

## **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 1 (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 precursors<sup>3</sup>. 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.

### **Sample Questions**

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.**

*Liberia recently passed a legislation that makes it a felony to purposely and knowingly import into Liberia or export out of Liberia controlled drug substances and precursors.*

Does your country have specific legislation on precursors control?

Yes.

Title of current legislation and date of adoption:

*The legislation is the “Controlled Drugs and Substances Act of 2023”, which was passed into law on July 12, 2023.*

Last amended/updated in:

N/A

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:**

*It is the sole prerogative of the Ministry of Justice to investigate all criminal offenses. In the case of diversion and trafficking of precursors, the Ministry of Justice by and thru the Liberia Drugs*

*Enforcement Agency (LDEA) does the investigation. So, too, is the same with effecting controlled or monitored deliveries.*

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?

No.

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?

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?

**Please explain:**

*Yes. Section 14.86 of the “Controlled Drugs and Substances Act of 2023” makes it an offense for a person to engage in the manufacture or preparation of any drugs or substances or precursors or essential chemicals for the purpose of distributing same. Consistent with this provision, the Liberia Drugs Enforcement Agency has set up a regime to monitor the manufacture and distribution of precursors throughout the country.*

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:**

*Section 14.88.2 of the “Controlled Drugs and Substances Act of 2023” provides as a criminal offense the manufacture, transport and distribution of essential equipment intended to be used for illicit drug manufacturing. The offense is punishable as a first-degree felony, with minimum of ten years in prison, provided that the purpose of the actor was for trafficking; otherwise, the offense is a second-degree felony, with maximum of five years in prison.*

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:**

*Yes. The “Controlled Drugs and Substances Act of 2023” makes it an offense to handle scheduled and non-scheduled chemicals without a license from the Minister of Justice. To mis-declare would*

*give rise to the presumption that the supplier had no license and would be sufficient to impute 'knowledge' on the part of the supplier of their being used for illicit drug manufacture.*

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:**

*The "Controlled Drugs and Substances Act of 2023" makes it a criminal offense for anyone to be in possession of non-scheduled chemicals and or emerging precursors without a license from the Minister of Justice and said person in violation shall be guilty of a second-degree felony with maximum of five years in prison.*

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:

*The Ministry of Justice has the power to make requests on behalf of the Republic of Liberia through the Ministry of Foreign Affairs to the appropriate authority of a foreign state for mutual legal assistance in any investigation or proceeding in Liberia. If testified to and authenticated, a judge in Liberia would act on evidence received from such mutual cooperation with respect to all criminal cases, including investigations related to new emerging drug precursor chemicals not under control in Liberia.*

Are there any specific provisions that allow you as a 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:

*There is absolutely no provision that allows a judge to act on non-scheduled chemicals with no known legitimate uses, and information from an international body/foreign country that a chemical has no known legitimate use will definitely aid a judge in this jurisdiction in making a determination with respect to such matter.*

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:

*Basic human rights, principles of natural justice, and rules of procedural fairness insofar as it relates to investigation/trial of accused persons/criminal defendants in this jurisdiction are constitutional guarantees that must be upheld by all courts/judges. It is, therefore, imperative that the foreign country making the request subscribe to a commitment to ensure that accused persons are accorded those rights, irrespective of the nature of the crime(s).*

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.

N/A

Thank you for cooperation!