

**INTERNATIONAL ASSOCIATION OF JUDGES
THIRD STUDY COMMISSION
Marrakech, 2009**

**QUESTIONNAIRE
THE INTERCEPTION OF COMMUNICATIONS
AND ITS IMPACT ON PRIVACY RIGHTS**

This year's questionnaire will explore the use in member countries of electronic devices as a criminal investigation tool to intercept communications. Technological advances have increased the sophistication of and the reliance by investigative agencies on devices to intercept all forms of communication transmission, from the use of microphones to capture face-to-face conversations, to wiretapping, to the interception of computerized and satellite communications.

This questionnaire will explore: (i) the conditions under which the electronic interception of private communications is authorized in member countries; and (ii) the legal principles that apply to the admissibility of evidence derived from the interception of communications.

This questionnaire does not address the electronic interception of private communications for the purpose of detecting terrorist activities as legislative responses of member countries to terrorist activities may be the basis for discussion at a future conference.

Topic I: The initial authorization to intercept private communications

1. (a) Does your country have special legislation that authorizes the interception of private communications to assist in the investigation of crime? ☐ Yes ☐ No

If yes, does the interception require the prior authorization of a Court of law?
☐ Yes ☐ No

If yes, please answer questions (b), (c) and (d) below:

(b) what conditions must be present or criteria met before a Court will grant an order authorizing the interception of private communications?

(c) describe the hearing in which the application for an authorization to intercept private communications is granted. Who presents the application (police? prosecuting attorney)? How is the evidence presented (*viva voce*, by sworn written statement)? Is the application audio-recorded?

(d) must the authorization to intercept private communications specify:

- what types of interception may be used (*ie.* microphone, interception of

computer communications, wiretap of phones)? ☐ Yes ☐ No

- the length of time the authorization remains in effect? ☐ Yes ☐ No
Is there a maximum time provided by law that an authorization to intercept can remain in effect? ☐ Yes ☐ No If yes, what is that time?

- the names of the persons who are the target of the authorization?
☐ Yes ☐ No

2. Do legislative provisions require that the person whose communications have been intercepted be notified of this fact once the interception has ended? ☐ Yes ☐ No

Topic II: The admissibility of intercepted communications in criminal trials

3. Is some type of admissibility hearing held to determine whether evidence obtained through the electronic interception of communications may be admitted in evidence against an accused person at his/her trial? ☐ Yes ☐ No

4. Is the accused in preparation for his/her criminal trial permitted to review all evidence that was presented at the initial request or application for an authorization?
☐ Yes ☐ No

5. Is the accused's counsel permitted to question the persons who prepared written or made oral statements at the initial request or application for an authorization?
☐ Yes ☐ No

If yes, are there criteria used by the Court to permit this questioning? ☐ Yes ☐ No
If yes, what are the criteria?

6. For what reasons would a Court not permit the use of intercepted private communications in a criminal prosecution?

- Would the Court refuse to permit the use of intercepted private communications depending on the occupation of the person to whom the communication is made (ie. lawyer, priest, doctor) or the relationship between the persons whose communication has been intercepted (ie. marital)? ☐ Yes ☐ No Explain.
- Can the Court refuse to admit evidence such as drugs and cash seized as a result of an unlawful interception of a private communication? ☐ Yes ☐ No

7. In your country, are there domestic legislative provisions or international conventions that regulate the interception of private *communications* by foreign investigative agencies (ie. CIA, DEA)? ☐ Yes ☐ No If yes, provide details.

Many thanks for completing the questionnaire. All responses will be tabulated and discussed at our October, 2009 meeting in Marrakech.

