**United nations convention against transnational organized crime review mechanism: Template civil society questionnaire**

(FIRST REVIEW CLUSTER-Criminalization and jurisdiction)

Introduction

The Review Mechanism of United Nations Convention against Transnational Organized Crime (UNTOC) is a peer review process, with one state being reviewed by two other states for the instruments (the Convention and its three Protocols) to which it is party. The mechanism is intended to assess how states are implementing UNTOC and the protocols to which they are party, and to identify what gaps exist in implementation that could be addressed through capacity building and technical assistance.

62 countries are to be reviewed over the next two years under the first review cluster - ‘Criminalization and Jurisdiction’. This cluster covers articles 2, 5, 6, 8, 9, 10, 15 and 23 of UNTOC; articles 3 and 5 of the Trafficking in Persons Protocol; articles 3, 5 and 6 of the Smuggling of Migrants Protocol; and articles 3, 5 and 8 of the Firearms Protocol. To assess their implementation of this cluster of provisions, states will use this [UNODC questionnaire.](https://www.unodc.org/documents/organized-crime/reviewmechanism/Self-assessment_questionnaire_for_the_United_Nations_Convention_against_Transnational_Organized_Crime_and_the_Protocols_thereto_Cluster_I.pdf)

The self-assessment phase, which should already be underway on all of these 62 countries, is one of the key opportunities for civil society to engage with the government as it prepares its responses to their questionnaire. Indeed, the Rules and Procedures of the Review Mechanism agreed by Member States set out a clearly defined role for civil society in the review process, and therefore the governments under review should consult with relevant stakeholders in the preparation of responses to the self-assessment questionnaire, including the private sector, non-governmental organizations, and academia.

Guidance

This **template civil society questionnaire** provides a framework for non-governmental individuals and groups to respond to the issues covered under the first review cluster, and to submit these inputs to the government under review and share them with other national and international stakeholders as required.

The questionnaire is divided into two parts:

* **Part A** is for a general overview of civil society perceptions or analysis of the response to organized crime since the adoption of the UNTOC, with reference to the Cluster under review. This is primarily for dissemination to civil society and other interested partners, and can be submitted to GI-TOC on a voluntary basis, to inform their analysis of trends and findings from around the world vis-à-vis implementation of the UNTOC and its effects on efforts to prevent and counter TOC. **This part should only be shared with the State Party under review if you are sure it would be welcome**. There are politically sensitive points included, and it does not mirror the exact themes of the review mechanism, so in many cases submission of this part may not be welcomed by Member States, or could be counter-productive.
* **Part B** is a detailed analysis of the implementation of the Cluster under review.  **This part should be shared with the State Party under review**, and closely mirrors the detailed questions that states will have to answer. Therefore it should help states as they fill in their questionnaire. This can also be submitted to GI-TOC on a voluntary basis.

The States’ Self-Assessment Questionnaire is provided in case respondents would like to understand more what questions states themselves will respond to, so that civil society inputs can be tailored accordingly - [UNODC questionnaire.](https://www.unodc.org/documents/organized-crime/reviewmechanism/Self-assessment_questionnaire_for_the_United_Nations_Convention_against_Transnational_Organized_Crime_and_the_Protocols_thereto_Cluster_I.pdf)

The [text of the Convention and its Protocols](https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html) should also be consulted in filling in this questionnaire, along with the UNODC *Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols thereto* <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html#_Full_Version_1>

There is no obligation to fill out the entire questionnaire. Just complete the sections for which you are comfortable providing your or your organization’s expertise or data. The completed questionnaire (Part B) should be submitted to the focal point of the state party under review, and both parts (A and B) should be shared with interested parties and submitted to the GI-TOC on a voluntary basis (to [ian.tennant@globalinitiative.net](mailto:ian.tennant@globalinitiative.net)) . GI-TOC would, on a confidential basis, keep track of all submitted civil society questionnaires for the purposes of analysis of trends and findings around the world through the review mechanism.

**Questions on the United Nations convention against transnational Organized crime**

Country status

|  |  |
| --- | --- |
| Background | Civil Society consultation questions (Respond in this column) |
| The UNTOC has 190 parties. To find out if your country is a party to the convention, and whether it made any declarations or reservations on the convention, the ratification status page is here – <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en> | Is your country a party to the UNTOC? Yes/No. |

PART A: General responses on the UNTOC and its criminalization and jurisdiction provisions.

For submission to GI-TOC, dissemination to civil society, partners etc, and potentially to states parties in some cases.

|  |  |
| --- | --- |
| Background | Civil Society consultation questions (Respond in this column) |
| According to the UNODC Legislative Guide, the Convention is intended to encourage states to adopt ‘comprehensive’ countermeasures to organized crime, and ‘eliminate safe havens for organized crime’, through legislative provisions and frameworks for international cooperation between states. However, the scope and challenges of organized crime have increased dramatically since the adoption of the TOC in 2000, as demonstrated in the 2021 GI-TOC study ‘The Global Illicit Economy’.  The Legislative Guide says:  *“The Convention is intended to encourage States that do not have provisions against organized crime to adopt comprehensive countermeasures and to provide those States with some guidance in approaching the legislative measures involved. It also seeks to eliminate safe havens for organized crime by providing greater standardization and coordination of national legislative, administrative and enforcement measures relating to transnational organized crime, and to ensure a more efficient and effective global effort to prevent and suppress it. The Convention recognizes that organized criminal groups behind various forms and manifestations of crime should be the target of criminal justice systems. Efforts should be geared towards the dismantling of those groups and protecting victims as well as witnesses. In relation to criminalization, the Convention focuses on the offence of participation in an organized criminal group and the enablers of organized criminality, namely money-laundering, corruption and obstruction of justice. The great adaptability and flexibility of the Convention stems from the expansion of the scope of application to all serious crime, including new and emerging forms of crime. The broad scope of application of the Convention enables States to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings. The Convention further reinforces mechanisms of confiscation with the aim, inter alia, of depriving criminal groups of assets that can further criminal activities. Finally, the Convention recognizes the importance of prevention. The Convention is supplemented by three protocols: the Protocol against the Smuggling of Migrants by Land, Air, and Sea, the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.”*  <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>  According to the GI-TOC ‘Global Illicit Economy’ report of 2021,  *“Since the early 1990s, transnational organized crime has boomed all over the world, a trend that has only accelerated in the past 20 years, despite the signing of the United Nations Convention against Transnational Organized Crime (UNTOC) in 2000. In just a few decades, transnational crime as we know it has changed beyond recognition – and so has its impact. What was once thought of as a handful of mafias operating in a few problem cities has become a pervasive threat to peace, justice and development the world over. This criminal transformation has been driven by the geopolitical, economic and technological shifts that have taken place since the turn of the century, with organized criminal groups some of the biggest beneficiaries of glo - balization. These groups have taken advantage of the opening of new markets, supply chains and technologies, while exploiting weak regulation in financial markets and cyberspace.”*  [*https://globalinitiative.net/wp-content/uploads/2021/03/The-Global-Illicit-Economy-GITOC-Low.pdf*](https://globalinitiative.net/wp-content/uploads/2021/03/The-Global-Illicit-Economy-GITOC-Low.pdf)  SDG 16 commits all UN member states to working towards the following targets:  *16.1 Significantly reduce all forms of violence and related death rates everywhere*  *16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children*  *16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all*  *16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime*  *16.5 Substantially reduce corruption and bribery in all their forms*  *16.6 Develop effective, accountable and transparent institutions at all levels*  *16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels*  *16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance*  *16.9 By 2030, provide legal identity for all, including birth registration*  *16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements*  *16.A Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime*  *16.B Promote and enforce non-discriminatory laws and policies for sustainable development*  [*https://www.un.org/sustainabledevelopment/peace-justice/*](https://www.un.org/sustainabledevelopment/peace-justice/) | Since becoming a State Party to the UNTOC in year 2\_\_\_\_\_, has transnational organized crime in your country (a) expanded/increased its power, (b) decreased/become weaker, or (c) stayed the same? Please provide evidence and justification, including data and case studies where possible.  Overall, do you think becoming a party to UNTOC has (a) improved, (b) weakened or (c) has had minimal or zero effect on your country’s ability to prevent and counter transnational organized crime? Please explain your answer.  Overall, as a state party to the UNTOC, do you think your country is implementing UNTOC effectively? With regards to the provisions under review in this cycle (criminalization and jurisdiction), do you think your country has criminalized organized criminal activity sufficiently? Please provide evidence and justification, including data and examples where possible.  Do you think that preventing and countering transnational organized crime a political priority in your country? Please explain.  If organized criminal activity is widespread in your country, why do you think transnational organized criminal groups are able to operate and succeed in your country (please tick all that apply)?   * Poor/non-implementation of provisions of UNTOC and its Protocols * Conflict * Corruption/criminal infiltration/impunity * Human rights abuses * Lack of gender-sensitive responses by governments * Poor relations with international partners * Poverty/Inequality/Socio-economic conditions * Lack of Rule of Law * Lack of protection for victims and witnesses * Low understanding of the nature of organized crime and how criminal groups work * Resilience/power of criminal groups * Weak civil society * Weak government and institutions * Heavy-handed/securitized state responses * Restricted media and civil society * Low political will/priority * Other: (please list here):   Please explain your answers:  Has becoming a State Party to UNTOC (a) enhanced, (b) damaged or (c) made no difference your country’s efforts to achieve UN Sustainable Development Goal 16 – i.e. ‘peace, justice and strong institutions’.? Please explain. |

PART B: Detailed responses

For submission to states parties and dissemination to civil society and other partners

Please respond to the following section if you have more detailed expertise and responses to offer with regard to the specific articles under review for the UNTOC - ‘Criminalization and Jurisdiction’. This cluster covers articles 2, 5, 6, 8, 9, 10, 15 and 23 of UNTOC

Article 2. Use of Terms

Summary: defining terminology, i.e., organized criminal group, serious crime, structured group, property, proceeds of crime, freezing/seizure, confiscation, predicate offence, controlled delivery, regional economic integration organization.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 1. Does your country’s legal framework include the definitions set forth in article 2?   **Text of Article 2: Use of Terms**  For the purposes of this Convention:  (a) “**Organized criminal group**” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;  (b) **“Serious crime”** shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;  (c) **“Structured group”** shall mean a group that is not randomly formed  for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;  (d) **“Property”** shall mean assets of every kind, whether corporeal or  incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;  (e) **“Proceeds of crime”** shall mean any property derived from or  obtained, directly or indirectly, through the commission of an offence;  (f) **“Freezing”** or **“seizure”** shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;  (g) “**Confiscation”,** which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;  (h) **“Predicate offence”** shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention;  (i) **“Controlled delivery”** shall mean 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;  (j) **“Regional economic integration organization”** shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to “States Parties” under this Convention shall apply to such organizations within the limits of their competence. | Does your country’s legal framework include the definitions in line with Article 2 of the UNTOC?  Does your State’s legal framework include definitions beyond what is captured in Article 2 of the UNTOC? To what effect?  Are criminal justice practitioners aware of these definitions and do they understand them? Why or why not?’  Other comments: |

Article 5. Criminalization of participation in an organized criminal group

Summary: States are required to establish as crime the following offences: agree to commit a serious crime; take active part in a crime; organize, direct, aiding, abetting, facilitating or counselling the commission of the crime.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 1. Is participation in an organized criminal group criminalized under your country’s legal framework, in accordance with article 5? 2. Does your country’s legal framework establish as criminal offences the acts of organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group (art. 5, para. 1 (b))?   **Text of Article 5: Criminalization of participation in an organized criminal group**  1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:  (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;  (ii) **Conduct** by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:  a. **Criminal activities of the organized criminal group**;  b**. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim**;  (b) **Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group**.  2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.  3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention. | Does your country’s legal framework criminalize, in line with the UNTOC Article 5, participation in an organized criminal group, as well as the acts of organizing, directly, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group?  Does your State’s legal framework criminalize other organized criminal conduct beyond what is captured in the UNTOC? To what effect?  Are criminal justice practitioners aware of these criminalization provisions and do they understand them? Why or why not?’  Are these provisions implemented effectively in practice? Why or why not? To what effect?    Other comments: |

Article 6. Criminalization of laundering of proceeds of crime

Summary: States are required to establish as crime the following offences: conversion/transfer of property knowing that such property is the proceeds of crime; the concealment/disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; acquisition, possession or use of property, knowing that such property is the proceeds of crime; participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 6. Is the laundering of proceeds of crime criminalized under your country’s legal framework, in accordance with article 6, paragraph 1 (a), of the Convention (art. 6, paras. 1 (a) (i)–(ii))?  7. Are the acquisition, possession and use of property known at the time of receipt to be the proceeds of crime criminalized under your country’s legal framework (art. 6, para. 1 (b) (i))?  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 country’s legal framework (art. 6, para. 1 (b) (ii))?  11. Does your country’s legal framework include predicate offences committed outside your country’s jurisdiction (art. 6, para. 2 (c))?  **Text of Article 6: Criminalization of the laundering of proceeds of crime**  1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a) (i) **The conversion or transfer of property, knowing that such property is the proceeds of crime**, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;  (ii) **The concealment or disguise of the true nature, source, location,**  **disposition, movement or ownership of or rights with respect to**  **property, knowing that such property is the proceeds of crime**;  (b) Subject to the basic concepts of its legal system:  (i) **The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime**;  (ii) **Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences** established in accordance with this article.  2. For purposes of implementing or applying paragraph 1 of this article:  (a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of **predicate offences**;  (b) Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In the case of States Parties whose legislation sets out a list of **specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups**;  (c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;  (d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;  (e) If required by fundamental principles of the domestic law of a State  Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;  (f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances. | Does your country’s legal framework criminalize, in line with the UNTOC Article 6, the laundering of the proceeds of crime?  Does your State’s legal framework criminalise other related conduct beyond what is captured in the UNTOC? To what effect?  Are criminal justice practitioners aware of these criminalisation provisions and do they understand them? Why or why not?’  Are these provisions implemented effectively in practice? Why or why not? To what effect?    Other comments: |

Note: Crossover with the UN Convention against Corruption

*The review of articles 8 and 9 of the Convention is only for those States parties to the Organized Crime Convention that are not parties to the United Nations Convention against Corruption (UNCAC). This is to avoid duplication of efforts for the states parties who are already reporting on their implementation of the UNCAC. Even though States Parties to UNCAC will not answer questions for UNTOC Articles 8 and 9, civil society can still offer views and insights on this section. Please consider the first question on UNCAC status and implementation, in parallel to answering the questions on Articles 8 and 9.*

|  |  |
| --- | --- |
| UNCAC Background | Civil Society consultation questions (Respond in this column) |
| UNCAC has 188 Parties. The ratification status can be found here - <https://www.unodc.org/unodc/en/corruption/ratification-status.html> | Is your country a party to UNCAC? Yes/No.  If yes, do you have any views on whether your country is implementing the UNCAC effectively?  If no, can you provide any reasons why your country is not a party to UNCAC? |

Article 8. Criminalization of corruption

Summary: States are required to establish as crime the following offences: promise, offering or giving to a public official of an undue advantage; the solicitation or acceptance by a public official of an undue advantage.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 13. Is the conduct described in article 8, paragraph 1 (a), criminalized in your country’s legal framework?  14. Is the conduct described in article 8, paragraph 1 (b), criminalized in your country’s legal framework?  15. Is the form of corruption described in article 8, paragraph 1, involving a foreign official or international civil servant criminalized in your country’s legal framework (art.8, para.2)?  16. Is any other form of corruption established as a criminal offence in your country’s legal framework (art. 8, para. 2)?  17. Is participation as an accomplice in offences established in accordance with article 8 criminalized under your country’s legal framework (art. 8, para. 3)?  **Text of Article 8: Criminalization of corruption**  1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a) **The promise**, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;  (b) **The solicitation or acceptance** by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.  2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant. Likewise, each State Party shall consider establishing as criminal offences **other forms of corruption.**  3. Each State Party shall also adopt such measures as may be necessary to establish as a criminal offence **participation as an accomplice** in an offence established in accordance with this article.  4. For the purposes of paragraph 1 of this article and article 9 of this Convention, “public official” shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function. | Does your country’s legal framework criminalize, in line with the UNTOC Article 8, corruption?  Does your State’s legal framework criminalize other related corrupt conduct beyond what is captured in the UNTOC? To what effect?  Are criminal justice practitioners aware of these criminalization provisions and do they understand them? Why or why not?’  Are these provisions implemented effectively in practice? Why or why not? To what effect?    Other comments: |

Article 9. Measures against corruption

Summary: In addition to the measures of Article 8, States should adopt legislative, administrative, or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials. States should take measures to ensure effective action in the prevention, detection and punishment of the corruption of officials.

*(The review of articles 8 and 9 of the Convention is only for those States parties to the Organized Crime Convention that are not parties to the United Nations Convention against Corruption (UNCAC). This is to avoid duplication of efforts for the states parties who are already reporting on their implementation of the UNCAC. Even though States Parties to UNCAC will not answer questions for UNTOC Articles 8 and 9, civil society can still offer views and insights on this section).*

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 18. Has your country adopted measures to promote integrity and to prevent, detect and punish the corruption of public officials (art. 9, para. 1)?  19. Has your country taken measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (art. 9, para. 2)?  **Text of Article 9: Measures against corruption**  1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.  2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions. | What measures has your country adopted to promote integrity and to prevent, detect and punish the corruption of public officials, in line with Article 9 of UNTOC?  Are criminal justice practitioners aware of these provisions and do they understand them? Why or why not?’  Are these provisions implemented effectively in practice? Why or why not? To what effect?  What would you improve in the way your country addresses the prevention, detection, and punishment of the corruption of public officials?  Other comments: |

Article 10. Liability of legal persons:

Summary: States should adopt these measures to establish the liability of legal persons for the participation in serious crimes involving an organized criminal group and for the offences of Article 5 (Participation in an organized criminal group), Article 6 (Laundering of proceeds of crime), Article 8 (Corruption) and Article 23 (Obstruction to Justice). Liability can be criminal, civil, or administrative. States should ensure that legal persons are held liable in accordance with this article are subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 20. Is the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences covered by the Convention and the Protocols to which your State is a party established under your country’s legal framework (art. 10)?  21. If the answer is “Yes”, is this liability:  (a) Criminal?  (b) Civil?  (c) Administrative?  22. What kind of sanctions are provided for in your country’s legal framework to implement article 10, paragraph 4, bearing in mind article 11, paragraph 6, of the Convention?  **Text of Article 10: Liability of legal persons**  1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to **establish the liability of legal persons for participation in serious crimes involving an organized criminal group** and for the offences established in accordance with articles 5, 6, 8 and 23 of this Convention.  2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.  3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.  4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions. | Does your country’s legal framework cover, in line with UNTOC Article 10, the liability of legal persons\* for participation in serious crimes involving an organized criminal group and for the offences covered by the convention and its protocols?  Are criminal justice practitioners aware of these provisions and do they understand them? Why or why not?’  Are these provisions implemented effectively in practice? Why or why not? To what effect?  Do you think that the relevant sanctions provided for in your country’s legal system are effective and comprehensive?  If not, what aspect would you improve?  Other comments: |

\*Note, according to the UNODC Legislative Guide:

*“While corporations are the dominant form of legal persons, there are many other types of legal persons, including unincorporated associations, trusts, partnerships and trade unions. The forms of legal personality and their status vary considerably between jurisdictions, and careful consideration should be given to the range of entities that may be subject to liability. This is particularly the case where liability is being established for a range of offences, criminal or otherwise. For these reasons, States parties may wish to consider defining the term legal person in national legislation. The legal persons for which liability may be established also vary considerably between jurisdictions. There may be general interpretation provisions which state that references to person include, unless the contrary intention appears, legal persons. In other cases, the scope of the provision is stated in the legislation itself, which may be narrow or broader. An important consideration in this context is whether the State and other governmental bodies should be subject to criminal liability. Such bodies include local authorities, State-owned corporations and government agencies. It is quite common for the State to be expressly excluded from criminal liability, and for local public authorities to have limited liability or to be excluded from criminal liability. It is also possible for legislation to provide for targeted liability by referring to specific government departments which are subject to liability. In some jurisdictions, non-profit organizations are also excluded from liability.”*

Article 15. Jurisdiction:

Summary: States have jurisdictions over the above-mentioned offences when the offence is committed on the territory of the State, on board a vessel that is flying with the State’s flag, on an aircraft that is registered under the State’s laws, committed against a national of the State. This does not exclude the exercise of any criminal jurisdiction established by a State in accordance with its domestic law.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 24. Does your country have jurisdiction to prosecute the offences established in accordance with articles 5, 6, 8 and 23 of the Convention and the Protocols to which it is a party when the offences are committed on board a vessel flying its flag or an aircraft registered under its laws (art. 15, para. 1 (b))?  **Text of Article 15: Jurisdiction**  1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5, 6, 8 and 23 of this Convention when:  (a) The offence is committed in the territory of that State Party; or  (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.  2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:  (a) The offence is committed against a national of that State Party;  (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or  (c) The offence is:  (i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;  (ii) One of those established in accordance with article 6, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 6, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.  3. For the purposes of article 16, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.  4. Each State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.  5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.  6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law. | Does your country have jurisdiction to succeed in prosecuting legal persons for these offences when committed on board a vessel flying its flag or an aircraft registered under its laws?  Are criminal justice practitioners aware of these provisions and do they understand them? Why or why not?’  Are these provisions implemented effectively in practice? Why or why not? To what effect?  Any other comments: |

Article 23. Criminalization of obstruction of justice:

Summary: States are required to establish as crime the following criminal offences: use of physical force, threats or intimidations or the promise, offering, or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by the Convention; the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention.

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 26. Is obstruction of justice in relation to offences covered by the Convention and the Protocols to which your country is a party criminalized under your country’s legal framework, in accordance with article 23 of the Convention?  **Text of Article 23: Criminalization of obstruction of justice**  Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:  (a) The **use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence** in a proceeding in relation to the commission of offences covered by this Convention;  (b) The **use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official** in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials. | Does your country’s legal framework criminalize, in line with the UNTOC Article 23, obstruction of justice?  Does your State’s legal framework criminalise other related justice obstruction conduct beyond what is captured in the UNTOC? To what effect?  Are criminal justice practitioners aware of these criminalisation provisions and do they understand them? Why or why not?’  Are these provisions implemented effectively in practice? Why or why not? To what effect?  Other comments: |

Criminalization: cases and judgements

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 27. States are invited to provide examples, relevant cases or judgments relating to successful implementation and enforcement for each of the criminal offences reviewed above. | Please provide any relevant information or case studies relating to the successful or unsuccessful implementation and enforcement of the criminalization provisions reviewed in this questionnaire to counter transnational organized crime in your country. |

Difficulties encountered

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 28. Has your country encountered any difficulties or challenges in implementing the Convention?  (a) If the answer is “Yes”, please specify:   * Problems with the formulation of legislation * Need for further implementing legislation (laws, regulations, decrees, etc.) * Reluctance of practitioners to use existing legislation * Insufficient dissemination of existing legislation * Limited inter-agency coordination * Specificities of the legal system * Competing priorities for the national authorities * Limited resources for the implementation of existing legislation * Limited cooperation with other States * Lack of awareness of the existing legislation * Other issues (please specify) | Do you think that your country has encountered any difficulties or challenges in implementing the Convention?   * Yes * No   If yes, related to:   * Problems with the formulation of legislation * Need for further implementing legislation (laws, regulations, decrees, etc.) * Reluctance of practitioners to use existing legislation * Insufficient dissemination of existing legislation * Limited inter-agency coordination * Specificities of the legal system * Competing priorities for the national authorities * Limited resources for the implementation of existing legislation * Limited cooperation with other States * Lack of awareness of the existing legislation * Other issues (please specify)   Please elaborate on your answers or other related issues here: |

Need for technical assistance

|  |  |
| --- | --- |
| State Self-Assessment Questions (for reference) | Civil Society consultation questions (Respond in this column) |
| 29. Does your country require technical assistance to overcome difficulties in implementing the Convention?  30. If the answer is “Yes”, please specify the type of technical assistance needed.  31.Which of the following forms of technical assistance, if available, would assist your country in fully implementing the provisions of the Convention? In identifying the forms of technical assistance as listed below, please also indicate for which provisions of the Convention such assistance would be needed.   * Legal advice * Legislative drafting support * Model legislation or regulations * Model agreements * Standard operating procedures * Development of strategies, policies, or action plans * Dissemination of good practices or lessons learned * Capacity-building through the training of practitioners or trainers * On-site assistance by a mentor or relevant expert * Institution-building or the strengthening of existing institutions * Prevention and awareness-raising * Technological assistance * Establishment or development of information technology infrastructure, such as databases or communication tools * Measures to enhance regional cooperation * Measures to enhance international cooperation * Other assistance (please specify).   32. Please provide any other information that you believe is important for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime to consider regarding aspects of, or difficulties in, the implementation of the Convention other than those mentioned above. | Do you think that your country requires assistance, resources or support, to overcome the difficulties in implementing the Convention?   * Yes * No   Please explain your answer:  Which of the following forms of technical assistance could help your country in implementing the Convention?   * Legal advice * Legislative drafting support * Model legislation or regulations * Model agreements * Standard operating procedures * Development of strategies, policies, or action plans * Dissemination of good practices or lessons learned * Capacity-building through the training of practitioners or trainers * On-site assistance by a mentor or relevant expert * Institution-building or the strengthening of existing institutions * Prevention and awareness-raising * Technological assistance * Establishment or development of information technology infrastructure, such as databases or communication tools * Measures to enhance regional cooperation * Measures to enhance international cooperation * Other assistance (please specify).   Are you aware of whether your country has already received technical assistance for improved implementation of the UNTOC, especially for the issues under this review cluster? And was it useful?  Do you have any other comments? |