



MUTUAL LEGAL ASSISTANCE FOR FOREIGN AUTHORITIES

GUIDANCE FOR AUTHORITIES MAKING REQUESTS TO THE UNITED REPUBLIC OF TANZANIA





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ABBREVIATIONS

CA	Central Authority
Cap	Chapter
DPP	Director of Public Prosecutions
LOR	Letter of Request
MLA	Mutual Legal Assistance
LR	Letters Rogatory
NPS	National Prosecutions Services
PIC	Person in Custody
SADC	Southern African Development Community
UNCAC	United Nations Convention Against Corruption
UNTOC	United Nations Conventions Against Transnational and Organized Crimes
URT	United Republic of Tanzania



FOREWORD.....

The spike of transnational organised crimes has had devastating effects on the United Republic of Tanzania (URT) and the rest of the world. Technological advances and the movement of people and goods have enabled criminals to operate across borders unimpeded. Over the years, nations across the globe have come together to find a common and joint solution against the overarching scourge of transnational organised crimes. URT has consistently recognised the importance of legal co-operation and other forms of co-operation in fighting crimes. In that regard, URT has ratified various international treaties and conventions which seek to establish and strengthen the legal framework to foster international co-operation in combating organised criminal activities. In discharging its obligations, URT is fully committed to providing the widest measures of mutual legal assistance in investigations, prosecutions and adjudication of criminal cases. Such measures embrace the reality that mutual legal assistance in criminal matters is the most effective way for the international community to confront transnational crime effectively.

Therefore, it is my pleasure to issue this manual to guide the international community to apply for mutual legal assistance efficiently and effectively from the United Republic of Tanzania. This manual offers guidance based on the existing law of URT as enacted by the Parliament and interpreted by the courts of law in the URT.

I believe that the dispensation of criminal justice, including crime prevention, protection of our citizens and the maintenance of peace, security and public order, constitutes the foundation for the development and welfare of any given society. Efforts to achieve these objectives cannot be restricted to national borders since it is evident that transnational organised crime, by its very definition, transcends boundaries. The crimes committed affect not only individual countries but also the international community in general.

The obligation of the Tanzanian Central Authority is to strengthen judicial co-operation between states to address the Transnational Organised Crimes that harm our communities most including drug trafficking, terrorism, maritime crime, human trafficking, child sexual exploitation, wildlife and money laundering, as well as sending a strong message to all criminals that crime does not pay by making a recovery and forfeiture of illicit proceeds of transnational organised crime a priority.

I am grateful to the British High Commission, Miss Claire Harris, the European Union, the United States of America Department of State and the International Institute for Justice and the Rule of Law (IIJ) for their continued support to ensure this manual was developed and published. I thank the technical team, led by Messrs. Paul Kadushi and Faraja Nchimbi, for their expertise, dedication and commitment exhibited throughout the preparation stage of the manual.



Sylvester Anthony Mwakitalu
Director of Public Prosecutions

PART 1:

INTRODUCTION

The Director of Public Prosecutions, being the Central Authority for Mutual Legal Assistance (MLA) in the United Republic of Tanzania (hereinafter referred to as “Tanzania”), issues these guidelines to provide guidance and essential information on the Tanzanian MLA framework. The aim is to ensure effective and expeditious execution of Letters of Requests (LOR) or Letters Rogatory (LR).

MLA in criminal matters is a process by which States seek and provide assistance in gathering evidence and other necessary information for investigative, prosecutorial or adjudication purposes. It is generally used to obtain information and evidential materials which cannot be obtained through informal means. MLA also affords States the widest measures of co-operation in freezing and confiscating proceeds of crime, including registration of foreign forfeiture orders. The assistance is usually requested by prosecutors or courts and is also referred to as ‘judicial co-operation’.

Due to the spike of transnational organised crimes and the need to prevent, detect and deter more effectively international transfers of illicitly acquired assets, MLA is critical to criminal investigations and proceedings both in Tanzania and abroad. Realising the urgent need to strengthen co-operation, Tanzania is committed to discharging its international obligations through MLA by assisting investigative, prosecuting and judicial authorities across the globe in combating crime and disrupting illicit financial flows.

Therefore, these guidelines provide an overview of the MLA regime in Tanzania and incorporate best practices and standards that might apply to incoming requests on a reciprocal basis. They, however, do not replace nor give legal advice on existing national legislation on MLA, namely the Mutual Legal Assistance in Criminal Matters Act, [Cap. 254 R.E 2002] as amended by the Written Laws (Miscellaneous Amendments) (No.2) Act No. 7 of 2018.

Tanzanian Central Authority

The Central Authority for MLA in Tanzania is the Director of Public Prosecutions. The Central Authority performs the function of receiving, acceding to and overseeing the execution of MLA requests by competent authorities. In Tanzania, all requests for MLA in criminal matters must be submitted by foreign Central Authorities/Competent Authorities to the Tanzanian Central Authority. The contact information for the Central Authority in Tanzania is provided below:

Director of Public Prosecutions
National Prosecutions Services
P.O. Box 1733
Dodoma
TANZANIA
Tel + 255-262963635
Fax + 255-262963635
Email: mla@nps.go.tz



A requisition for the surrender of a fugitive criminal must be made to the Minister for Constitutional and Legal Affairs by a diplomatic representative or consular officer of the requesting country.

The contact information for the relevant Ministry is provided below:

Ministry of Constitutional and Legal Affairs,

P.O. Box 315

Dodoma

TANZANIA

Tel + 255-26 2310021

Fax + 255-26 2321679

Email: km@sheria.go.tz

Consideration as to whether MLA is appropriate

It is a common ground that MLA is designed for the gathering of evidence, not intelligence or other forms of informal assistance. Therefore, it is imperative for requesting states to give due consideration as to whether the assistance sought can be obtained through other means.

Tanzania allows informal enquiries such as administrative assistance to be made directly to relevant Government Authorities such as police to police or prosecutor to prosecutor. Due consideration should also be given to other pertinent factors such as availability of information through the public domain and intended use of required information. Equally important is a consideration as to whether required materials can be obtained voluntarily without assistance from Tanzanian authorities. Ordinarily, MLA is employed where the information gathered is intended to be used as evidence in judicial proceedings in the requesting state.

Nonetheless, Tanzania encourages the use of administrative or informal approaches prior to making an MLA request. By employing initial police-to-police or prosecutor-to-prosecutor enquiries, the requesting state will have the opportunity of discussing the form and the requirements of the LOR to Tanzania, especially in complex cases. Such early engagements will, in most cases, guarantee swift and expeditious execution of MLA requests.

Legal bases for MLA requests

All requests for MLA sent to Tanzania must be on a clearly stated legal basis. Common legal bases for MLA requests include multilateral treaties, bilateral treaties, schemes or voluntary arrangements – such as the Harare Scheme for the Commonwealth States –, national law – with or without a requirement for reciprocity –, and an undertaking of reciprocity/comity.

Tanzania is a party to numerous multilateral, bilateral, regional, and even politically affiliated treaties that provide for international co-operation in criminal matters. Some of these agreements include the United Nations Conventions against Transnational and Organized Crimes (UNTOC), the United Nations Convention against Corruption (UNCAC), the Southern African Development Community



(SADC) Protocol on Mutual Legal Assistance and the Commonwealth Scheme Relating to Mutual Legal Assistance in Criminal Matters (Harare Scheme). Prior to making a request, it is critical for requesting states to ascertain and ultimately assert the relevant legal basis.

In the absence of an underlying agreement, treaty or scheme, Tanzania can still provide MLA to any state in the world basing on an undertaking of reciprocity in line with the provisions of the Tanzanian Mutual Assistance in Criminal Matters Act [Cap 254 R.E. 2019].

Dual criminality

Further consideration must be given to the dual criminality prerequisite prior to making an MLA request to Tanzania. MLA may be declined if the request relates to the prosecution or penalty of an act or omission, which would not have constituted an offence if it had occurred in Tanzania. Similarly, MLA request may also be declined if it relates to an act or omission which, if it had occurred in Tanzania at the same time and had constituted an offence against the law of Tanzania, the accused could have no longer been prosecuted by the operation of legal principles such as age, immunity, or privileges.

Nonetheless, under exceptional circumstances, Tanzania may provide assistance to the extent of its own discretion, irrespective of whether the act or omission would constitute an offence under its domestic law.

Confidentiality

The Central or Competent Authorities in Tanzania are under a legal obligation not to disclose the receipt of an MLA request or the information gathered as a result of an MLA request to other Government departments, agencies, judiciary, law enforcement agencies or to any other person in Tanzania without the prior consent of the requesting authority. However, Tanzania may make a disclosure if it is necessary to facilitate the execution of the request.

Where a requesting foreign authority makes a public statement about MLA, the Central Authority should be immediately notified so as to take appropriate measures, including response to any media or public enquiries.

In the event, confidentiality requirements render the execution of a request difficult or impossible, the Central Authority will make prior consultation with the requesting state. In cases where disclosure of a request or any part thereof is required by Tanzanian domestic law in order to execute the request, the requesting state will be notified and accorded an opportunity to withdraw the request before disclosure to third parties is made.

Evidence obtained by Tanzania pursuant to an MLA request to a foreign authority will not be used for any other purpose than that specified in the original request unless the appropriate foreign authority consents to such use.



Similarly, where a requesting state wishes to use evidence obtained from Tanzania for a different purpose other than the purpose stated in the original MLA request, or to share the evidence obtained from Tanzania under MLA with a third country, a formal request to do so must be made in writing by the original requesting country to the Central Authority of Tanzania.

The additional request for collateral use must contain the following information.

Request to Use Evidence for Other Purposes

- ✓ The Central Authority's reference number of the original request to enable its identification;
- ✓ What evidence is to be used/shared;
- ✓ How the evidence will be used/shared;
- ✓ Why this evidence is needed in this new/other investigation/court proceedings.

Costs of Executing Requests

Ordinary costs of executing a request shall be borne by Tanzania unless otherwise determined by Tanzania and the requesting state. However, under the principle of reciprocity, Tanzania will expect requesting states to bear ordinary costs of future MLA requests by Tanzania.

Suppose expenses of a substantial or extraordinary nature¹ are or will be required to execute the request; Tanzania and the requesting country 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.

PART 2:

MAKING A REQUEST FOR MLA

In drafting LORs to Tanzania, any requesting Central Authority should have due consideration of the following.

Language

All requests and supporting documents should be in **English or Kiswahili**. If the request does not comply with this requirement, it will be returned unattended to the requesting state.

Format

Requests must always be made in writing **with headed notepaper/official letterhead of the requesting authority**. It is recommended that the requesting Central Authority informally contact the Tanzanian Central Authority in advance of making MLA request, particularly in the most serious or urgent case. Such consultation will ensure that the assistance sought is available under Tanzanian law, and the request will meet Tanzania's legal requirements. This includes the possibility of submitting a **preliminary draft request**. If the request sent is a draft, this should be clearly stated in its heading.

Contents

Any request made by requesting state to Tanzania should contain the following information:

- ✓ Details of the Central Authority of the requesting state, including the name, physical address, telephone number, and mail and e-mail address (where available) of a contact person.
- ✓ A signed and certified translated version must be provided for documents not made in the English or Kiswahili language.
- ✓ The original request and the supporting documents must be signed, dated, stamped and authenticated by the requesting authority.
- ✓ Description of the purpose for which assistance is sought.
- ✓ Requesting State should clearly state the legal basis for the request.
- ✓ The type of assistance requested and any other additional information (see Part 3 of these guidelines).
- ✓ Details of any particular procedure that the requesting state wishes to be followed in giving effect to the request, including preferred mode of authentication. If a requesting state requires a particular procedure to make the evidence admissible in its home court, then this must be specified in the request.
- ✓ The nature of the criminal offence involved, including extracts of the legislation that criminalises the alleged conduct in the requesting state and any other information on the offence, penalty and the rights a person may be afforded.



- ✓ Whether or not criminal proceedings have been instituted.

Where criminal proceedings have been instituted, the request must contain the following information:

- o The court exercising jurisdiction in the proceedings and assigned case number;
 - o The identity and particulars of the accused person;
 - o The offence of which the person stands accused, a summary of facts and the penalties which may be imposed.;
 - o The stage reached in the proceedings; and
 - o Any date fixed for further stages in the proceedings.
- ✓ Where criminal proceedings have not been instituted, the request must describe the offence that the requesting authority has reasonable grounds to believe has been, will be or is being committed, together with a summary of known facts.
 - ✓ The facts must clearly establish a connection between the evidence requested and the offence under investigation or proceeding. Details of the person[s] including legal persons and assets named in the request, including, if possible, the address/location, date of birth and nationality, must be provided; and whether they are witnesses, suspects or victims. If confidential, this information can be sent separately from the request.
 - ✓ Indication of the urgency and confidentiality of the request where necessary and reasons thereto (See 'Timescales' for more information).
 - ✓ Details of the period within which the requesting authority wishes that the request be complied with and the reasons thereto.
 - ✓ Details of the authority conducting the investigation or prosecution in the requesting country.
 - ✓ Details of any informal enquires made to Tanzania in relation with the request, including the telephone number and e-mail address, if available, of any Tanzanian law enforcement agency, police officers, and other relevant persons who are familiar with the investigation.
 - ✓ If applicable, the title of the relevant bilateral or multilateral agreement under which the request is being made. If no relevant bilateral or multilateral agreement is applicable, the request should contain an assurance of reciprocity.
 - ✓ Where applicable, details of any media attention, sensitivities or reasons for high profile interest in the case.
 - ✓ If applicable, the reference numbers of any linked requests.
 - ✓ Any other information that may assist in giving effect to the request.

The request should also contain all relevant documents or exhibits. Certain copies of documents should be certified or authenticated as true copies of the original by a notary or judicial officer. These documents will include court orders, warrants and anything that would reasonably be relied upon in court proceedings in order to give effect to a request.

Failure to provide all the necessary information possible may result in delays.

Transmission

Ordinarily, Tanzania requires the request to be submitted in original hard copies. The same can be submitted directly to the Central Authority by post, courier or physically to the address provided in Part 1 of this Guidelines. However, requesting countries will need to comply with their own domestic laws relating to the transmission of requests.

In exceptional circumstances, requests can be transmitted electronically via the provided email address, but the original hard copy of the request must be submitted immediately before completion of the execution.

Receipt and Queries

Upon receipt of the request, the Central Authority shall acknowledge the same and communicate an allocated reference number via email within five working days. Such acknowledgement shall include the contact details of the assigned officer within the Tanzanian Central Authority. If further information is deemed necessary, the requesting country will be contacted accordingly.

Once the Central Authority is satisfied that all requirements have been met, the request will be transmitted to the competent authority for execution. The requesting state will receive further notification to this effect.

If the request does not comply with Tanzania's legislation, it is to be refused or cannot be complied with in whole or in part, or there are circumstances that are likely to cause a significant delay in complying with the request, the Central Authority will promptly inform the requesting authority, giving reasons thereto.

Any subsequent inquiries relating to the MLA request should be sent to the assigned officer and should always quote the allocated reference numbers of both the requesting and Tanzanian Central Authority.

Timescales

The Central Authority aims to consider all MLA requests within 30 days of receipt. However, depending on the nature of the request, this may not always be possible. The Central Authority will take into account any reasons for urgency which are clearly stated in the request. Failure to follow the advice in these guidelines may also delay the acceptance and execution of the request.

Urgent Requests

Only urgent requests are to be marked as such. The Central Authority will give regard to the urgency of the request. However, reasons for the urgency of the request should be provided. Such reasons may include a person's detention, possible release of the person in custody, risk of dissipation of assets and domestic time scales in the prosecution of cases under investigation. Dates of any deadlines which need to be met must also be provided.



Communication between Central Authorities after the Submission of a Request

In order to ensure that the MLA request is still relevant in the terms in which it was initially made, the requesting authority should provide periodic updates on the progress of the investigation/proceedings. Depending on the nature or the urgency of the case, updates should be communicated to the Tanzanian Central Authority at least every three months.

Where the need for the requested assistance ceases, the Tanzanian Central Authority should be informed immediately, quoting the reference numbers for the request assigned by both the requesting country and the Tanzanian Central Authority.

Linked Requests

Requests which relate to a previous request can be sent to the Tanzanian Central Authority as a linked request.

Information to Include in a Linked Request

- ✓ A statement that the request is linked to a previous one.
- ✓ The reference numbers for the previous request assigned by both the requesting country and the Tanzanian Central Authority.
- ✓ All the information relevant to a standard MLA request (see Part 2).
- ✓ Any further information relating to the specific type of additional request.

Postponement

The Central Authority may postpone the execution of a request if its immediate execution would interfere with an ongoing investigation or prosecution, or the material to which the request relates is subject to an investigation or prosecution taking place in Tanzania. Before any request is postponed, Tanzania shall consult with the requesting country to consider whether such assistance may be granted subject to terms and conditions.

Refusal

Ordinarily, MLA will be provided where the requirements outlined in these guidelines have been met. However, the Central Authority retains the discretion to grant or refuse the request.



Grounds for refusal

- ✓ The request relates to the prosecution or punishment of a person for an offence of a political nature.
- ✓ There are reasonable grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing, or otherwise causing prejudice to a person on account of their race, sex, religion or nationality.
- ✓ The act or omission which is the subject of the request would have constituted an offence under the military law of Tanzania and not under the ordinary criminal law.
- ✓ The execution of the request would prejudice public safety, public order, defence, or the economic interests of Tanzania.
- ✓ The request relates to the prosecution of a person for an offence for which they had been previously acquitted or pardoned by a competent Court or Authority in the foreign country or had undergone the punishment of the same.
- ✓ The steps required to be taken in order to comply with the request cannot be taken under the Tanzanian law.
- ✓ The request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Tanzania, would not have constituted an offence against the laws of Tanzania.
- ✓ The request relates to the prosecution or punishment of a person for the offence, which would have been time-barred if committed in Tanzania.
- ✓ The provision of assistance could prejudice the investigation or proceedings in relation to a criminal matter in Tanzania.
- ✓ The provision of assistance would likely prejudice the safety of any person within or outside Tanzania.
- ✓ The provision of assistance would impose an excessive burden on the resources of Tanzania.
- ✓ Assistance shall not be refused solely on the ground of banking or other financial institution secrecy rules.



PART 3:

TYPES OF ASSISTANCE

This part provides in detail types of assistance that Tanzania may provide.

Service of Documents

In Tanzania, an MLA request for service of documents may be accepted under the following circumstances:

- Where a specific law of the requesting State requires the service to be through a Central Authority of the requested State;
- Where the service relates to documents issued by a court of law with competent jurisdiction in relation to any investigation or criminal proceedings in the requesting state;
- Where it is unreasonably difficult for the requesting state to serve the document directly; or;
- Where there are reasons to believe that direct service will be ineffective or legally inappropriate.

The request to serve documents should be accompanied by necessary documents to be served. It must be supported by sufficient information describing the location and personal details of the person to be served. If a particular method of service is required, it should be explicitly stated. If no form of service is expressly stated, the service will be effected according to Tanzanian laws.

Where the service relates to appearance before a court of law, the request must clearly state: the dates and time of the hearing or other deadlines; the address of the court where the proceedings are to take place; and the name and contacts of an official from the requesting state from whom the person asked to appear can seek further information.

The Central Authority may arrange for the document to be served by the relevant Competent Authority where personal service is specifically requested. Upon service, the Central Authority may transmit to the requesting authority a certificate or other form of proof of service. In cases where the service was not possible, the Central Authority will as soon as possible communicate to the requesting Authority the reasons which prevented the service.

Provision of Documents and Other Records

A request for the provision of documents and other records must demonstrate how that material is related to a criminal matter in the requesting state. The request must state the description of the documents fully, articles or materials required. Certain documents that are not publicly available, such as bank records, other financial records, communication records, and tax information, can only be obtained or produced pursuant to production orders issued by courts of law or other relevant mandated government authority.



Under certain circumstances, especially where public documents are involved, the Central Authority may provide certified copies of the said documents or records. Documents and other materials transmitted shall be duly authenticated under the laws of Tanzania. If a particular authentication procedure is required, the requesting country should make that known in the request. The original transmitted documents and other records must be returned to the Competent Authority in case they are no longer required unless the Central Authority indicates otherwise.

The requesting state will advise on any further information required in order to execute the request. The information may relate to confidentiality, urgency or legal representation.

If the documents to be produced are bank documents, the request shall indicate the following:

- ❖ Name of the bank or financial institution;
- ❖ Account name/holder;
- ❖ Account number;
- ❖ Branch of the bank where the account is held; and
- ❖ Time frame (if any) of the document.

Witness Statement/Testimony

The Central Authority can also provide assistance in taking statements or testimony from a witness. In addition to the information included in Part 2, a request for taking statements or testimony from a witness shall specify:

- ✓ Personal particulars of the witness, including name, address and designation of the person to be examined.
- ✓ A clear explanation on how the information sought from a witness is relevant to a criminal matter alleged.
- ✓ The status of the person in the investigation or proceedings in the requesting state.
- ✓ Desired method of examination (oral or in writing).
- ✓ Whether the statement or testimony needs to be sworn or affirmed.
- ✓ Any law of the requesting authority as to privilege or exemption from giving evidence which may be relevant to the request.
- ✓ Details of any special requirements as to the manner of taking evidence relevant to its admissibility in the requesting state.
- ✓ List of questions that should be put to the witness, if any.
- ✓ Whether officials from the requesting state wish to attend in Tanzania to participate in the recording of a witness statement or taking of witness testimony together with reasons justifying such necessity.
- ✓ Any other relevant information, including details of special needs for persons with disabilities.



The requesting state may seek permission, so far as Tanzanian law permits, for the accused person or his legal representative to attend the recording of the witness statement or taking the witness' testimony. Costs for the attendance of the accused person or his legal representative or interpreter, if required, shall be borne by the requesting state. The Central Authority shall advise the requesting state on any such costs before they are incurred.

Hearings through Video Conference

A request that the hearing of the testimony of a witness who is in Tanzania take place through video conference may be submitted. However, the hearing through video conference must be held from the premises of a Tanzanian court or embassy. In addition to the information contained in Part 2, a request for hearing of witness through video conference requires.

- ✓ A minimum of eight weeks' notice given prior to the date of the hearing.
- ✓ A proposed day and time that the witness should be heard and an estimation of time for their evidence.
- ✓ E-mail address and telephone number of a contact person in the requesting state who can be contacted to provide technical assistance where a need arises.
- ✓ All available personal details of the witness, including the name, address, or official designation of the person to be examined.
- ✓ Special procedural requirement, if any, to be followed during the hearing.
- ✓ The requesting state to ensure the availability of an interpreter if the need arises.
- ✓ Proposed date and time for a "test run" of the live link.

The costs of establishing a video link, remunerations of the interpreter and travelling costs for a witness, if any, shall be borne by the requesting state. The Central Authority shall advise the requesting state of any such costs before they are incurred.

Making of Arrangements for a Person to Give Evidence or Assist in Investigations

The Central Authority can make appropriate arrangements for a witness to appear in court and give evidence or assist in an investigation. In addition to the information provided in Part 2, a request for making of arrangements for a witness to give evidence or assist in an investigation will be considered if:

- ✓ The request is submitted to the Central Authority at least 30 days prior to the date of appearance. In case of urgency, a request can be accepted in less than 30 days.
- ✓ The date and time when the appearance is required are indicated.
- ✓ All available personal particulars, including the name, address and designation of the witness, are provided.
- ✓ The request clearly describes the subject matter, for a witness is required to give evidence or assist in investigations.
- ✓ The request states the reason why personal appearance is required.
- ✓ The request provides assurance for the witness' security.



The Central Authority shall notify the witness required to give evidence or assist in the investigation in accordance with Tanzanian law.

Securing Personal Attendance of a Prisoner

The Central Authority may assist in making arrangements for the temporary transfer of a prisoner from Tanzania to a requesting state for the purpose of assisting in a criminal investigation or appear as a witness. A prisoner cannot be transferred from Tanzania without their consent and shall not be liable to any penalty or measure of compulsion if they do not consent to the transfer. In addition to the information included in Part 2, a request for attendance of prisoners shall also specify:

- ✓ Sufficient information to enable the Central Authority to identify the prisoner in custody, such as personal particulars and place of incarceration.
- ✓ The place to which the person in custody is sought to be transferred.
- ✓ The reasons why the prisoner's physical attendance is required.
- ✓ The relevant date and time of which presence of the prisoner is required.
- ✓ Assurance by requesting state on the return of the prisoner, including the date, time and manner of which the prisoner is to be returned.
- ✓ Confirmation that arrangements have been made to ensure the person's security.
- ✓ Details of travelling and other expenses payable by the requesting state.
- ✓ Sufficient information to allow the prisoner to make an informed decision before consenting.
- ✓ Assurance that the prisoner will be lawfully confined, subject to all the laws and rules applicable, in the requesting state.

The requesting authority shall bear the costs for escorting and accommodating prisoners from their point of departure in Tanzania to the requesting country and their return to Tanzania.

Custody of Persons in Transit

The Central Authority may authorize the transit of a person in custody from one foreign country to another foreign country via Tanzania for the purpose of giving evidence or assisting in the investigation of a criminal matter. If their transportation has failed to continue, they shall be kept in such custody as the Central Authority directs until their transportation is continued. If the transportation is not continued within a reasonable time, the Central Authority may direct the person to be returned.

Search and Seizure

Upon receipt of a request for search and seizure, the Central Authority may make arrangements for the issuance of a search warrant where;

- ❖ Proceedings have, or investigation relating to a criminal matter involving a serious offence has commenced in the requesting state, and
- ❖ There are reasonable grounds to believe that an item relevant to the said proceedings or investigation is located in Tanzania.



In addition to the information required in Part 2, a request for search and seizure shall specify:

- ✓ The full address and description of the place to be searched.
- ✓ Full details of the specific material or type of material to be seized and any information available which indicates where the material requested may be held.
- ✓ Why the evidence is thought to be on the particular premises or in possession of the particular person.
- ✓ Reasons why the material would not be produced to a Tanzanian court if the natural or legal person holding the material were ordered to do so by means of a witness/ production summons.
- ✓ Proof of appropriate undertakings for the safekeeping and return of any seized evidence.
- ✓ Personal particulars of officials from the requesting state who should participate in the search and reasons why their presence is necessary.
- ✓ The type and nature of the information needed in the search and seizure of any material found in a computer or other electronic data storage device.
- ✓ Any other information which would be of operational use to the executing authority in connection with the execution of the request.

According to Tanzanian laws, upon completion of the search, the mandated official would prepare the record of search indicating place, date of seizure, seized items, particulars and signatures of the owner or occupier, witnesses and seizing officer, including the place and circumstances of the seizure. Where the seizure involves electronic devices such as smartphones and other storage media, the said devices shall be examined by Tanzanian investigative officers to ensure that the material was included in the request and does not contain any legally privileged material.

Interception of Communications

Requests for interception of communications may be made where:

- ❖ The requesting state consider the criminal matter arising is of a serious nature; and
- ❖ It appears to Tanzania that there are reasons to suspect that the information obtained is relevant to the commission of a criminal offence in Tanzania.

Notwithstanding the general rules for refusal listed in Part 2, Paragraph III, a request for assistance for interception of communication may be refused by the Tanzanian Central Authority. Tanzania shall not be obliged under any circumstances to give reasons for refusal to a requesting state.



Interception of Telecommunications

In Tanzania, requests for interception can be accepted **only** in the investigation or prosecution of counterterrorism-related offences.

Requests for interception of telecommunications may be made where:

- ❖ The subject to be intercepted is in Tanzania, and the requesting State needs technical assistance to intercept such communications; or where
- ❖ The subject is in a third State, and the requesting state needs technical assistance from Tanzania to intercept. The request must be accompanied by proof that the third state has duly authorised the anticipated interception.

In addition to the information outlined in Part 2, a request for interception of telecommunication shall include:

- ✓ The name, physical address, mail, email address and other contact details of the requesting authority.
- ✓ A proof that a lawful interception order or warrant has been issued in connection with a criminal investigation in the requesting state, where such order or warrant is required by law.
- ✓ Detailed information to identify the subject of the requested interception.
- ✓ Information on the location of the subject.
- ✓ The period required for interception.
- ✓ Where possible, the provision of sufficient technical data, particularly the relevant network connection number, telecommunications address or service identifier, ensures that the request can be effected.
- ✓ The type of telecommunications proposed to be intercepted.
- ✓ Assurance that the intercept produced will be handled in accordance with the restriction imposed by Tanzanian Central Authority.
- ✓ Preference as to the form of assistance to be provided, such as interception and immediate transmission to the requesting state or recording and subsequent transmission to the requesting state or retrievable stored communications.

Covert Electronic Surveillance

A request for deployment of covert electronic surveillance may be executed in Tanzania so far as the said request is necessary and proportionate and does not contravene the laws of Tanzania.

Notwithstanding the information provided under Part 2, a request under this part shall also include:



- ✓ Details of any provision of law under which order or warrant for covert electronic surveillance is required in the requesting state and provision of law which ensures respect for the rights of those under covert electronic surveillance.
- ✓ A copy of any related order or warrant obtained from the court.
- ✓ Detailed information to identify the subject and location of the requested covert electronic surveillance.
- ✓ The required period of the covert electronic surveillance.

Interception of Postal Items

A request may be made to Tanzania to interject a postal item during its carriage by a postal or any other courier service. However, any state that wishes to make a request of this nature will be required to include sufficient information so as to enable the identification of the item. The information required must include clear identification of the item, the mode of transportation, point of departure, anticipated delivery date, time, and point of delivery (if its final destination is within Tanzania).

Preservation of Computer and Telecommunications Data

Tanzanian laws allow the preservation of data contained in computer devices which is vulnerable to loss or modification. However, for such orders of preservation to be made, there must be reasonable grounds to believe that such data might be required for investigation purposes. Tanzania encourages requesting State to use **law enforcement co-operation** to discuss available options and applicable time limitations.

It should, however, be noted that communications data referred above is only limited to the “who”, “when”, “where”, and “how” of a communication but **not** the content of the communication. This includes text messages, e-mail, phone calls, etc.

If a formal request is preferred, in addition to requirements to be included in the letter of request, it should contain the following:

- ✓ Description of the communications data to be preserved, such as subscription details, traffic data including incoming calls and outgoing calls, but does not include content data.
- ✓ Duration of the data required.
- ✓ Information concerning the source of the communications data, like telephone numbers.
- ✓ Reasons as to why the investigation cannot be achieved by other means.
- ✓ An explanation of whether the privacy of any individual not under investigation will be infringed, and why the circumstances of the case justify such an intrusion and that the requested measure is proportionate.
- ✓ An express statement that the requesting country intends to submit a formal request for legal assistance to obtain the communications data within 120 days. If a request is not received within 120 days, the data will no longer be preserved.

If Tanzania considers that the preservation of communications data pursuant to a request made under this section will not ensure the future availability of the communications data or will threaten the confidentiality of, or otherwise prejudice the investigation in the requesting country, it shall promptly inform the requesting authority, which shall then determine whether the request should be executed.

However, the request may be declined by Tanzania if the Central Authority is of the opinion that requested measures may contravene the laws of Tanzania or is prejudicial to national security or the interests of Tanzania or other states.

Identification, Tracing, Preservation and Recovery of the Proceeds and Instruments of Crime

The Tanzanian Central Authority encourages requesting states to **use law enforcement co-operation** to identify and trace assets in Tanzania before making an MLA request. Where the request relates to disposition and ultimate sharing of proceeds of a property confiscated within Tanzania, as a result of the registration of foreign forfeiture order, the requesting state must enter into a special arrangement with Tanzania. A request for identification, tracing, preservation, and recovery of tainted properties shall include:

- ✓ If known, details of the property in question, including type of property, size of property, geographical location, ownership and registration details, and current value.
- ✓ If the proceeds are within the banking system, then details of the bank, the account number, the account name, and the amount involved.
- ✓ The connection between the property and any offence in respect of which the request is made.
- ✓ Whether prior assistance has been given by Tanzania and, if so, details of the same.
- ✓ If known, details on the source of funding and whether the property was directly or indirectly acquired.
- ✓ If known, chain of handling of the property.
- ✓ If known, details of third-party interest, how it was acquired and the extent of the said interest.
- ✓ A sealed or authenticated copy of any freezing order, seizing decision or confiscation order made by a court and confirmation that it is not subject to appeal and is enforceable.;
- ✓ Where forfeiture has been ordered in the absence of a conviction, the requesting country must provide the manner and circumstances in which the confiscation order was made and the evidence thereto.
- ✓ The evidence that a person whose properties are subject of the request was given an adequate opportunity to make representation to the registration of the order.
- ✓ An explanation that will enable the court to consider whether there is a risk that the identified property will be dissipated if no order is made where freezing/restraint or seizure is requested.



PART 4:

ADDITIONAL RESOURCES

- ❖ Mutual Assistance in Criminal Matters Act (Cap. 254).
- ❖ Written Laws (Miscellaneous Amendments) (No. 2) Act No. 7 of 2018.
- ❖ [Commonwealth Scheme Relating to Mutual Legal Assistance in Criminal Matters \(Harare Scheme\)](#)
- ❖ Template on How to Draft a Mutual Legal Assistance Request for Tanzania.
- ❖ List of Tanzanian focal persons in regional/international networks for judicial co-operation.
- ❖ Flowchart(s) on the lifecycle of incoming MLA requests that explain the distribution of tasks and responsibilities between all the different national agencies involved.





