Conference of the Parties to the United Nations Convention against Transnational Organized Crime

28 July 2004

Questionnaire on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

The purpose of the present questionnaire is to collect information from States parties and signatories to the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) in accordance with guidance provided by the Conference of the Parties to the Convention at its first session and in the context of the programme of work approved at that session (decision 1/2). The information to be provided will relate to the following areas, as determined by the Conference of the Parties, for consideration at its second session:

(a) Basic adaptation of national legislation in accordance with the Convention;

(b) Examination of criminalization legislation and difficulties encountered in the implementation in accordance with article 34, paragraph 2, of the Convention;

(c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Convention.

Does your country need assistance in providing the information requested in this questionnaire?

( ) Yes  ( ) No

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I. Criminalization requirements under the Convention

A. Criminalization of participation in an organized criminal group (article 5)

1. Is participation in an organized criminal group criminalized under your domestic legislation?

( ) Yes  ( ) No

(a) If the answer is “No”, please explain.

(b) If the answer is “Yes”, does participation in an organized criminal group consist of:

(i) Agreeing with one or more other persons to commit a serious crime for financial or other material benefit (art. 5, para. 1 (a)(i), of the Convention)?

( ) Yes  ( ) No

and/or

(ii) Taking an active part in criminal activities of the organized criminal group with knowledge of either the aim and general criminal activity of that group or its intention to commit the crimes concerned, as well as taking an active part in other activities of the organized criminal group in the knowledge that such participation will contribute to the achievement of the criminal aim of that group (art. 5, para. 1 (a)(ii), of the Convention)?

( ) Yes  ( ) No

(iii) If your domestic legislation includes the requirement described under (i) above, does it additionally require that an act was undertaken by one of the participants in furtherance of the agreement or the involvement of an organized criminal group?

( ) Yes  ( ) No

2. Does your country’s legislation establish as a criminal offence organizing, directing, aiding, abetting, facilitating and counselling the commission of serious crime involving an organized criminal group (art. 5, para. 1 (b), of the Convention)?

( ) Yes  ( ) No

Please provide a copy of your country’s relevant legislation and website addresses, if any, where such legislation may be found.
B. Criminalization of the laundering of proceeds of crime (article 6)

3. Is the laundering of proceeds of crime criminalized under your domestic legislation in accordance with article 6, paragraph 1 (a), of the Convention?

   ( ) Yes  ( ) No

   (a) If the answer is “No”, please explain.

   ( ) No

   ( ) Yes

(b) If the answer is “Yes”:

   (i) Are all the offences covered by the Convention predicate offences under your domestic legislation to the offence of money-laundering (arts. 2, subpara. (h), and 6, para. 2 (a) and (b), of the Convention)?

      ( ) Yes  ( ) No

   (ii) Are all the offences covered by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II), and the Protocol against the Smuggling of Migrants by Land, Sea or Air, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex III), predicate offences under your domestic legislation to the offence of money-laundering (arts. 2, subpara. (h), and 6, para. 2 (a) and (b), of the Convention, and art. 1, para. 2, of each Protocol)?

      ( ) Yes  ( ) No

4. Does your legislation require that the predicate offences be committed in your country or include also offences committed outside your country?

   ( ) Yes  ( ) No

5. If your legislation includes as predicate offences also offences committed outside your country (see question 4), please explain under which specific requirements (art. 6, para. 2 (c), of the Convention).
6. Are the acquisition, possession and use of property, knowing, at the time of receipt, that such property is the proceeds of crime, criminalized under your domestic legislation (art. 6, para. 1 (b)(i), of the Convention)?

( ) Yes ( ) No

7. If the answer to question 6 is “No”, please explain.

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8. Are participation in, association with and conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of a money-laundering offence criminalized under your domestic legislation (art. 6, para. 1 (b)(ii), of the Convention)?

( ) Yes ( ) No

9. If the answer to question 8 is “No”, please explain.

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10. Does the legislation of your country permit the prosecution and punishment of an offender for both the predicate offence and the laundering of proceeds from that offence (art. 6, para. 2 (e), of the Convention)?

( ) Yes ( ) No

11. If the answer to question 10 is “No”, does your country refuse extradition, mutual legal assistance or cooperation for the purposes of confiscation solely on the ground that the relevant request was based on a money-laundering offence and not on the predicate offence committed by the same person?

( ) Yes ( ) No

Please provide a copy of your country’s relevant legislation and web site addresses, if any, where such legislation may be found.

States parties to the Convention required to furnish copies of their relevant laws under article 6, paragraph 2 (d), of the Convention, may wish to do so in the context of a separate brief questionnaire on basic reporting obligations addressed to them in accordance with decision 1/3 of the Conference of the Parties to the Convention, adopted at its first session, held in Vienna, from 28 June to 8 July 2004.
C. **Criminalization of corruption (article 8)**

12. Is active bribery of a public official criminalized under your domestic legislation (art. 8, para. 1 (a), of the Convention)?

   ( ) Yes  ( ) No

13. If the answer to question 12 is “No”, please explain.

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14. Is passive bribery of a public official criminalized under your domestic legislation (art. 8, para. 1 (b), of the Convention)?

   ( ) Yes  ( ) No

15. If the answer to question 14 is “No”, please explain.

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16. Is participation as an accomplice in bribery offences criminalized under your domestic legislation (art. 8, para. 3, of the Convention)?

   ( ) Yes  ( ) No

17. If the answer to question 16 is “No”, please explain.

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18. Is your country able to apply, mutatis mutandis, article 8 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?

   ( ) Yes  ( ) No

   (a) If the answer is “No”, please explain.

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D. Criminalization of obstruction of justice (article 23)

19. Is obstruction of justice criminalized under your domestic legislation in accordance with article 23 of the Convention?
   (   ) Yes  (   ) No

20. If the answer to question 19 is “No”, please explain.

   Please provide a copy of your country’s relevant legislation and web site addresses, if any, where such legislation may be found.

21. Is your country able to apply, mutatis mutandis, article 23 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?
   (   ) Yes  (   ) No

   (a) If the answer is “No”, please explain.

   Please provide a copy of your country’s relevant legislation and web site addresses, if any, where such legislation may be found.

   (b) If the answer is “Yes”, please specify.
E. Jurisdiction (article 15)

22. Are there any circumstances under which your country does not have jurisdiction over offences committed in its territory (art. 15, para. 1 (a), of the Convention)?

( ) Yes   ( ) No

23. If the answer to question 22 is “Yes”, please specify.

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24. Does your country have jurisdiction to prosecute the offences covered by the Convention when the offences are committed on board a vessel flying its flag or an aircraft registered under its laws (art. 15, para. 1 (b), of the Convention)?

( ) Yes   ( ) No

25. Is the establishment of extraterritorial jurisdiction with respect to the offences covered by the Convention permitted in your country?

( ) Yes   ( ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”:

(i) Does your country have jurisdiction to prosecute the offences covered by the Convention when committed outside its territory by its nationals (or stateless persons who have habitual residence in the country) (art. 15, para. 2 (b), of the Convention)?

( ) Yes   ( ) No

(ii) Does your country have jurisdiction to prosecute the offences covered by the Convention when committed outside its territory against its nationals (art. 15, para. 2 (a), of the Convention)?

( ) Yes   ( ) No
(iii) Does your country have jurisdiction to prosecute participation in an organized criminal group committed outside its territory with a view to the commission of a serious crime (art. 2, subpara. (b), of the Convention) within its territory (art. 15, para. 2 (c)(i), of the Convention)?

( ) Yes   ( ) No

(iv) Does your country have jurisdiction to prosecute ancillary offences related to money-laundering offences (see question 8 above) committed outside its territory with a view to the commission of the laundering of criminal proceeds in its territory (art. 15, para. 2 (c)(ii), of the Convention)?

( ) Yes   ( ) No

26. If your country does not extradite its nationals, is it able to establish jurisdiction over offences covered by the Convention when those offences are committed by them outside its territory (aut dedere aut judicare) (arts. 15, para. 3, and 16, para. 10, of the Convention)?

( ) Yes   ( ) No

27. If the answer to question 26 is “No”, please explain.

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28. If your country does not extradite an alleged offender on any other ground, is it able to establish jurisdiction over offences covered by the Convention when those offences are committed by that person outside its territory (art. 15, para. 4, of the Convention)?

( ) Yes   ( ) No

29. If the answer to question 28 is “No”, please explain.

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30. Is your country able to apply, mutatis mutandis, article 15 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?

   ( ) Yes   ( ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify.

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Please provide a copy of your country’s relevant legislation and web site addresses, if any, where such legislation may be found.

F. Liability of legal persons (article 10)

31. Is liability of legal persons established under your domestic legislation in accordance with article 10 of the Convention?

   ( ) Yes   ( ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, is this liability:

   (i) Criminal?

       ( ) Yes   ( ) No

       and/or

   (ii) Civil?

       ( ) Yes   ( ) No

       and/or

   (iii) Administrative?

       ( ) Yes   ( ) No
(iv) What kind of sanctions are provided for in your country’s legislation (criminal, non-criminal or pecuniary)? Please specify.

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32. Is your country able to apply, mutatis mutandis, article 10 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?

( ) Yes ( ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify.

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Please provide a copy of your country’s relevant legislation and web site addresses, if any, where such legislation may be found.
G. Confiscation and seizure (article 12)

33. Does your domestic legislation enable confiscation of:
   
   (a) Proceeds of crime derived from offences covered by the Convention (art. 12, para. 1 (a), of the Convention)?
       ( ) Yes  ( ) No

   (b) Property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (art. 12, para. 1 (b), of the Convention)?
       ( ) Yes  ( ) No

   (c) Proceeds of crime transformed or converted into other property (art. 12, para. 3, of the Convention)?
       ( ) Yes  ( ) No

   (d) Proceeds of crime intermingled with legitimately obtained property (art. 12, para. 4, of the Convention)?
       ( ) Yes  ( ) No

   (e) Income or other benefits derived from items described under (a), (c) and (d) above (art. 12, para. 5, of the Convention)?
       ( ) Yes  ( ) No

34. If the answer to any of the sub-questions in question 33 is “No”, please explain.

35. Does your domestic legislation enable the identification, tracing, freezing or seizure of items described under question 33 above for the purpose of eventual confiscation?
       ( ) Yes  ( ) No

36. If the answer to question 35 is “No”, please explain.
37. Does your national legislation permit shifting the burden of proof to the defendant to show that alleged proceeds of crime were derived from legitimate sources (art. 12, para. 7, of the Convention)?

( ) Yes    ( ) No

38. Does your domestic legislation permit access by your competent authorities to bank, financial or commercial records for:

(a) Investigation or prosecution of offences covered by the Convention in your country?

( ) Yes    ( ) No

(b) Securing confiscation in your country (art. 12, para. 6, of the Convention)?

( ) Yes    ( ) No

39. If the answer to any of the sub-questions in question 38 is “No”, please explain.

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40. Is your country able to apply, mutatis mutandis, article 12 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?

( ) Yes    ( ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify.

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Please provide a copy of your country’s relevant legislation and web site addresses, if any, where such legislation may be found.
H. Disposal of confiscated proceeds of crime or property (article 14)

41. Does the legislation of your country permit the return of confiscated proceeds of crime or property to the requesting State party so that it can give compensation to the victims of the crime or the return of such proceeds of crime or property to their legitimate owners (art. 14, para. 2, of the Convention)?

( ) Yes  ( ) No

42. If the answer to question 41 is “No”, please explain.

Please provide a copy of your country’s relevant legislation and web site addresses, if any, where such legislation may be found.

II. International cooperation requirements under the Convention

A. Extradition (article 16)

43. In your country, is extradition granted:

   (a) By statute?  

       ( ) Yes  ( ) No

   and/or

   (b) By treaty or other agreement or arrangement (multilateral or bilateral)?

       ( ) Yes  ( ) No

   and/or

   (c) By virtue of reciprocity or comity?

       ( ) Yes  ( ) No

44. If in your country extradition is conditional on the existence of a treaty, does your country take the Convention as the legal basis for cooperation on extradition with other States parties to the Convention (art. 16, para. 5 (a), of the Convention)?

       ( ) Yes  ( ) No
45. If in your country extradition is conditional on the existence of a treaty, are the offences covered by the Convention included as extraditable offences in existing (bilateral or multilateral) extradition treaties (art. 16, para. 3, of the Convention)?

( ) Yes  ( ) No

46. If in your country extradition is granted by statute, does that statute include all offences covered by the Convention as extraditable offences (art. 16, para. 6, of the Convention)?

( ) Yes  ( ) No

47. What are the conditions provided for in your country for granting extradition, including the minimum penalty requirement and the grounds on which the requested State may refuse extradition? Please specify.

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48. Is the double criminality requirement established in your domestic legal framework for granting an extradition request?

( ) Yes  ( ) No

49. If the answer to question 48 is “No”, please explain.

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50. Does your domestic legal framework provide for specific evidentiary requirements for granting an extradition request (art. 16, para. 8, of the Convention)?

( ) Yes  ( ) No

51. If the answer to question 50 is “Yes”, please specify.

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52. Are simplified extradition proceedings available in your country to facilitate prompt execution of the extradition request where the requested State and/or the fugitive have given consent to the surrender (art. 16, para. 8, of the Convention)?

( ) Yes ( ) No

53. If the answer to question 52 is “Yes”, please specify.

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54. Does your domestic legal framework permit extradition for offences involving fiscal matters (art. 16, para. 15, of the Convention)?

( ) Yes ( ) No

55. Does your domestic legal framework permit extradition of your nationals to another country?

( ) Yes ( ) No

56. If your country does not extradite its nationals, is it able to establish jurisdiction over offences covered by the Convention (and the Protocols) when those offences are committed by them outside its territory (aut dedere aut judicare) (arts. 15, para. 3, and 16, para. 10, of the Convention)? (See also question 26).

( ) Yes ( ) No

57. Does the legislation of your country permit requesting another State that has denied extradition of a person on the ground of nationality to initiate prosecutorial action against that person and, in that case, providing cooperation with respect to procedural and evidentiary aspects for the purpose of ensuring the efficiency of such prosecution (art. 16, para. 10, of the Convention)?

( ) Yes ( ) No

58. If the answer to question 57 is “Yes”, please specify.

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59. Is conditional surrender in accordance with article 16, paragraph 11, of the Convention available in your country?

( ) Yes  ( ) No

60. If the answer to question 59 is “Yes”, please specify.

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61. If your country does not extradite its nationals, is it able to enforce the sentence that has been imposed to the person sought under the domestic law of the requesting State (art. 16, para. 12, of the Convention)?

( ) Yes  ( ) No

62. If the answer to question 61 is “Yes”, please specify.

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63. Is your country able to apply, mutatis mutandis, article 16 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?

( ) Yes  ( ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify.

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B. Mutual legal assistance (article 18)

64. In your country, is mutual legal assistance afforded:
   (a) By statute?
       (  ) Yes    (  ) No
   and/or
   (b) By treaty or other agreement or arrangement (multilateral or bilateral)?
       (  ) Yes    (  ) No
   and/or
   (c) By virtue of reciprocity or comity?
       (  ) Yes    (  ) No

65. Is your country able to apply the provisions of article 18 of the Convention, including paragraphs 9-29 thereof, in order to provide mutual legal assistance to other States parties to the Convention with which it does not have another mutual legal assistance treaty in force?
       (  ) Yes    (  ) No

66. Which of the following types of mutual legal assistance does your country provide (art. 18, paras. 3 and 18, of the Convention):
   (a) Taking evidence or statements from persons?
       (  ) Yes    (  ) No
   and/or
   (b) Effecting service of judicial documents?
       (  ) Yes    (  ) No
   and/or
   (c) Executing searches and seizures, and freezing?
       (  ) Yes    (  ) No
   and/or
   (d) Examining objects and sites?
       (  ) Yes    (  ) No
(e) Providing information, evidentiary items and expert evaluations?

( ) Yes  ( ) No

and/or

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records?

( ) Yes  ( ) No

and/or

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes?

( ) Yes  ( ) No

and/or

(h) Facilitating the voluntary appearance of persons in the requesting State party?

( ) Yes  ( ) No

and/or

(i) Facilitating the testimony of witnesses by video conference?

( ) Yes  ( ) No

67. Is bank secrecy a ground for refusal of a mutual legal assistance request under your domestic legal framework (art. 18, para. 8, of the Convention)?

( ) Yes  ( ) No

68. If the answer to question 67 is “No”, please explain.

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69. Is the provision of mutual legal assistance subject to the double criminality requirement according to your domestic legal framework (art. 18, para. 9, of the Convention)?

( ) Yes  ( ) No
70. If other grounds for refusal of a mutual legal assistance request are provided for in your domestic legal framework, please specify (art. 18, para. 21, of the Convention).

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71. What kind of information does your domestic legal framework require for inclusion in a mutual legal assistance request (art. 18, para. 15, of the Convention)? Please specify.

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72. Is there any treaty or treaties in force with other States that permits the relocation of witnesses who give testimony concerning offences covered by the Convention (art. 24, para. 3, of the Convention)?

( ) Yes  ( ) No

73. If the answer to question 72 is “Yes”, please specify.

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74. Is your country able to apply, mutatis mutandis, article 18 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?

( ) Yes  ( ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify.

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C. International cooperation for purposes of confiscation (article 13) and disposal of confiscated proceeds of crime or property (article 14)

75. Is your country able to confiscate the proceeds of crime, as described under question 33, at the request of another State party?

( ) Yes ( ) No

(a) If the answer is “No”, please explain.

(b) If the answer is “Yes”:

(i) Is the request submitted to the competent authorities of your country for the purpose of obtaining a domestic order of confiscation (art. 13, para. 1 (a), of the Convention)?

( ) Yes ( ) No

(ii) Is the request submitted to the competent authorities of your country for direct enforcement (art. 13, para. 1 (b), of the Convention)?

( ) Yes ( ) No

76. Does your domestic legal framework enable the competent authorities to identify, trace and freeze and seize the proceeds of crime, as described under question 33, for the purpose of eventual confiscation, at the request of another State party?

( ) Yes ( ) No

(a) If the answer is “No”, please explain.

(b) If the answer is “Yes”:

(i) Is the request submitted to the competent authorities of your country for the purpose of obtaining a domestic order to identify, trace and freeze and seize the proceeds of crime for the purpose of eventual confiscation (art. 13, para. 2, of the Convention)?

( ) Yes ( ) No
(ii) Is the request submitted to the competent authorities of your country for direct enforcement (art. 13, para. 2, of the Convention)?

(   ) Yes  (   ) No

77. If any grounds for refusal of a request for cooperation for the purposes of confiscation are provided for in your domestic legal framework, please specify.

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78. What kind of information does your domestic legal framework require for inclusion in a request for cooperation for the purposes of confiscation (arts. 13, para. 3, and 18, para. 15, of the Convention)? Please specify.

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79. Is your country able to apply, mutatis mutandis, article 13 of the Convention to the offences established in accordance with the Trafficking in Persons Protocol and the Migrants Protocol (art. 1, para. 2, of each Protocol)?

(   ) Yes  (   ) No

(a) If the answer is “No”, please explain.

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(b) If the answer is “Yes”, please specify.

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80. Are there any agreements or arrangements in force with other States that enable the disposal of confiscated proceeds of crime or property upon request of the other State (art. 14, para. 2, of the Convention)?

(   ) Yes  (   ) No
81. If the answer to question 80 is “Yes”, please specify.

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82. Are there any agreements or arrangements in force with other States that enable the sharing of proceeds of crime with those States (art. 14, para. 3 (b), of the Convention)?

( ) Yes        ( ) No

83. If the answer to question 82 is “Yes”, please specify.

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III. Difficulties encountered and assistance required

A. Difficulties encountered

84. If domestic legislation has not been adapted to the Convention’s requirements on the issues dealt with in questions 1-83, what steps remain to be taken? (For example, is legislation being drafted? Has legislation been submitted for approval?) Please specify.

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85. Are there any difficulties hampering the adoption of adequate national legislation?

( ) Yes        ( ) No

86. If the answer to question 85 is “Yes”, please specify.

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B. Need for technical assistance

87. Does your country require technical assistance to overcome such difficulties?

( ) Yes  ( ) No

88. If the answer to question 87 is “Yes”, please specify.

C. Technical assistance provided

89. Does your country provide technical assistance to other countries in the areas covered by this questionnaire:

(a) Bilaterally?

( ) Yes  ( ) No

and/or

(b) Through international organizations?

( ) Yes  ( ) No

90. If the answer to question 89 (b) is “Yes”, please specify which organizations.

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91. If the answer to question 89 is “Yes”, please specify the types of technical assistance provided.

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IV. Other information

92. Please provide any other information you believe is important for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime to consider at this stage regarding aspects of, or difficulties in, implementing the Convention other than those mentioned above.

Country: 

Date on which the questionnaire was received: 

__/__/__
(day/month/year)

The official(s) responsible for responding to the questionnaire is (are):

Ms./Mr. 

Title and/or position: 

Agency and/or office: 

Mailing address: 

Telephone number: 

Telefax number: 

E-mail address: 

Completed questionnaires should be sent to:

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United Nations Office on Drugs and Crime
Vienna International Centre
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A 1400 Vienna, Austria

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