted under its domestic law to extradite one of its nationals only on condition that the person will be returned to that Member State to serve the sentence imposed as a result of the trial or proceedings for which the extradition was sought and that Member State and the Member State seeking the extradition agree with this option and other terms that they may deem appropriate, such conditional extradition shall be sufficient to discharge the obligation set forth in paragraph 9 of this article.
11. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Member State, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
12. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the Member State in the territory of which that person is present.
13. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested Member State has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person for a political offence or on account of that person's gender race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.
14. Extradition shall be refused if the time limit for the action or sentence has expired under the domestic laws of the requesting or requested state at the time of receipt of the application from the requesting state.
15. Member States may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
16. Before refusing extradition, the requested Member State shall, where appropriate, consult with the requesting Member State to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. Member States shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

*General principles relating to mutual assistance*

**Article 36 General principles relating to mutual assistance<sup>3</sup>**

1. The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.
2. Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 39 through 52.
3. Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax, email, and other electronic means, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.
4. Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the domestic law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences criminalised under this convention solely on the ground that the request concerns an offence which it considers a fiscal offence.

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<sup>3</sup> Consistent with provisions of the Budapest Convention on Cybercrime, African Union Convention and Ghana's Mutual Legal Assistance Act, 2010 (Act 807)

5. Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

#### **Article 37 Spontaneous information**<sup>4</sup>

1. A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
2. Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.

#### **Article 38 Joint investigations**<sup>5</sup>

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the

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<sup>4</sup> Consistent with the Budapest Convention on cybercrime and UNTOC

<sup>5</sup> Consistent with provisions of UNTOC and section 54 of Ghana's Mutual Legal Assistance Act, 2010 (Act 807)

State Party in whose territory such investigation is to take place is fully respected.

*Procedures pertaining to mutual assistance requests in the absence of applicable international agreements*

**Article 39 Procedures pertaining to mutual assistance requests in the absence of applicable international agreements<sup>6</sup>**

1. Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 13 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
2.
  - a. Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.
  - b. The central authorities shall communicate directly with each other.
  - c. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary-General of the United Nations the names and addresses of the authorities designated in pursuance of this paragraph.
  - d. The Secretary-General of the United Nations shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.
3. Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.
4. The requested Party, in addition to the grounds for refusal established under paragraph 4 of Article 39 on “General Principles relating to Mutual Legal Assistance”, may refuse assistance if:

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<sup>6</sup> Consistent with provisions of the Budapest Convention on Cybercrime and Ghana’s Mutual Legal Assistance Act, 2010 (Act 807)

- a. the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or
  - b. it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.
5. The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.
6. Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
7. The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.
8. The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.
9.
  - a. In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
  - b. Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).
  - c. Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the



request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

- d. Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.
10. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.
  11. A request for mutual legal assistance shall contain:
    - a. The identity of the authority or entity making the request including contact details;
    - b. The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
    - c. A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
    - d. A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
    - e. Where possible, the identity, location and nationality of any person concerned; and
    - f. The purpose for which the evidence, information or action is sought.
    - g. The period within which compliance with the request is desired with stated reasons
  12. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities

of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

13. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.
14. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary-General of the United Nations that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.

**Article 40 Electronic Database on Mutual Legal Assistance for purpose of review of effectiveness.**

Each Party shall consider maintaining electronic databases that facilitate access to statistics relating to incoming and outgoing requests for mutual legal assistance involving electronic evidence, to ensure that reviews of efficiency and effectiveness are in place.

**Article 41 Confidentiality and limitation on use**

1. When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
2. The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:

- a. kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or
  - b. not used for investigations or proceedings other than those stated in the request.
3. If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.
4. Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.

### **Specific provisions<sup>7</sup>**

#### *Mutual assistance regarding provisional measures*

#### **Article 42 Expedited preservation of stored computer data**

1. A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.
2. A request for preservation made under paragraph 1 shall specify:
  - a. the authority seeking the preservation;
  - b. the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;
  - c. the stored computer data to be preserved and its relationship to the offence;
  - d. any available information identifying the custodian of the stored computer data or the location of the computer system;

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<sup>7</sup> The provisions under this section are consistent with provisions of the Budapest Convention on Cybercrime and Ghana's Mutual Legal Assistance Act, 2010 (Act 807), UNTOC and Ghana's Cybersecurity Act, 2020 (Act 1038)

- e. the necessity of the preservation; and
  - f. that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.
3. Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.
4. A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with this Convention (that is offences criminalised under this convention), reserves the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.
5. In addition, a request for preservation may only be refused if:
  - a. the request concerns an offence which the requested Party considers a political offence, or an offence connected with a political offence, or
  - b. the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.
6. Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.
7. Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

### **Article 43 Expedited disclosure of preserved traffic data**

1. Where, in the course of the execution of a request made to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.
2. Disclosure of traffic data under paragraph 1 may only be withheld if:
  - a. the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or
  - b. the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

#### *Mutual assistance regarding investigative powers*

### **Article 44 Mutual assistance regarding accessing of stored computer data**

1. A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to the Article 42 on “preservation of stored computer data”.
2. The requested Party shall respond to the request through the application of relevant international instruments on international cooperation in criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and domestic laws, and in accordance with other relevant provisions of this chapter.
3. The request shall be responded to on an expedited basis where:
  - a. there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or

- b. the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.

#### **Article 45 Trans-border access to stored computer data with consent or where publicly available**

A Party may, without the authorisation of another Party:

- a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or
- b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.

#### **Article 46 Mutual assistance regarding the real-time collection of traffic data**

1. The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.
2. Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.

#### **Article 47 Mutual assistance regarding the interception of content data**

The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.

*24/7 Network*

#### **Article 48 24/7 Network**

1. Each Party shall designate a point of contact available on a twenty-four hours, seven-days-a week basis, in order to ensure the

provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:

- a. the provision of technical advice;
  - b. the preservation of data pursuant to the “Expedited Preservation of Stored Computer Data and the “Expedited disclosure of preserved traffic data”
  - c. the collection of evidence, the provision of legal information, and locating of suspects.
2. A Party’s point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.
- a. If the point of contact designated by a Party is not part of that Party’s authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.
3. Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

#### **Article 49 Law Enforcement Cooperation**

1. States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

## **Article 50 Public-private partnerships to enhance cybercrime investigations**

1. State Parties shall collaborate to conclude bilateral and multilateral agreements or arrangements to assist the Law Enforcement Agencies of one another in direct cooperation with relevant service providers in their respective territories through public-private partnerships in order to streamline cooperation with industry and enhance collaboration between State Parties, Government and private service providers to establish modalities/protocols of cooperation in law enforcement, cybercrime investigations and evidence collection, in particular for addressing the challenge of cross-border acquisition of electronic evidence.

2. State Parties shall develop guidelines for service providers to assist law enforcement agencies in cybercrime investigations, including with regard to the format and duration of preservation of digital evidence and information as well as cross-border acquisition of electronic evidence.

## **Article 51 International cooperation for purposes of confiscation**

A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment, or other instrumentalities used in or destined for use in offences covered by this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

- a. Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
  - b. Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with relevant provisions under this convention.
1. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other



instrumentalities used in or destined for use in offences covered by this Convention , for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

2. The provisions regarding mutual legal assistance under Article 39 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 39 paragraph 11 requests made pursuant to this article shall contain:
  - a. In the case of a request pertaining to paragraph 1 (*a*) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
  - b. In the case of a request pertaining to paragraph 1 (*b*) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;
  - c. In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.
3. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.
4. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.
5. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.
6. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

7. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
8. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

#### **Article 52 Disposal of confiscated proceeds of crime or property**

1. Proceeds of crime or property confiscated by a State Party pursuant to provisions, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.
2. When acting on the request made by another State Party in accordance with article 51 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.
3. When acting on the request made by another State Party in accordance with the Articles regarding confiscation under this Convention, a State Party may give special consideration to concluding agreements or arrangements on:
  - a. Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 55, paragraph 2 (c), of this Convention and to intergovernmental bodies specializing in the fight against cybercrime;
  - b. Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

## Technical Assistance

### Article 53 Capacity Building and Technical assistance<sup>8</sup>

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its criminal justice sector including law enforcement personnel, prosecutors, judges, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

- a. Basic technical knowledge on computer systems and network/internet/digital technology and electronic evidence
- b. Substantive Law on Cybercrime including elements that define the offences under this convention.
- c. Procedural Measures and Law Enforcement investigation powers
- d. Methods used in the prevention, detection, investigation and control of the offences covered by this Convention;
- e. Modi operandi used by persons suspected of involvement in offences covered by this Convention and appropriate countermeasures;
- f. Monitoring and identifying ongoing illicit online activities.
- g. Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating the offences covered under this convention.
- h. Collection of electronic evidence;
- i. Chain of custody
- j. Forensic analysis
- k. Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
- l. Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
- m. Methods used in the protection of victims and witnesses.

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<sup>8</sup> Adopted from UNTOC with modifications to suit the current purpose

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

5. State Parties shall strengthen capacity-building and training to include highly specialized training for practitioners that promotes, in particular, the participation of female experts, and should address the needs of legislators and policymakers to better handle issues of data retention for law enforcement purposes.

#### **Article 54 Cooperation with Computer Emergency Response Teams (CERTs)**

State Parties to the extent permitted by domestic laws shall strengthen cooperation mechanisms between National Computer Emergency Response Teams (National CERTs) and the Criminal Justice Authorities to assist in identification, detection and investigation of offences covered under this convention and the development of cyber situational awareness and early warning systems to help identify cybercrime trends and threats with the objective of stopping ongoing illicit activities.

#### **Article 55 Implementation of the Convention through Economic Development and Technical Assistance<sup>9</sup>**

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<sup>9</sup> Adopted from UNTOC with modifications to suit the current purpose

States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of cybercrime on society in general, in particular on sustainable development.

1. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:
  - a. To enhance their cooperation at various levels with one another, with a view to strengthening the capacity of each other to prevent and combat cybercrime.
  - b. To enhance financial and material assistance to support the efforts of one another to fight cybercrime effectively and to help each other implement this Convention successfully.
  - c. To provide technical assistance and share best practices learned at the national level with one another to assist each other in meeting requirements for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention.
  - d. To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.
2. To the extent possible, Member states shall ensure that resources and efforts are distributed and directed to support harmonisation of standards, skills, capacity, expertise, technical capabilities with the aim of establishing common minimum standards amongst member states to eradicate cybercrime safe havens and strengthen

the fight against cybercrime considering the cross-border nature of cybercrime.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.
4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of cybercrime.

#### **Article 56 Prevention Measures<sup>10</sup>**

1. Member States shall ensure that prevention measures are not only the responsibility of Governments but also requires the participation of all relevant stakeholders, including law enforcement authorities, the private sector, especially Internet service providers, non-governmental organizations, schools, and academia, in addition to the public in general. Such preventive measures shall be proactive, regular, continuous, and suitable for vulnerable groups and deal, in particular and to the extent permitted by domestic law, with the following:
  - a. Developing and implementing strategies and policies on raising awareness of cybercrime among the general public and private industry in order to address the lower rates of reporting of cybercrime compared with other types of crime.
  - b. The development of methods to ensure that the public have easy access to prevention tools such as online platforms, audio clips, plain-language infographics and reporting platforms.

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<sup>10</sup> Consistent with Provisions of the African Union Convention on Cybersecurity and Personal Data Protection, outcomes and recommendations of the work of the Open-ended Intergovernmental Expert Group to conduct a comprehensive study on Cybercrime and Ghana's Cybersecurity Act, 2020 (Act 1038)

- c. The development of a series of long-term public policies on prevention, which should include the development of awareness-raising campaigns on the safe use of the Internet.
  - d. The development of strategies and policies to prevent and eradicate gender-based violence, in particular, violence against women and girls, and hate crimes and suitable for vulnerable groups such as the elderly and persons with disabilities
  - e. The development of a robust mechanism to stimulate and facilitate the sharing of intelligence on potential criminal *modi operandi*.
  - f. Development of strategies to prevent cybercrime by identifying and disrupting ongoing illicit activities online. Accordingly, Police and public prosecution services should invest in signalling, detecting, and reacting to cybercrime threats and work through public-private partnerships also harnessing the expertise, intelligence and technical capabilities of computer emergency response teams (CERTs) whenever possible.
2. State Parties shall collect a broad range of data to help understand trends to inform and shape cybercrime policies and operational responses to combat cybercrime.
3. State Parties should improve the implementation of national laws and enhance improved domestic coordination and synergies for the collection and sharing of information and evidence for prosecution purposes.
4. State Parties shall consider undertaking surveys to measure the impact of cybercrime on businesses, including measures implemented, employee training, types of cyber-incidents that affect them and the costs associated with recovering from and preventing cyber-incidents.
5. States shall consider supporting businesses and communities in raising awareness of cybercrime risks, mitigation strategies and enhancing cyber-practices, as these can have significant downstream preventive benefits.
6. State Parties shall take steps to study the *modi operandi* of contemporary cybercriminals by means of intelligence analysis and criminological research in order to deploy existing resources more effectively and identify vulnerabilities.

7. State Parties shall consider specific and tailored efforts to keep children safe online. This should include ensuring domestic legal frameworks, practical arrangements and international cooperation arrangements to enable reporting, detection, investigation, prosecution and deterrence of child sexual abuse and exploitation online.
8. State Parties shall consider implementing mechanisms for cooperating with industry, including on referrals to competent national authorities and takedowns of harmful criminal material, including child sexual exploitation and abuse material.
9. State Parties shall develop strategies and policies aimed at issuing and sharing with users, organisations and other stakeholders regular advisories on incident prevention to enable them prevent cyber-incidents that could potentially lead to criminal activities.

### **Mechanisms of implementation, Final Provisions<sup>11</sup>**

#### **Article 57 Conference of the Parties to the Convention**

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat cybercrime and to promote and review the implementation of this Convention.
2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).
3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:
  - a. Facilitating activities by States Parties under articles 53, 54, 55 and 56 of this Convention, including by encouraging the mobilization of voluntary contributions;
  - b. Facilitating the exchange of information among States Parties on patterns and trends in cybercrime and on successful practices for combating it;

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<sup>11</sup> Consistent with provisions of UNTOC



- c. Cooperating with relevant international and regional organizations and non-governmental organizations;
  - d. Reviewing periodically the implementation of this Convention;
  - e. Making recommendations to improve this Convention and its implementation.
4. For the purpose of paragraphs 3 *(d)* and *(e)* of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.
5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

#### **Article 58 Secretariat**

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.
2. The secretariat shall:
  - a. Assist the Conference of the Parties in carrying out the activities set forth in article 57 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
  - b. Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 57, paragraph 5, of this Convention; and
  - c. Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

## **Article 59 Technical Implementation/Operationalisation of the Law Enforcement Procedural and Investigative Measures**

1. The International Criminal Police Organisation (Interpol) is hereby appointed to assist the Conference of the Parties to the Convention to promote and review the technical implementation/operationalization of the Articles pertaining to mutual assistance regarding Law Enforcement provisional measures and investigative powers including coordinating and promoting the 24/7 network, preservation and disclosure requests, real-time collection of traffic data, interception requests, Law Enforcement Cooperation, Law Enforcement Cooperation with Service Providers, cooperation with National CERTs, Coordinating global response to cyber-threats amongst others.
2. Interpol shall also assist the Secretariat to the extent possible in facilitating activities pertaining to technical capacity building and prevention measures.

## **Article 59 Implementation of the Convention**

1. Each State Party shall 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.
2. The offences established under this Convention shall be established in the domestic law of each State Party.
3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime.

## **Article 60 Settlement of disputes**

1. State Parties shall endeavour to settle disputes concerning interpretation of or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 61 Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open to all States for signature from ..... 2024 in XXXXX, YYYY and thereafter at United Nations in New York until .....2024.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one Member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one Member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### **Article 62 Relation with protocols**

1. This Convention may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.
3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

#### **Article 63 Entry into force**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving, or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

#### **Article 64 Amendment**

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon

communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

### **Article 65 Denunciation**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

## **Article 66 Depository and Languages**

1. The Secretary-General of the United Nations is designated depository of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.