

SAARC Convention on Mutual Assistance in Criminal Matters

The Member States of the South Asian Association for Regional Cooperation (SAARC) hereinafter referred to as the States Parties;

Mindful of the principles of cooperation enshrined in the SAARC Charter;

Reaffirming the principles of sovereignty, territorial integrity and non-interference in internal affairs of States.

Recalling the Declaration of the Fourteenth SAARC Summit to work on the modalities to implement the provisions of the existing SAARC Conventions and reiterating the need for law enforcement authorities of Member States to enhance cooperation in the prevention, suppression and prosecution of offences under these instruments.

Concerned about the rising trends in criminal acts including organized crime, and determined to effectively curb the commission of such acts, both national and transnational;

Convinced that the establishment of regional arrangements for mutual assistance in criminal matters will greatly contribute to the development of more effective cooperation for the control of criminality;

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in international instruments including the Universal Declaration of Human Rights;

Recognizing the importance of a convention on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime in its new forms and dimensions;

Recalling the discussions in SAARC on cooperation measures for combating criminal activities including those related to terrorism;

Desirous of extending to each other the widest measures of cooperation in combating crime by strengthening cooperation in the prevention, investigation and prosecution of crimes.

Have agreed as follows:

Part I – General Provisions

Article 1 Scope of Application

1. The States Parties to this Convention shall, subject to their national laws, and in accordance with the provisions of the Convention, provide to each other the widest possible measures of mutual legal assistance in criminal matters, namely investigations, prosecution and resulting proceedings.

2. Mutual assistance shall be provided by the requested State Party to the requesting State Party 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 and irrespective of whether the assistance is sought or is to be provided by a court or other competent authority.

3. Assistance may be provided without regard to whether the conduct, which is the subject of the investigation, prosecution or proceedings in the requesting State Party, would constitute an offence under the laws of the requested State Party.

4. Mutual assistance to be rendered by the requested State Party in accordance with the present Convention shall include:

- (i) locating and identifying persons and objects;
- (ii) service of judicial documents;
- (iii) providing information, documents and records;
- (iv) providing objects, including lending exhibits;
- (v) search and seizure;
- (vi) taking evidence and obtaining statements;
- (vii) making detained persons available to give evidence or assist investigations;
- (viii) facilitating the appearance of witnesses or the assistance of persons in investigations;
- (ix) taking measures to locate, restrain or forfeit the proceeds and instruments of crime;
- (x) taking measures to locate, freeze and confiscate any funds or finances meant for the financing of all criminal acts in the territory of either State Party; and
- (xi) Any other assistance consistent with the objectives of this Convention and the laws of the requested State Party, as may be mutually agreed upon.

5. This Convention shall apply to all requests for assistance after its entry into force and subject to laws and or concurrence of the concerned States Parties, even if the relevant criminal acts occurred before its entry into force prior to that date.

6. The provisions of this Convention shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

7. This Convention shall not apply to:
- (i) The arrest or detention of any person with a view to the extradition of that person;
 - (ii) The transfer of persons in custody to serve sentences;
 - (iii) The transfer of proceedings in criminal matters;
 - (iv) The enforcement in the requested State Party of judgments in criminal matters passed in the requesting State Party, except to the extent permitted by the law of the requested State Party; and
 - (v) Offences under military law, which are not offences under ordinary criminal law.
8. Nothing in this Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State Party by its domestic laws.

Article 2 Definitions

For the purpose of this Convention:

1. 'Criminal Matter' means investigations, inquiries, trials or other proceedings relating to an offence created by the legislature of the requesting State Party and includes investigations, prosecutions and proceedings relating to economic or fiscal offences concerning taxation, duties, customs and foreign exchange.
2. 'Proceeds of Crime' means any property derived or obtained directly or indirectly by any person as a result of criminal activity including crime involving currency transfers or the value of any such property.
3. 'Property' means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime.

Article 3 Other Conventions/Treaties

This Convention shall not affect the rights and obligations of the States Parties arising from other conventions/treaties concerning mutual assistance in criminal matters to which they are parties.

Article 4
Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the laws and practice of the requested State Party and, insofar as not prohibited by such laws, in the manner specified by the requesting State Party.
2. The requested State Party shall, upon request, inform the requesting State Party of the date and place of execution of the request for assistance.
3. The requested State Party shall not refuse to execute a request on the ground of bank secrecy.

Article 5
Refusal and Postponement of Assistance

1. Assistance may be refused if:
 - (i) in the opinion of the requested State Party, the execution of the request would impair its sovereignty, security, public order, or other essential interests or prejudice the safety of any person;
 - (ii) the execution of the request would be contrary to the domestic law of the requested State Party;
 - (iii) the request relates to an offence in respect of which the accused person has already been tried and as a result convicted or acquitted, or he has been pardoned in respect of that offence;
 - (iv) the request seeking restraint, forfeiture or confiscation of proceeds or instruments of activity which, had it occurred within the jurisdiction of the requested State Party, would not have been an activity in respect of which a confiscation order could have been made;
 - (v) 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, religion, gender, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
 - (vi) the offence is regarded by the requested State as being of a political nature. An offence shall not be deemed to be an offence of a political nature if it is an offence within the scope of an international convention to which the requesting and the requested Parties are State Parties.

2. Assistance may be postponed by the requested State Party if execution of the request would interfere with an ongoing investigation or prosecution in the requested State Party.
3. The requested State Party shall promptly inform the requesting State Party of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.
4. Before refusing a request for assistance or before postponing the execution of a request, the requested State Party shall consider whether assistance may be provided subject to such conditions, as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with them.

Part II – Specific Provisions

Article 6 Service of Documents

1. The requested State Party shall serve any document relating to a criminal matter transmitted to it for the purpose of service.
2. The requesting State Party shall transmit a request for the service of a document pertaining to a response or appearance in the requesting State Party within a reasonable time, before the scheduled response or appearance.
3. The requested State Party shall return a proof of service in the manner required by the requesting State Party, to the extent not prohibited by the law of the requested State Party.

Article 7 Obtaining Documents, Records, Objects and Information

1. The requested State Party shall provide copies of publicly available information, documents and records of government departments and agencies.
2. The requested State Party may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the extent and under the conditions they would be available to its own law enforcement and judicial authorities.
3. The requested State Party may provide certified copies of documents or records, unless the requesting State Party specifically requests originals.
4. Original documents, records or objects provided to the requesting State Party shall be returned, to the requested State Party as soon as possible unless the latter waives its right of return thereof.

5. In so far as not prohibited by the law of the requested State Party, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the requesting State Party in order to make them admissible according to the law of the requesting State Party.

Article 8 Search and Seizure

The requested State Party shall, to the full extent permissible by its laws and subject to provisions of Article 5, execute requests for search and seizure and delivery of any material to the requesting State Party for evidentiary purposes, provided that the rights of bona-fide third parties are protected.

Article 9 Taking Evidence in the Requested State Party

The requested State Party, shall subject to its domestic laws and upon request, take the sworn or affirmed testimony, documents or records or otherwise obtain statements of persons including a person in custody or require them to produce items of evidence relating to a criminal offence for transmission to the requesting State Party.

Article 10 Making Detained Persons Available to give Evidence or to Assist in Investigation

1. Upon request, a detained person in the requested State Party may, subject to its domestic laws and practice be temporarily transferred to the requesting State Party to assist investigations or to testify, provided that person consents to it.

2. While the person transferred is required to be held in custody under the law of the requested State Party, the requesting State shall hold that person in custody and shall return that person in custody to the requested State Party immediately after 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. When the sentence imposed expires, or where the requested State Party advises the requesting State Party 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 present in the requesting State Party pursuant to a request seeking that person's attendance in terms of Article 11.

4. The period during which a person transferred is in custody in the requesting State Party shall be deemed to be service in the requested State Party of an equivalent period of sentence/custody in that country for all purposes.

5. Transfer may be refused if there are any overriding grounds for not transferring him to the territory of the requesting State Party.

Article 11
Giving Evidence or Assisting Investigations
in the Requesting State Party

1. The requesting State Party may request the assistance of the requested State Party in inviting a person;
 - a. to appear in proceedings in relation to a criminal matter in the requesting State Party unless that person is the person charged; or
 - b. to assist in the investigations in relation to a criminal matter in the requesting State Party.
2. The requested State Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable. Where appropriate, the requested State Party shall satisfy itself that satisfactory arrangements have been made for the person's safety.
3. A person whose appearance as a witness is the subject of a request and who does not agree to appear shall not by reason thereof be made liable to any penalty or measure of compulsion in either the requesting or the requested State Party.

Article 12
Safe Conduct

1. Subject to the provisions of Article 10, a person present in the requesting State Party in response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State Party for any acts or omissions which preceded that person's departure from the requested State Party, nor shall that person be obliged to give evidence in any proceedings other than to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the requesting State Party, has not left within fifteen (15) days after receiving official notification that the person's attendance is no longer required, or having left, has voluntarily returned. In such cases, the date and place of release of the person in question should be officially notified to the requested State Party.
3. Any person who fails to appear in the requesting State Party may not be subjected to any sanction or compulsory measure in the requested State Party.

Article 13
Funds Meant for Financing of Criminal Acts

Where a State Party has reason to believe that any person or group of persons in its jurisdiction has collected or has been collecting or has contributed or has been contributing to any funds meant, directly or indirectly, for the financing or furthering criminal acts in the territory of the other State Party including offences within the scope of the SAARC

Conventions relating to the Suppression of Terrorism and Trafficking in Narcotic Drugs and of multilateral conventions subscribed to by the Parties relating to the suppression of crimes, it shall bring these facts to the notice of the other State Party and shall take steps as permitted by its law for search, seizure or confiscation of such funds and the prosecution of the person(s) or group(s) involved.

Article 14 **Proceeds and Instruments of Crime**

1. The requested State Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of the alleged crime are located within its jurisdiction and shall notify the requesting State Party of the results of its inquiries. In making the request, the requesting State Party shall notify the requested State Party of the basis of its belief that such proceeds or instruments of crime are located within its jurisdiction.
2. In pursuance of a request made under paragraph 1 of the present Article, the requested State Party shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds or instruments of crime.
3. Where pursuant to paragraph 1 of the present Article, suspected proceeds or instruments of crime are found, the requested State Party shall, upon request, take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of those suspected proceeds or instruments of crime, pending a final determination in respect of those proceeds or instruments by the requesting State Party.
4. Subject to the provisions of domestic laws of the requested State Party, property forfeited or confiscated pursuant to the present Article shall accrue to the requesting State Party unless otherwise agree in each particular case.
5. The requested State Party shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds or instruments of crime made by the requesting State Party or take other appropriate action to secure the proceeds or instruments of crime following a request by the requesting State Party.
6. The Parties shall ensure that the rights of bonafide third parties shall be respected in the application of the present article.

Part III – Procedure

Article 15 **Central Authorities**

1. Each State Party shall designate a Central Authority to transmit, receive, examine and process for execution requests for assistance under this Convention.

2. The designation of Central Authorities shall be made at the time of the deposit of its instrument of ratification or soon thereafter.

3. Each State Party shall expeditiously notify the others of any change in the designation of its Central Authority.

Article 16 **Contents of Requests**

1. The requests for assistance under the Convention shall include:

- (i) the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;
- (ii) the nature of the investigation, prosecution or other proceedings including a summary of the facts and copies of the provisions of relevant laws; and where applicable a description of the offence to which the request relates, and a description of the evidence;
- (iii) the purpose of the request and the nature of the information or assistance sought;
- (iv) the degree of confidentiality required and the reasons for that; and
- (v) any time limit within which the request should be executed.
- (vi) such other information as may be required under the domestic laws of the requested State Party or which is otherwise necessary for the proper execution of the request.

2. In the following cases, requests for assistance shall also include:

- (i) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds or instruments of crime, or of funds meant for financing of criminal acts, a statement indicating the basis for belief that evidence or proceeds or instruments may be found in the requested State Party;
- (ii) The request shall specify, as appropriate and so far as the circumstance of the case permit:
 - (a) the documents, records, property or computer data to be inspected, preserved, photographed, copied or transmitted;
 - (b) the samples of any property or computer data to be taken, examined or transmitted; and
 - (c) the site to be viewed or photographed

- (iii) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
 - (iv) in the case of lending of exhibits, the current location of the exhibits in the requested State Party and an indication of the person or class of persons who will have custody of the exhibits in the requesting State Party, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;
 - (v) in the case of making detained persons available, an indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the probable date of that person's return; and
 - (vi) in case of requests for seizure and confiscation of funds meant for financing of criminal acts, the basis for belief that the funds are being so used.
 - (vii) any court order pertaining to the assistance requested and a statement relating to the finality of that order.
3. If necessary, and where possible, requests for assistance shall include:
- (i) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or other proceedings; and
 - (ii) details of any particular procedure or requirement that the requesting State Party wishes to be followed and the reasons for that.
4. If the requested State Party considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.
5. A request for assistance shall be made in writing. However, in urgent circumstances or where otherwise permitted by the requested State Party, a request may be made orally but shall be confirmed in writing promptly thereafter.

Article 17 Confidentiality

1. The requested State Party may require, after consultation with the requesting State Party, that information or evidence furnished or the source of such information or evidence be kept confidential, disclosed or used only subject to such terms and conditions as it may specify.
2. The requesting State Party may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request

cannot be executed without breaching the confidentiality requirement, the requested State Party shall so inform the requesting State Party prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

Article 18 **Limitation of Use**

The requesting State Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request, without the prior consent of the requested State Party. However, in cases where the charge is altered, the material provided may be used in respect of the altered charge, provided a ground for refusal of assistance under the Convention is not attracted.

Article 19 **Authentication**

Documents, records or objects transmitted pursuant to this Convention shall not require any form of authentication, except as specified in Article 7 pertaining to the obtaining of documents, records, objects and information as required by the requesting State Party.

Article 20 **Language**

1. Requests for assistance under the Convention shall be submitted in the English language.
2. Supporting documents, and other communications, if not in the English language, shall be accompanied by an English translation.

Article 21 **Expenses**

1. Unless otherwise agreed by the concerned Parties, the requested State Party shall meet the cost of executing the request for assistance, except that the requesting State Party shall bear:
 - (i) the expenses associated with conveying any person to or from the territory of the requested State Party at the request of the requesting State Party, and any expenses payable to that person while in the requesting State Party pursuant to a request under the Convention;
 - (ii) the expenses and fees of experts either in the requested State Party or the requesting State Party;
 - (iii) the expenses of translation, interpretation and transcription; and

- (iv) the expenses associated with the taking of evidence from the requested State Party to the requesting State Party via video, satellite or other technological means.

2. If the execution of the request requires or is likely to require expenses of an extraordinary nature, the requesting and the requested States Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22 Consultation

The States Parties shall consult as and when necessary, at the request of any State Party, on matters concerning the interpretation and application of this Convention. The concerned States Parties shall also consult promptly in relation to a particular case at the request of either State Party in order to promote the most effective implementation of the Convention.

Part IV – Final Clauses

Article 23 Signature

The Convention shall be open for signature by the Member States of SAARC at the Fifteenth SAARC Summit at Colombo and thereafter at the SAARC Secretariat at Kathmandu.

Article 24 Entry into Force

This Convention is subject to ratification and shall enter into force on the thirtieth day after the date of deposit of the last instrument of ratification in accordance with Article 26.

Article 25 Amendment

A State Party may propose an amendment to the present Convention to the Secretary General of SAARC, who shall communicate the proposal to other States Parties to the Convention for consideration. Any amendment to the Convention shall be adopted by consensus.

Article 26 Depositary

The Secretary General of SAARC shall be the depositary for this Convention. The Secretary General shall notify the Member States of signatures of this Convention and the deposit of instruments of ratification and shall transmit certified copies of instruments of ratification to each Member State. The Secretary General shall also notify the Member States of the date of entry into force of the Convention in accordance with Article 24.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorised by their respective Governments, have signed this Convention.

DONE at Colombo, Sri Lanka On This The Third Day of August Two Thousand Eight, In Ten Originals In English Language, All Texts Being Equally Authentic.

Rangin Dadfar Spanta
Minister of Foreign Affairs
Islamic Republic of Afghanistan

Iftekhar Ahmed Chowdhury
Adviser for Foreign Affairs
(Foreign Minister)
People's Republic of Bangladesh

Ugyen Tshering
Minister for Foreign Affairs
Kingdom of Bhutan

Pranab Mukherjee
Minister of External Affairs
Republic of India

Abdulla Shahid
Minister of Foreign Affairs
Republic of Maldives

Ram Sharan Mahat
Minister for Finance
Federal Democratic Republic of Nepal

Makhdoom Shah Mehmood Qureshi
Minister for Foreign Affairs
Islamic Republic of Pakistan

Rohitha Bogollagama
Minister of Foreign Affairs
Democratic Socialist Republic of Sri Lanka