

Third Study Commission Questionnaire 2024

South Africa

In 2024, the Third Study Commission of the International Association of Judges (IAJ) intends to study the rapid evolution of illicit drug manufacturing and the challenges this unstoppable process poses to successful prosecution.

Background

In general, a precursor is a starting material used to manufacture a narcotic drug, psychotropic substance or another precursor. A subset of starting materials is under national or international control, but there are a number of starting materials used in illicit drug manufacture that are as yet not controlled, often referred to as “non-scheduled chemicals”.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 provides the legal framework for addressing the problem of international drug trafficking,

including manufacturing. With 191 States parties, this Convention enjoys nearly universal adherence. Article 12 of the 1988 Convention introduces a set of control measures to ensure control of internationally scheduled substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, also known as “precursors”. The premise underlying the control of precursors is that the denial of these substances to illicit producers and manufacturers of drugs will result in a reduction in illicit drug manufacture.

The decision whether a chemical precursor should be placed under international control lies with the United Nations Commission on Narcotic Drugs (CND), a policy making body of the United Nations system with prime responsibility for drug-related matters. The scheduling decision by CND is prompted by the technical assessment by the International Narcotic Control Board.

The very article 12 of the 1988 Convention establishes a system under which designated national competent authorities with the support of INCB monitor imports and exports of the internationally scheduled precursors listed in Table 1 and table 2 of the 1988 Convention. Finally, national legislations regulate to different extents the domestic manufacture, trade and distribution of these substances, as well as of any other substance which can be used for illicit drug manufacturing.

The evolution of illicit drug markets toward synthetic drugs including the so called New Psychoactive Substances reflects the increased use by criminal drug manufacturers of non-scheduled precursors, including designer precursors³. To cope with this development some legislations put under national control entire families of chemical substances and incite operators of the chemical industries to exercise due diligence in selling their products. Similarly, and keeping in mind article 13 of the 1988 Convention, some jurisdictions also extend control and due diligence to the market of essential equipment possibly used in illicit drug manufacturing. The CND has 53 member states that are elected by ECOSOC.

Sample questions

1. Does your country have legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year – chemical substances and essential equipment possibly used in illicit drug manufacturing and trafficking, including importing, exporting, for domestic distribution and use and private sector due diligence.

Please explain.

Yes, we do. The purpose of this law is to define the legal regime applicable to the trafficking and consumption of narcotic drugs, psychotropic substances, precursors and other chemical products that may be used in the manufacture of drugs.

2. Does your country have specific legislation on precursors control?

Yes.

Title of current legislation and date of adoption:

Law on the Trafficking and Consumption of Narcotic Drugs, Psychotropic Substances and Precursors. Date of adoption is 06 August of 1999 (legislation 3/99)

Last amended/updated in:

After 25 years there is no amendments on this law. Although we have approved in 2020 a new penal law and penal procedure law, adopted both on 11 November 2020 (legislations 38/20 and 39/20 respectively) for the necessary adjustments.

3. In your country, is an approval by a judge a pre-condition to launch investigations into a case of diversion and trafficking of precursors? Similarly, is a court order or approval by a judge required for effecting controlled or monitored deliveries?

Please explain:

No. according to our constitution of 2010, on article 186.^o and the penal procedure law a pre-condition to lunch an investigation depends exclusively on the prosecutors but articles 313.^o and 314.^o of the penal procedure act designates a list of acts that must be performed and authorize by a judge.

4. When a drug/precursor-related crime is being investigated in your country, does the judiciary have any role (a) in the request for information from a foreign state and/or (b) in the provision of information to a foreign state?

Yes.

If your answer to either (a) or (b) is yes, what legislation, regulations or rules of procedure apply to the decision of a judge involved at the investigation stage?

The legislation, regulations or rules of procedure that applies depends on the foreign country involved. We have different legislation agreements to different countries.

5. Does your country have legislation or court rules that relate to monitoring manufacture and distribution of precursors which are applicable over the entire national territory?

Yes. Law on the Trafficking and Consumption of Narcotic Drugs, Psychotropic Substances and Precursors. Date of adoption is 06 August of 1999 (legislation 3/99)

Please explain:

All plants, substances and preparations referred to in the conventions on narcotic drugs or psychotropic substances ratified by Angola and their amendments, as well as other substances included in the schedules annexed to this law, shall be subject to control.

6. Does your country have legislation or court rules that establish as a criminal offence the manufacture, transport and distribution of essential equipment intended to be used for illicit drug manufacturing.

Please explain:

Yes. In article 4.º of Law on the Trafficking and Consumption of Narcotic Drugs, Psychotropic Substances and Precursors. Date of adoption is 06 August of 1999 (legislation 3/99).

Anyone who, without due authorization, cultivates, produces, manufactures, extracts, prepares, offers, offers for sale, distributes, buys, assigns or in any way receives, provides to others, transports, imports, exports, causes transit or unlawfully possesses, except in the cases provided for in article 23 of this law, plants, substances or preparations included in tables I and III shall be punished with imprisonment of more than 8 to 12 years.

7. In respect of non-scheduled chemicals/ equipment, is the fact that they have been mis-declared before the Customs, sufficient to impute 'knowledge' on the part of the supplier of their being used for illicit drug manufacture?

Please explain:

No. according to article 5.º he must have knowledge of the part of the supplier of their being used for illicit drug manufacturers.

8. In your country, does domestic legislation include measures and/or civil, criminal and/or administrative sanctions to address non-scheduled chemicals and emerging precursors, namely those that are used as starting materials and/or intermediaries in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention? If yes, which type of sanctions?

Please explain:

No. we do not address non-scheduled chemicals and emerging precursors.

9. Please elaborate on specific pieces of information and level of details that would allow you as a judge to act on information/intelligence/evidence received from counterparts in investigations related to new emerging drug precursor chemicals not under control in your country.

Please explain:

On this situation one must get expert knowledge on the evidence and analyse the consequences of the new drug precursor chemicals.

10. Are there any specific provisions that allow you as judge to act on non-scheduled chemicals with no known legitimate uses? Would information from an international body, or a collection of information from other countries, that a chemical has no known legitimate use facilitate your work in any way?

Please explain:

Always depends on the effect of the chemical in the society and the level of damage.

11. As a judge, if you receive a request for assistance in a drug/precursor-related crime from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), how is it relevant to your determination to ensure that basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected?

Please explain:

Since the procedural fairness have constitutional and law protection, one must follow up on the matter to make that they are been respected.

12. Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.

Looks like a very interesting situations but none of us working in these answers we never experience any of these situations.