

Treaty on Mutual Assistance in Criminal Matters*

(Adopted by General Assembly resolution 45/117,
subsequently amended by General Assembly resolution 53/112)

A/RES/45/117

April the 1st in 2010

Treaty on Mutual Assistance in Criminal Matters

Between

CORADA

and

PACIFICA

Desirous of extending to each other the widest measure of co-operation to combat crime,

Have agreed as follows:

Article 1

Scope of application

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.
2. Mutual assistance to be afforded in accordance with the present Treaty may include:
 - (a) Taking evidence or statements from persons;
 - (b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;
 - (c) Effecting service of judicial documents;
 - (d) Executing searches and seizures;
 - (e) Examining objects and sites;
 - (f) Providing information and evidentiary items;

(g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

(a) The arrest or detention of any person with a view to the extradition of that person;

(b) The enforcement in the requested State of criminal judgments imposed in the requesting State except to the extent permitted by the law of the requested State and **article 18 of** the present Treaty;

(c) The transfer of persons in custody to serve sentences;

(d) The transfer of proceedings in criminal matters.

Article 2

Other arrangements

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

Article 3

Designation of **central** authorities

Each Party shall designate and indicate to the other Party a **central** authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.

Article 4

Refusal of assistance

1. Assistance may be refused if:

(a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (*ordre public*) or other essential public interest;

(b) The offence is regarded by the requested State as being of a political nature;

(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

(d) The request relates to an offence the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (*ne bis in idem*);

(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

- (f) The act is an offence under military law, which is not also an offence under ordinary criminal law.
2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.
3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.
4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.⁷
5. Reasons shall be given for any refusal or postponement of mutual assistance.

Article 5

Content of requests

1. Requests for assistance shall include:
- (a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;
- (b) The purpose of the request and a brief description of the assistance sought;
- (c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;
- (d) The name and address of the person to be served, where necessary;
- (e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
- (f) Specification of any time-limit within which compliance with the request is desired;
- (g) Such other information as is necessary for the proper execution of the request.
2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.⁹
3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

Article 6

Execution of requests

Subject to article 20 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.¹¹

Article 7

Return of material to the requested State

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

Article 8

Limitation on use

Unless otherwise agreed, the requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 9

Protection of confidentiality

Upon request:

- (a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;
- (b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

Article 10

Service of documents

1. The requested State shall effect service of documents that are transmitted to

it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [...] days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

Article 11

Obtaining of evidence

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.¹⁷

Article 12

Right or obligation to decline to give evidence

1. A person who is **called upon** to give evidence in the requested or requesting State may decline to give evidence where either:

(a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.¹⁸

Article 13

Availability of persons in custody to give evidence or to assist in investigations

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the

matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

Article 14

Availability of other persons to give evidence or assist in investigations

1. The requesting State may request the assistance of the requested State in inviting a person:

(a) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

Article 15

Safe conduct

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any

penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

Article 16

Provision of publicly available documents and other records

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.
2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

Article 17

Search and seizure

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of *bona fide* third parties are protected.

Article 18*

Proceeds of crime

1. In the present **article** "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.
2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.
3. In pursuance of a request made under paragraph 2 of the present **article**, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.
4. Where, pursuant to paragraph 2 of the present **article**, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.
5. The requested State shall, to the extent permitted by its law, give effect to ensure that the rights of *bona fide* third parties shall be respected in the application of the present **article**.

Article 19

Certification and authentication

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

Article 20

Costs

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

Article 21

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

Article 22

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.
2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.
3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.
4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

DONE at CORADA Ministry of Justice
April the 1st of 2010