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**Working Group of Government Experts  
on Technical Assistance**

Vienna, 6-7 October 2014

Item 4 of the provisional agenda\*

**Information-gathering under article 32, paragraph 5, of  
the United Nations Convention against Transnational  
Organized Crime****Draft needs assessment tool on law enforcement,  
prosecution, adjudication and sanctions****Note by the Secretariat****I. Law enforcement and witness protection****A. Introduction**

1. The purpose of this draft tool is to provide guidance in assessing what should be done by a State Party in order to ensure that the full potential of the Organized Crime Convention can be realized. The Working Group on Technical Assistance may wish to discuss how the draft tool could be further developed to make it useful in the delivery of technical assistance, in particular in assessing the needs of States for technical assistance. Experts are requested to provide concrete comments on the proposed indicators and questions in the thematic areas contained in the Conference Room Paper. The comments received will be taken into consideration in the further development of the tool in a consultative process.

2. The Organized Crime Convention requires action by the States Parties to harmonize their legislation with the Convention requirements. Article 34(1) of the Convention calls upon each State Party to take “the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.”

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\* CTOC/COP/WG.2/2014/1.



3. The seventh session of the Working Group on Technical Assistance recommended, inter alia, that UNODC should continue to provide coordinated technical assistance to States to ensure the effective implementation of the Convention and the Protocols thereto. The Working Group further recommended that UNODC should continue the development of technical assistance tools, for the Convention and the Protocols thereto and on specialized issues, including mutual legal assistance and extradition.<sup>1</sup>

4. The tool consists of sets of indicators and questions designed to enable experts from international organizations, non-governmental organizations, national governments as well as relevant institutions, in particular policymakers and legislators, to conduct a comprehensive assessment of implementation of the Organized Crime Convention. This includes:

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

## **B. Law enforcement**

5. The Organized Crime Convention contains several provisions which are related to law enforcement. These deal with specific issues, such as special investigative techniques and measures against money-laundering. Although the Convention does not contain more general provisions on law enforcement, assessment of implementation of the provisions of the Convention does require an assessment of the context of law enforcement.<sup>2</sup>

6. The key questions relevant to law enforcement in general are the following:

### **Clarifying structure, duties and responsibilities in investigation**

- What organizations, agencies or bodies are involved in investigating offences related to organized crime? Is the jurisdiction of each agency clear or is there disjuncture?
- What are the duties and responsibilities of each agency? Are the duties of the relevant agencies clearly defined and understood by their staff and the agencies with which they interact? Do these agencies have adequate authority or discretion to properly undertake their functions?

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<sup>1</sup> Report on the meeting of the Working Group of Government Experts on Technical Assistance held in Vienna from 28 to 30 October 2013 (CTOC/COP/WG.2/2013/5).

<sup>2</sup> For further information and guidance, see the UNODC publication *Guidance on the Preparation and Use of Serious and Organized Crime Threat Assessments: The SOCTA Handbook* (Vienna, 2010). See also the UNODC publications *Current practices in electronic surveillance in the investigation of serious organized crime* (Vienna, 2009); *Criminal Intelligence Manual for Analysts* (Vienna, 2011); *Criminal Intelligence Manual for Front-line Law Enforcement* (Vienna, 2010); and *Criminal Intelligence Manual for Managers* (Vienna, 2011).

- Are the agencies part of one government ministry or several? Which ministries are involved?
- How are the agencies financed? Are the budgets they receive sufficient to carry out their functions?
- Who has control over these agencies? Who examines their function?
- If specialized agencies or departments exist, are they made up of individuals from a number of different agencies?
- Who is responsible for managing a criminal investigation involving offences related to organized crime: a prosecutor, investigating judge or police officer?

#### **Strengthening coordination and the sharing of police intelligence**

- Is the responsibility for managing an investigation unambiguous so as to ensure a coordinated investigation and avoid the loss of evidence?
- Are the results of investigations, prosecutions and court decisions shared among the relevant enforcement agencies, in particular the agencies that handed over the case in question?
- If there is a national or principal agency dealing with criminal information and intelligence? Does the organization coordinate and lead on all activities related to criminal information and intelligence? What are its objectives? How many staff does it have? Is it empowered to collect information and intelligence in its own right?
- Where each law enforcement body is responsible for managing its own information and intelligence, is there a set of common standards for:
  - The collection, evaluation and analysis of the information and intelligence?
  - The recording and logging of information and intelligence?
  - Security standards?
  - Reports and briefings?

#### **Threat assessments and analysis**

- Is there a national crime threat assessment or other strategic crime report? Does it assess and describe existing and emerging criminal activity on the national level? Who coordinates it? Who defines its terms of reference? For whom is it produced? Does the document satisfy the terms of reference?
- Are there regional and local crime threat assessments or strategic crime reports? Are they used to supplement and develop the national crime threat assessment or other strategic reports? Do they assess and describe existing and emerging criminal activity on the regional and/or local level?
- Are strategic assessments and analyses provided to the office of the chief of police in the organization? Does the chief of police provide feedback on their content? What use is made of them? Are there examples in which such reports have led to new policies or strategies, or changes in them?

### **Ensuring integrity in law enforcement**

- Are there any mechanisms for the monitoring and oversight of police conduct and performance? What are they? Have they been implemented? Is there a specific reference to corruption in terms of policing? Does it provide a statutory right to make complaints against the police and provide a mechanism for making them? Is there independent oversight of the complaints system?
  - Are there any allegations that police officers or other staff take or solicit bribes? Is there any suggestion or evidence that police are receiving bribes in order to ignore criminal offences? Is there any suggestion that officers are receiving direct payments or benefits from members of the public in return for special attention or additional protection?
  - Are police staff required to file financial disclosure statements? Is this a requirement at all ranks or does it apply only to the more senior ranks? Who verifies these statements, if anyone? Do officers appear to be living beyond their means? Are there officers with lifestyles apparently incompatible with their remuneration? Are they ever investigated? With what outcome?
  - Is there a national anti-corruption commission? What is its remit in dealing with police corruption? What are its most recent findings? What recommendations has it made (if any) in respect of national policing?
  - Are on-the-spot fines or fixed penalty tickets issued by police officers to the public? Are officers expected to receive and handle cash payments for fines or tickets? What are the arrangements for supervision of this system? Is there any evidence of abuse of this system?
  - Do officers receive free items from shopkeepers or free food and beverages from bars or restaurants? Is this permitted by police regulations? Are there allegations that police officers receive unofficial payments or gratuities from business people in the community? What reasons are given for this? What are the implied consequences if payments are not made?
7. The key performance indicators related to law enforcement in general are the following:
- What proportion of reported offences related to organized crime do police report that they have cleared?
  - What proportion of these cleared cases is forwarded to the prosecutorial service for the presentation of charges?
  - Of prosecutions related to organized crime that were overturned on appeal, what proportion is due to errors in police procedure or allegations of improper police conduct? Please elaborate on promising practices.

## C. Special investigative techniques

8. Article 20 of the Convention deals with special investigative techniques. States Parties are required to allow for the appropriate use of controlled delivery,<sup>3</sup> if this is permitted by the basic principles of their domestic legal system, and within the possibilities and under the conditions prescribed by national law. States Parties are further required, where they deem it appropriate, to take measures to allow for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by their competent authorities in their territory, for the purpose of effectively combating organized crime.

9. Article 20 further encourages States Parties to enter into appropriate bilateral or multilateral agreements or arrangements on the use of such special investigative techniques in international cooperation.

10. The key normative indicators of implementation of the provisions on special investigative techniques are the following:

- Appropriate use is allowed of special investigative techniques, if this is permitted by the basic principles of the domestic legal system and within the possibilities and under the conditions prescribed by national law;
- Adequate control of implementation of special investigative techniques is ensured, including prior authorization, supervision during the investigation and/or after the fact review;
- The legal possibility exists to provide on a case-by-case basis international cooperation with respect to special investigative techniques, where not contrary to the basic principles of the domestic legal system;
- Use is allowed also of other special investigative techniques, as deemed appropriate, by competent authorities in the State Party's territory; and
- Consideration is given to entering into appropriate agreements or arrangements on the use of such special investigative techniques in international cooperation.

11. The key implementation questions relevant to the provisions on special investigative techniques are the following:

- How is proportionality in the appropriate use of special investigative techniques ensured? (the least intrusive method suitable should be used);
- In respect of controlled delivery:
  - Is there a legal basis to conduct controlled delivery operations? If so, is this law specific to investigations of offences related to organized crime?
  - Are investigators of offences related to organized crime permitted to conduct controlled deliveries, based on national legislation?

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<sup>3</sup> Article 2(i) of the Convention defines controlled delivery as the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

- Have investigators undertaken controlled deliveries?
- In the absence of a legal basis, is it possible to conduct controlled delivery operations with the agreement of prosecution or judicial authorities?
- Does the national legislation or regulations allow substituting (in whole or in part) the detected contraband before an actual controlled delivery is conducted? If so, can the records be accepted for the purpose of evidence in court?
- Which agency should take the lead with regard to the controlled delivery?
- What are the preconditions for the use of controlled delivery? Is authorization from a judicial or other independent source required? What are the limits and conditions for orders for a controlled delivery?
- Have standard operation procedures been developed to support speedy and efficient controlled deliveries?
- In respect of electronic and other forms of surveillance:
  - Is there a legal basis to conduct surveillance operations? If so, is this law specific to investigations of offences related to organized crime?
  - Are investigators of offences related to organized crime permitted to conduct surveillance, based on national legislation?
  - Have investigators undertaken surveillance?
  - In the absence of a legal basis, is it possible to conduct surveillance operations with the agreement of prosecution or judicial authorities?
  - Which agency should take the lead with regard to the surveillance operation?
  - What are the preconditions for the conduct of surveillance operations? Is authorization from a judicial or other independent source required? What are the limits and conditions for orders for surveillance?
  - Have standard operation procedures been developed to support efficient surveillance operations?
- In respect of undercover operations, in which investigators infiltrate criminal networks or pose as offenders:
  - Is there a legal basis to conduct undercover operations? If so, is this law specific to investigations of offences related to organized crime? In what kind of cases and in which format are such undercover operations allowed?
  - Are investigators of offences related to organized crime permitted to conduct undercover operations, based on national legislation?
  - Have investigators undertaken undercover operations?
  - In the absence of a legal basis, is it possible to conduct undercover operations with the agreement of prosecution or judicial authorities?

- Which agency should take the lead with regard to the undercover operation?
- What are the preconditions for the conduct of undercover operations? Is authorization from a judicial or other independent source required? What are the limits and conditions for orders for such operations?
- Are there guidelines for the use of undercover officers? If so, are these guidelines public?
- Have standard operation procedures been developed to support efficient undercover operations?
- Are the following special investigative techniques deployed:
  - Interception of telecommunications?
  - Interception of e-mail traffic?
  - Interception of post/mail?
  - Use of listening devices?
  - Use of assumed personal and company identities?
  - Covert search of letters, packages, containers and parcels?
  - Simulation of a corruption offence?
  - Covert real-time monitoring of financial transactions?
  - Disclosure of financial data? (This measure is carried out through obtaining information from a bank or another financial institution on deposits, accounts or transactions.)
  - Use of tracking and positioning devices?
- Is there legislation in place allowing the use of the special investigative techniques listed immediately above? What preconditions must be satisfied before they can be used? Who authorizes their use: prosecutor, judge or senior police officer? Are there time limits within which they must be used? Is there any independent oversight and monitoring of these techniques?
- Can the evidence gained through special investigative techniques be used as evidence in court? Are there special rules of evidence that apply? If so, what are these special rules of evidence?
- Can the information gained through special investigative techniques be appropriately disseminated?
- Is there a legal concept of entrapment (by which a law enforcement body encourages someone to commit a criminal act)? How does a court deal with such a situation?
- Is there legislation in place allowing the use of informants? How are informants managed? Are all investigators permitted to run informants or is this restricted to specially selected officers? Is the identity of informants protected when giving testimony in court? Is there a policy on the protection and court testimony of informants? Are informants reimbursed?

- Is training provided in the use of special investigative techniques?
  - Are officers using special investigative techniques protected from civil and criminal liability?
12. The key performance indicators of implementation of the provisions on special investigative techniques are the following:
- How many controlled deliveries are made each year?
  - How many telephone interceptions (“wiretaps”) are made each year? How many other forms of interception (e-mail, post/mail) are made each year?
  - How many undercover operations are authorized each year?
  - How many police officers are trained with respect to special investigative techniques every year?
  - How many requests for use of special investigative techniques were denied by the relevant authority each year?
13. Additional questions:
- What factors lead to successful use of special investigative techniques? Please elaborate on promising practices.
  - What problems or challenges were faced in the use of special investigative techniques?

#### **D. Measures against money-laundering**

14. Article 7 of the Convention sets out mandatory and non-mandatory measures to be taken against money-laundering. The two mandatory measures are:

(a) Establishment of a regulatory and supervisory regime for banks and non-bank financial institutions, and other bodies susceptible to money-laundering, emphasizing requirements of customer identification, record-keeping and the reporting of suspicious transactions; and

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

15. States Parties are further encouraged, but not required, to:

(a) Endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities;

(b) Consider the establishment of a financial intelligence unit (FIU) in order to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering;

(c) Use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering;



(d) Consider implementing feasible measures to detect and monitor the movements of cash and negotiable instruments across their borders, such as reporting requirements for substantial cross-border transfers;

(e) Endeavour to develop and promote global, regional, subregional and bilateral cooperation among authorities to combat money-laundering.

16. The key normative indicators of implementation of the provisions on measures against money-laundering are the following:<sup>4</sup>

- Banks and non-bank financial institutions and other bodies susceptible to money-laundering, are required to ensure effective customer identification and other customer due diligence measures (CDD), in other words to identify and document holders of accounts and all parties to financial transactions; and records should contain sufficient information to identify all parties and the nature of the transaction, identify specific assets and the amounts or values involved, and permit the tracing of the source and destination of all funds or other assets. CDD requirements should be implemented in line with the FATF Recommendations 10, 11, 22 and 23;
- Banks and non-bank financial institutions are required to keep accurate records. The record-keeping requirements should be implemented in line with the FATF Recommendation 10;
- Banks and non-bank financial institutions are required to have a mechanism for reporting suspicious transactions. The record-keeping requirements should be implemented in line with the FATF Recommendation 20;
- The concept of “suspicious transactions reporting” is defined, and competent authorities provide guidelines to the bank and non-bank financial institutions on detection of the suspicious transactions;
- Consideration has been given to the establishment of a financial intelligence unit (FIU). The established FIU should seek the membership in the Egmont Group of FIUs;
- The powers granted to regulators and staff of the financial intelligence unit to inspect records and to compel the assistance of record-keepers in locating the records is defined. Bank and other commercial secrecy and legal privilege should not be an obstacle for obtaining the information for the money-laundering investigation;
- Financial institutions are protected against civil and other claims for disclosing client records to regulators and financial intelligence units;
- Failure to comply with requirements in respect of money-laundering is sanctioned by criminal, civil or administrative penalties, in accordance with domestic fundamental principles and laws.

17. The key implementation questions relevant to the provisions on measures against money-laundering are the following:

- What customer due diligence measures do reporting institutes employ to establish customer and beneficial owner identities?

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<sup>4</sup> For more information, please see [www.fatf-gafi.org](http://www.fatf-gafi.org).

- What reporting entities are covered in the State?
- Are reporting entities, including banks, required to report suspicious transactions? Such an obligation applies to, inter alia, the following:
  - Proceeds of all offences that are required to be included as predicate offences under Recommendation 3 of the Financial Action Task Force (FATF) Recommendations (see “designated categories of offences” in the Glossary to FATF Recommendations);
  - Funds suspected to be linked or related to financing of terrorism; and
  - All suspicious transactions, including attempted transactions, regardless of whether the transaction involves tax matters.
- Does the jurisdiction have a financial intelligence unit (FIU)? What are its resources? How does it operate? To which agencies does it disseminate information?
- Does the FIU have, on a timely basis, access to financial, administrative and law enforcement information to achieve its objectives in assessing the suspicious transaction?
- Does the FIU provide reporting entities with adequate guidance or instructions on reporting a suspicious transaction?
- Are enhanced customer due diligence measures in place for dealings with politically exposed persons (PEPs), as defined in recommendation 12 of the FATF Recommendations? If so, are both domestic and international PEPs covered?
- Does the State have policies and procedures in place to address the risks associated with non-face-to-face business relationships or transactions?
- Are measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation?
- Have measures been implemented to establish a regime for banks and financial institutions to deter and detect money-laundering?
- Are there special anti-money-laundering provisions in relation to offences related to organized crime?
- Are investigators authorized, trained and equipped to conduct financial investigations? Do they cooperate with FIUs?
- Have measures (such as a compulsory declaration of cash or other bearer negotiable instruments exceeding a threshold amount) been implemented to ensure that the authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at both the national and international levels? Is the FIU a member of the Egmont Group of Financial Intelligence Units?
- Have other measures been implemented to detect and monitor cross-border cash flows?

- What is the situation in the State Party with respect to informal value transfer systems, such as *hawala* or *hundi*?
  - Is the State a member of the Financial Action Task Force (FATF)?
  - Is the State a member of another regional anti-money-laundering group (FATF-style regional body)?
  - Has the State undergone a mutual evaluation by its peers (in the context of FATF or an FATF-style regional body)? If so, when was the assessment carried out and what was its outcome? What deficiencies were identified and what steps have been taken to remedy these deficiencies?
  - Has the State established either a central database of accounts at financial institutions or, in the alternative, a requirement that such institutions respond in a timely manner to an FIU's request to search for a criminal suspect's financial accounts?
18. The key performance indicators of implementation of the provisions on measures against money-laundering are the following:
- What is the number of suspicious transactions reported each year to the financial intelligence unit?
  - How many investigations have been initiated?
  - How many cases has the prosecutor brought to court?
  - How many convictions/acquittals have there been for money-laundering?
  - Please elaborate on promising practices.

## **E. Seizure, freezing and confiscation of the proceeds of crime**

19. Articles 12, 13 and 14 of the Convention deal with the tracing, seizure, freezing and confiscation of the proceeds of crime. According to these mandatory provisions, 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 (art. 12 (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 (1)(b));

(c) The identification, tracing and freezing and/or seizure of the proceeds and instrumentalities of crime covered by the Convention, for the purpose of eventual confiscation (art. 12(2));

(d) The application of confiscation powers to transformed or converted property and proceeds intermingled with legitimately obtained property (to the value of the proceeds in question) and to benefits or income derived from the proceeds (art. 12(3)-(5));

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

### **Article 13**

20. A State Party, to the greatest extent possible under its system, is required:

(a) Either to submit to its competent authorities another State Party's request for confiscation, for the purpose of obtaining an order of confiscation and giving effect to it, or to submit to its competent authorities, with a view to giving effect to it, a confiscation order issued by another State Party (art. 13(1));

(b) Upon request of another State Party, to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities relating to offences covered by the Convention for the purpose of eventual confiscation (art. 13(2));

(c) To furnish copies of its laws and regulations that give effect to article 13 to the Secretary-General of the United Nations (art. 13(5)).

21. Article 13 also sets forth the types of information required for various types of requests (art. 13(3)(a)-(c)).

22. States parties are also required to consider concluding bilateral or multilateral agreements to enhance the effectiveness of international cooperation in this area.

### **Article 14**

23. To the extent permitted by its domestic law and if requested by a requesting State Party under article 13, the confiscating State Party shall give priority consideration to returning the proceeds or property to the requesting State so that it can give compensation to victims or return the proceeds or property to the legitimate owners (art. 14(2)).

24. The key normative indicators of implementation of the provisions on seizure, freezing and confiscation of the proceeds of crime are the following:

- Legislation is in place to allow the confiscation, to the greatest extent possible, of proceeds of crime from offences covered by the Convention, or of property the value of which corresponds to that of such proceeds;
- In this respect, the concept of "proceeds of crime" includes any property derived from or obtained, directly or indirectly, through the commission of an offence;
- Legislation is in place to allow the confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention;
- Legislation is also in place to allow confiscation of property into which the proceeds of crime have been converted, as well as intermingled proceeds of crime up to their assessed value;

- In this respect, the scope of “property” includes all assets, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;
  - Legislation ensures that bank records, financial records and commercial records are subject to compulsory production;
  - Bank secrecy is not a bar to such compulsory production;
  - Consideration is given to the possibility of shifting to the defendant the burden of proof of the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of domestic law and with the nature of the judicial and other proceedings;
  - The seizure, freezing and confiscation does not prejudice the rights of bona fide third parties;
  - The State Party is able to submit to its competent authorities another State Party’s request for confiscation, for the purpose of obtaining an order of confiscation and giving effect to it, or to submit to its competent authorities, with a view to giving effect to it, a confiscation order issued by another State Party;
  - Upon request of another State Party, the State Party is able to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities relating to offences covered by the Convention for the purpose of eventual confiscation;
  - Priority consideration is given to returning proceeds or property to the requesting State for compensation of, or return to, victims;
  - Special consideration is given to contributing proceeds or property to the United Nations Crime Prevention and Criminal Justice Trust Fund for use against organized crime.
25. The key implementation questions relevant to the provisions on seizure, freezing and confiscation of the proceeds of crime are the following:<sup>5</sup>
- What is the legal framework regarding asset recovery, confiscation, and forfeiture? Is it adequate?
  - What are the treaties to which the State is a party that create obligations with respect to asset confiscation and forfeiture?
  - What mechanisms exist to identify, trace, seize or freeze property/assets, including bank, financial, or commercial records, as well as equipment and other instrumentalities used in, or destined to be used in the commission of crimes?
  - What bank secrecy laws exist that may impede investigations or become a basis for refusing a request for cooperation?

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<sup>5</sup> For further information, see the UNODC publication *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (Vienna, 2012).

- Are agencies able to use investigative strategies that target the assets of organized crime through interconnected financial investigations?
  - Is there a national capacity to engage in active and continuous exchanges of relevant financial intelligence information and analyses with other States?
  - Is informal (as opposed to formally requested) exchange of information permitted between the State Party and other jurisdictions?
  - Are there dispositions in national law that allow confiscation or forfeiture of assets proceedings that are independent from other criminal proceedings?
  - Has the State Party entered into bilateral or other agreements for asset sharing among States involved in tracing, freezing and confiscation of assets originating from organized crime activities?
  - What is the legislated authority of law enforcement agencies to seize property used in the commission of criminal offences?
  - Is there any data on the confiscation of crime-related assets facilitated by international cooperation?
  - Is there any data on the value of assets seized/recovered, and on how these assets were distributed or returned?
  - What problems have been encountered in seeking or offering international cooperation in relation to crime-related assets?
26. The key performance indicators of implementation of the provisions on seizure, freezing and confiscation of the proceeds of crime are the following:
- How much and what type of property and other assets are seized annually in relation to organized crime offences?
  - How much and what type of property and other assets are confiscated annually in relation to organized crime offences?
  - How much and what type of property and other assets confiscated annually in relation to organized crime offences are returned to the requesting State for compensation, or return to, victims?
  - How much and what type of property and other assets confiscated annually in relation to organized crime offences are contributed to the United Nations Crime Prevention and Criminal Justice Trust Fund for use against organized crime?
- Please elaborate on promising practices.

## **F. Protection of victims and witnesses**

27. Articles 24 and 25 of the Convention require States Parties to ensure effective protection of witnesses as well as assistance to and protection of victims. In terms of witnesses, this may include physical protection, domestic or foreign relocation, and special arrangements for giving evidence. In addition, States Parties are required to establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention, and provide opportunities for

victims to present views and concerns at an appropriate stage of criminal proceedings, subject to domestic law.

28. The key normative indicators of implementation of the provisions on protection of victims and witnesses are the following:<sup>6</sup>

- Appropriate measures have been taken, within means, to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by the Convention and, as appropriate, their families and other persons close to them;
- Victims of offences covered by the Convention have access to processes that enable them to seek compensation and restitution;
- Victims have opportunities to present their views and concerns at an appropriate stage of criminal proceedings, subject to domestic law.

29. The key implementation questions relevant to the provisions on protection of victims and witnesses are the following:

#### **Interviewing of victims and witnesses**

- Are victims entitled to withdraw their allegations? What then happens to the case? Can victims be compelled to proceed? If yes, how often does this happen and in what kinds of cases?
- Are witnesses to a crime compelled by law to assist the police?
- What are the rules for the interviewing of victims and witnesses? Does the interviewer inform the witness of his or her right to freedom from self-incrimination during the interview? Does a witness have the right to have a lawyer present during the interview? If the witness is a child, does the law require that his or her parent, guardian or other responsible person is present? How are interviews recorded, e.g. audio or video recorded, transcribed or summarized?
- Are there rooms available for interviewing witnesses and victims? Are they separate from the cell/detention area? Do investigators know about and/or practice “cognitive interviewing” techniques (i.e. psychological techniques used to help someone remember)? Are there investigators who have been specially trained to interview children or vulnerable people? Are such interviews videotaped? Is the videotape admissible in evidence?
- Who takes a witness or victim statement? Does the victim or witness have the opportunity to read his or her statement and certify that each page is accurate? What happens when the witness or victim cannot speak the same language? What happens where the witness or victim is illiterate? Do witnesses and victims have to provide their full contact details? Are these contact details included in the witness statement? Are witness or victim statements included in the trial case file?

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<sup>6</sup> For further information, see the UNODC publication *Good practices in the protection of witnesses in criminal proceedings involving organized crime* (Vienna, 2008).

### **Support to and services for victims and witnesses**

- Are there formal or informal support services for victims and witnesses?
- Are investigators designated as liaison officers to support visitors and families in cases of a sensitive and emotional nature? What training do they receive?
- What obligations under law does the prosecuting authority have toward crime victims or witnesses in criminal cases?
- What is the prosecution service's policy regarding (1) the provision of services to victims, including the poor and elderly, and (2) reducing inconvenience to and protecting witnesses?

### **Provision of information to victims and witnesses**

- Are victims and witnesses given information about the services that are available, including what protections they may seek? How and by whom?
- How are victims and witnesses kept informed about cases, including verdicts and sentences or release of the convicted? Does the court have a notification system that gives notice to victims and witnesses about hearings that may have been scheduled or whose time or date may have changed?

### **Protection of victims and witnesses**

- Are there special waiting areas where victims and witnesses can wait where they do not have to confront the accused?
- What measures are available to protect witnesses and victims of offences related to organized crime (such as protective orders, no-contact orders, conditions of bail, escorts for victims and witnesses, concealment of identity from the suspect, testimonial aid, and victim relocation)?
- What kind of physical protection is available for a witness? For example, do witnesses stay at police stations, or are they offered protection or safe accommodation elsewhere?
- What kind of physical protection is available for police officers, prosecutors and judges?
- What capacity is there to offer effective physical protection to victims and witnesses before and after the trial?
- Can the witness or victim request a protective measure or an order for anonymity where there is serious risk to him or her or to close family members? For example, is it possible for witnesses who are in danger to testify through a process that protects their identity? What other measures have been taken to protect victims and witnesses in specific cases, e.g. testifying via closed circuit television, behind a screen in court, by the submission of pre-recorded evidence? If evidence is pre-recorded, does the defence have the right to always be present during the giving of evidence in order to exercise the right of the accused to examine the witnesses against him or her?
- Does national law establish limitations on the disclosure of information concerning the identity or whereabouts of victims and witnesses, and in



exceptional circumstances, protecting the anonymity of the person giving evidence?

#### **Compensation to victims and witnesses**

- Are witnesses paid expenses for appearing in court? Do they receive other payments?
- Under the law, are crime victims entitled to seek restitution or compensation for losses within a criminal case? Does the court have the authority to order victim compensation or restitution? What happens if the defendant is ordered to pay but has no means to do so? Does the State have a compensation fund? In circumstances where no restitution or compensation may be ordered in a criminal case, may victims seek compensation through civil procedure or through labour courts? Do they receive assistance or obtain representation through any court-related service?

#### **International cooperation in the protection of victims and witnesses**

- Has the State entered into international law enforcement cooperation agreements to protect victims of transnational crime?
- Can agencies assist other States in safely repatriating victims, particularly children?
- Can agencies offer international assistance in evaluating the threat against a witness or victim? Can they promptly communicate information concerning potential threats and risks to other jurisdictions?
- Can the State offer assistance to other jurisdictions in relocating witnesses and ensuring their ongoing protection?
- Can the State offer protection to witnesses who are returning to a foreign State in order to testify and collaborate in the safe repatriation of these witnesses?
- Can the State offer protection to prisoners who will be or have been witnesses in cases in other States?
- What data are available on international cooperation in the protection of witnesses and victims?
- What are the problems most frequently encountered?

30. The key performance indicators of implementation of the provisions on protection of victims and witnesses are the following:

- How often do the courts use protective measures for victims annually?
- How many cases are reported annually in which a victim or witness has been further victimized as a result of his or her assistance to the authorities in the investigation of an offence?

31. Additional questions:

- What factors lead to successful protection of victims and witnesses? Please elaborate on promising practices.
- What were the problems and challenges faced?

## **G. Measures to enhance cooperation with law enforcement authorities**

32. One of the most effective ways to obtain evidence of the activity of an organized criminal group is to entice one of its members to cooperate with the authorities. According to article 26, States Parties are required to take appropriate measures to encourage persons who participate or who have participated in organized criminal groups to supply information for investigative and evidentiary purposes on such matters as the identity, nature, composition, structure, location or activities of organized criminal groups; links, including international links, with other organized criminal groups; and offences that organized criminal groups have committed or may commit. States Parties are further required to take appropriate measures to encourage persons who participate or who have participated in organized criminal groups to provide factual, concrete help contributing to depriving organized criminal groups of their resources or of the proceeds of crime.

33. In practice, this type of cooperation can be secured by promising the cooperating person lesser punishment, immunity from prosecution, and/or protection. Article 26(4) provides that such protection shall be the same as that provided under article 24 for witnesses. Mitigation of punishment and immunity from prosecution, in turn, are dealt with in article 26(2) and (3):

(a) “2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.”

(b) “3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.”

34. The use of the words “shall consider” indicates that States Parties are obliged only to consider the provision. In many countries, the concept of immunity from prosecution is seen to be in conflict with the principle of mandatory prosecution, according to which the prosecutor is required to bring charges whenever there is cause to believe that an identified person is guilty of an offence. In these countries, it is only the court which may decide on the outcome. Correspondingly, in many countries the mitigation of punishment is seen to be the prerogative of the court, and thus for example the police or the prosecutor would not have the competence to promise lesser punishment.

35. However, other countries have had positive experience with extending to cooperating persons the promise of mitigation of punishment and/or immunity from prosecution, and for this reason the possibility was included in the Organized Crime Convention.

36. Article 26(5) furthermore calls upon States Parties to consider entering into agreements or arrangements on international cooperation in line with the elements of article 26, when a person in one State can provide substantial cooperation to the competent authorities of another State.

37. The key implementation questions relevant to the provisions on enhancement of cooperation with law enforcement authorities are the following:<sup>7</sup>

- Are the law enforcement authorities or prosecutors empowered, in appropriate cases, to assure an accused person of mitigated punishment if he or she provides substantial cooperation in investigation or prosecution?
- Are the law enforcement authorities or prosecutors empowered, in appropriate cases, to assure an accused person of immunity from prosecution if he or she provides substantial cooperation in investigation or prosecution?
- Where immunity is given, is it conditional or confined?

38. The key performance indicators of implementation of the provisions on enhancement of cooperation with law enforcement authorities are the following:

- How many persons have been accorded a mitigated punishment in return for substantive cooperation with the law enforcement authorities?
- How many persons have been provided immunity from prosecution in return for substantive cooperation with the law enforcement authorities? Do the laws of the State provide for transactional immunity (i.e. leniency in sentencing is provided if truthful and complete testimony is given)?
- Please elaborate on promising practices.

## II. Prosecution, adjudication and sanctions

39. Article 11 of the Convention requires that States Parties:

(a) Ensure that offences covered by the Convention are subject to adequate sanctions that take the gravity of each offence into account (art. 11(1));

(b) Ensure that any discretionary powers they may have are exercised to maximize the effectiveness of law enforcement and deterrence (art. 11(2));

(c) Take appropriate measures to ensure the presence of defendants at criminal proceedings (art. 11(3));

(d) Consider the grave nature of the four main offences covered by the Convention when considering early release or parole (art. 11(4));

(e) Establish, where appropriate, long domestic statute of limitation periods for commencement of proceedings for offences covered by the Convention; this period should be longer when the alleged offender has evaded the administration of justice (art. 11(5)).

40. The key normative indicators of implementation of the provisions on prosecution, adjudication and sanctions are the following:

- The offences of participation in an organized criminal group, money-laundering, corruption, and obstruction of justice; “serious crime” as defined in article 2(b) of the Convention; and offences criminalized on the

<sup>7</sup> For further information, see also the UNODC publication *Model Legislative Provisions against Organized Crime* (Vienna, 2012).

basis of any of the three Protocols to which the State is a party, are all subject to adequate sanctions that take the gravity of the offence into account;

- The State Party seeks to encourage the application of the law (including possible discretionary prosecutorial powers) to the maximum extent possible in order to deter the commission of these offences; for example; guidelines and training may be provided to prosecutors regarding when charges may be waived specifically in respect of offences related to organized crime;
- The State Party seeks to ensure that conditions imposed in connection with release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings;
- If the State Party allows for early release or parole, the State Party ensures that consideration is given to the grave nature of participation in an organized criminal group, money-laundering, corruption, and obstruction of justice when a decision is made on early release or parole of an offender convicted of such offences;
- If the State Party applies a statute of limitation to commencement of proceedings for the offences covered by the Convention, this period is, where appropriate, long, especially in the case where the alleged offender has evaded the administration of justice.

41. The key implementation questions relevant to the provisions on prosecution, adjudication and sanctions are the following:

#### **A. Prosecution**

- Is there an official government policy on the prosecution service? Who develops it? Whose input is sought? Does the policy address the prosecution of offences related to organized crime?
- Is there a strategic plan for the prosecution service? Who prepares it? Whose input is sought? How many years into the future does the strategic plan project? What are the strategies it will employ to improve:
  - The day-to-day functioning of the prosecution service?
  - Case management, including the development of case screening mechanisms?
  - Timely resolution of the caseload and reduction of any backlogs that may exist?
  - Its capacity to handle specialized or complex crimes, including corruption?
  - Services/support provided to victims?
  - Its accountability to the public it serves?
- Are cases involving offences related to organized crime generally assigned to particular prosecutors? If so, what is their average caseload? How many pending cases are such prosecutors handling at any one time?

- Is the prosecution service able to assemble a multidisciplinary team to prosecute complex cases? What resources or mechanisms are available for long-term or complex investigations? Has the prosecution service organized separate units/specialized prosecutors to prosecute such cases as:
  - Offences related to organized crime, including drug trafficking;
  - Financial crimes;
  - Corruption;
  - Misconduct by officials, including lawyers and police officers;
  - Obstruction of justice?
- Does the prosecutor have discretion over whether to pursue charges? On what basis?
- How often does the prosecutor decline to prosecute? What happens to the case? How often does the prosecutor send the case back for additional investigation instead of declining?
- Does a prosecutor in declining to prosecute or withdrawing a criminal case need to provide a reason for doing so? Are reasons published? Does this occur in practice? Up to what point in the process may a prosecutor exercise the discretion to decline or withdraw a case? At what point may only a judge dismiss a criminal case?
- Can the decision to proceed, decline to prosecute, withdraw or dismiss the case be overruled by a member of the executive branch? Can it be overruled by a member of the judiciary? Can it be overruled by a government minister? To what extent does this occur in practice?
- Does the prosecutor have the legal authority to conditionally dismiss a case? At what stages? For what types of crime? For what type of offender? Does the law or regulatory framework guide conditional dismissals? Internal policy/procedures? Does a judge have to approve of this agreement? What record is made of the agreement? Who verifies fulfilment of the conditions?
- Does the prosecutor have the legal authority to negotiate plea agreements, if there is a legal basis for plea agreements? To what extent is the prosecutor's discretion to negotiate a plea controlled by a regulatory framework? What are the limitations of that framework? Does the prosecutor have an obligation to make a plea offer? Does the prosecutor have a legal obligation to consult with or inform the victim about a plea offer or agreement? Is it a policy (and practice) for providing access to evidence (discovery) to facilitate early acceptance of plea offers (rather than on the day of trial)? Does there need to be judicial approval or acceptance of the agreement?

## **B. Courts, adjudication and sanctions**

- Is there a strategic plan for the courts? Who prepares it? Whose input is sought? How many years into the future does the strategic plan project? What are the strategies it will employ to improve:
  - Integrity of judicial processes and functions?

- The day-to-day functioning of the courts?
  - Case management, including the development of case screening mechanisms?
  - Timely resolution of the caseload and reduction of any backlogs that may exist?
  - The State's capacity to handle specialized or complex organized crimes?
  - Services/support provided to victims and witnesses?
- What sentences does the current law impose for the various offences related to organized crime? What are the maximum terms of imprisonment and maximum fines for the relevant offences?
  - Who determines the sentence (for example, sentencing courts or individual judges)?
  - What are the principles of sentencing? Where are they articulated?
  - Is it possible to impose higher penalties for repeat offenders?
  - Are there formal or informal sentencing guidelines or criteria for offences related to organized crime? Are victims heard?
  - Which authorities have the legal power or discretion to impose sanctions?
  - Does the law permit sentencing courts to prohibit the offender from engaging in certain types of occupations or trades?
42. The key performance indicators of implementation of the provisions on prosecution, adjudication and sanctions are the following:
- What number and types of organized crime offences have been reported?
  - What number and types of organized crime offences have been investigated?
  - How many suspects have been investigated? How many have been detained?
  - How many organized crime-related prosecutions are resolved annually by the prosecutor's office? How many of them are resolved via trials, and how many via guilty pleas?
  - What proportion of organized crime prosecutions result in a conviction for at least one of the charges, and what proportion results in full acquittals? How many such prosecutions are withdrawn or dismissed?
  - How many appeals involving offences related to organized crime have been initiated by the prosecution service?
  - How many convictions/acquittals for offences related to organized crime have been overturned on appeal? What were the main reasons for appeal?
  - How long do court proceedings for offences related to organized crime generally take?
  - What is the average cost per organized crime-related offence prosecuted during a year?
  - Please elaborate on effective practices.