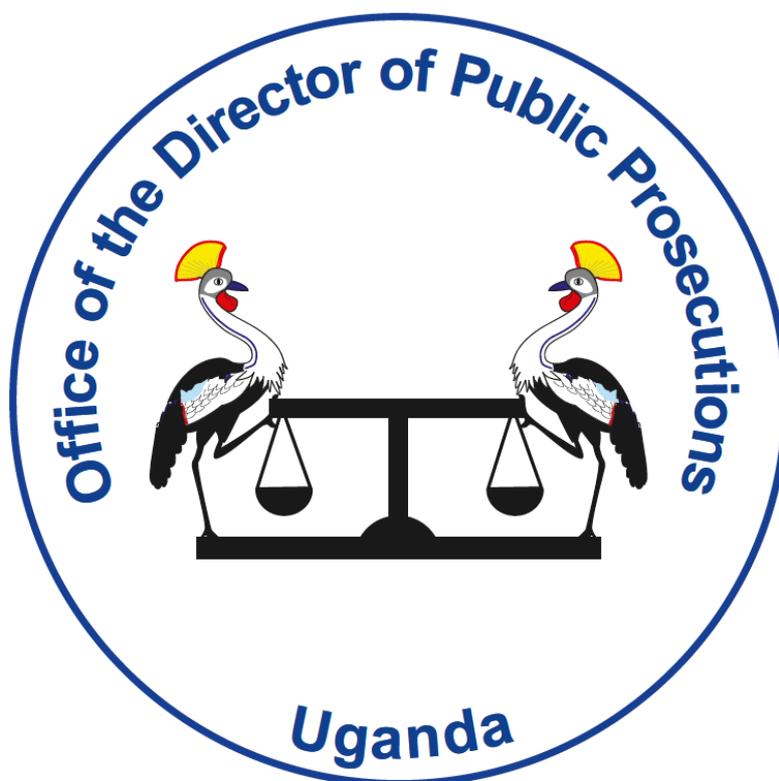


REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Guidance for Authorities Outside of UGANDA



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Central Authority of UGANDA

Ministry of Justice and Constitutional Affairs, Attorney General's Chambers

PO Box 7183

Kampala, Uganda

Christopher Gashabaraki: gashirach@gmail.com

Competent Authority:

Director of Public Prosecutions

PO Box 1550

Kampala, Uganda

Director: Mike Chibita (mikechibita@yahoo.com)

International and Bi-Lateral Agreements

Uganda is party to a number of international agreements such as The Commonwealth Harare Scheme on Mutual Legal Assistance (MLA) and London Agreement on Extradition, and the UN Convention on Transnational Organized Crime among others as well as the IGAD Convention on Mutual Legal Assistance in Criminal Matters 2010.

Is it necessary?

Before submitting a Letter or Request (LOR), first consider whether the material can be obtained voluntarily without assistance from Ugandan authorities, or whether it can be obtained via law enforcement cooperation. It is often helpful if overseas authorities obtain intelligence before making an MLA request as it will make it far less likely that the request will be returned due to lack of information.

PART A: INCOMING LETTER OF REQUEST

FORMAT (based on the principles outlined in the Harare Scheme and the Anti Money Laundering Act 2013 (AMLA))

A request under the Scheme shall:

- Specify the nature of the assistance requested and details of any specific procedure the requesting State wishes to be followed;
- Contain the information appropriate to the assistance sought as specified in the following provisions of this guide.
- Indicate any time-limit within which compliance with the request is desired, stating reasons;
- Identify the agency or authority initiating the request;
- The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates.
- A text of the statutory provisions applicable and indication of penalty that could be imposed.
- Whether or not criminal proceedings have been instituted.
- Where criminal proceedings have been instituted, contain the following information:
 - The court exercising jurisdiction in the proceedings;
 - The identity of the accused;
 - The offences of which he stands accused, and a summary of the facts (except where the purpose is for service of documents);
 - The stage reached in the proceedings; and any date fixed for further stages in the proceedings.
- Where criminal proceedings have **not** been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of known facts.

A request shall normally be in writing, and if made orally in the case of urgency, shall be confirmed in writing forthwith. All requests should be in English.

Transmission of a Request

Uganda requires requests to come via diplomatic channels (s114(2) of the AMLA). Requesting states will need to comply with their own domestic laws relating to the transmission of requests, however. Address any requests to the Central Authority but it is acceptable to cc the competent authority with the ODPP as above.

What will happen when your LOR is received?

Once satisfied that all requirements set out in this guidance are met, the LOR will be promptly transmitted to the relevant authority for action. If the LOR does not meet the guidelines, the requesting state shall be informed.

The competent authority of Uganda may postpone the execution of a request if its immediate execution would interfere with an on-going investigation or prosecution (s107(4) AMLA).

Failure to follow these guidelines may delay the acceptance and execution of a request.

Before any request is refused or postponed, Uganda shall consult with the requesting State to consider whether such assistance may be granted subject to terms and conditions (s107(5) AMLA).

PART B: GROUNDS FOR REFUSAL OF A LETTER OF REQUEST

Under the AMLA and the Harare Scheme, a request may be refused if the following grounds apply:

- The request was not made by a competent authority according to the legislation of the requesting State, or if it was, it was not transmitted in the proper manner.
- The request would impair the sovereignty, security, public order or other essential interests of Uganda (Article 6 Protocol 2002).
- The crime to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in Uganda.
- The measures requested, or any other measures having similar effect are not permitted by the laws of Uganda or are not applicable under the laws of Uganda to the crime referred to in the request.
- The measures requested cannot be ordered by reason of time barring of the crime under the laws of Uganda.
- The decision rendered in the requesting State was delivered under conditions that it did not afford sufficient safeguards to the rights of the defence.
- There are substantial grounds for believing the purpose of the request is to prosecute, punish or otherwise cause prejudice to a person on account of the person's race, sex, religion, ethnic origin, nationality, status or political opinions.
- The request relates to an offence of a political character or is motivated by political consideration.
- The case is not sufficiently important enough to justify the measures requested or the enforcement of the decision rendered abroad.
- The offence relates to conduct which falls under military law within the requesting State.
- The person subject to the request has been acquitted or convicted for that offence in Uganda.

PART C: SPECIFIC TYPES OF ASSISTANCE

This section deals with the forms of assistance that Uganda can provide and the specific information that must be included in the request.

SERVICE OF DOCUMENTS

There is nothing to stop a Requesting State serving documents directly, and Uganda strongly encourages direct transmission of procedural documents. However, a request may be necessary if the address of the intended recipient is unknown or uncertain; or where the law of the requesting state requires proof of service or where it has not been possible to effect service through post or there are reasons to believe that service by post will be ineffective or inappropriate.

Where a request to serve documents is made, the request should include all relevant documents to be served and if a particular method of service is required, this should be explicitly stated, failure to so do will mean that service will be effected according to Ugandan law. All dates of hearings or other deadlines should be stated clearly within the request together with the address of the court where the proceedings are to take place. Without limiting the manner of service, service may be proved by a certificate or, if not served, a certificate as the reasons that have prevented service.

EXAMINATION OF WITNESSES (s111 AMLA) (see also section 26 & 27 of The Extradition Act Cap 117, laws of Uganda)

The competent authority of Uganda may authorise the taking of evidence.

This will be conducted before magistrate, on oath. The magistrate shall cause the evidence to be put in writing and shall certify that the evidence was taken by him. The magistrate shall send that evidence so certified to the competent authority. The magistrate shall state whether when the evidence was given, whether the person so requested was represented and/or whether the any other person giving evidence or producing articles or documents were present.

The request should contain, as a matter of good practice, the following:

- Names and address or official designations of the witness to be examined.
- Basis of the examination i.e. the nexus between the witness and the criminal matter alleged.

- Questions to be put across and/or the subject matter to be examined.
- Desired method of examination (oral or in writing).
- Desired method of administration e.g. under oath or upon solemn affirmation.
- Confirmation that the witness is not subject to claims of immunity, privilege or incapacity under the laws of the requesting state. Any dispute should be resolved by the requesting State.
- Details of any special requirements as to the manner of taking evidence relevant to its admissibility in the requesting state.
- Any language requirements of the person in question.

Such a request must be made clear in the letter of request. However, to actively participate in court proceedings, the representative would either need a practicing certificate for Uganda or will have to ask their questions through a local lawyer.

PRODUCTION ORDERS regarding: “TAINTED PROPERTY”

The competent authority for Uganda can assist with obtaining production orders in respect of:

1. “TAINTED PROPERTY” (Part V AMLA).

Though not specified, as a matter of good practice, the request should contain the following:

- Names and address or official designations of the witness to be examined.
- Basis of the examination i.e. that there are reasonable grounds for suspecting that the person has possession or control of documents relevant to identifying/locating/quantifying tainted property of the person or such a document necessary for the transfer of tainted property by such a person or documents relevant to identifying/locating/quantifying tainted property in relation to a crime or necessary for the transfer of tainted property in relation to a crime.
- If the application is to be ex parte, the application should be supported with an affidavit or equivalent from the requested state.
- Desired method of production.
- Desired method of administration e.g. under oath or upon solemn affirmation.

- Confirmation that the witness is not subject to claims of immunity, privilege or incapacity under the laws of the requesting state. Any dispute should be resolved by the requesting State.
- Details of any special requirements as to the manner of taking evidence relevant to its admissibility in the requesting state.
- Any language requirements of the person producing the article or document in question.

2. JUDICIAL AND OFFICIAL RECORDS (Harare Scheme) AND BANK, FINANCIAL, CORPORATE AND BUSINESS RECORDS (AMLA S111).

The competent authority can assist a requesting State with a request for production of such records relevant to a criminal matter arising in the requesting state. Official records are those held by prosecution authorities as well as by government departments or agencies. This may include records that are not publicly available provided that such production would be in compliance with the law in Uganda regarding provision of such records. The request should contain, in addition to the matters outlined in section 1 above:

- Details of the criminal proceedings that have arisen in the requesting State.
- Explanation of why the records requested are 'relevant' to those proceedings.

On transmission and return of material, the competent authority may postpone transmission if required in relation to proceedings in Uganda and instead may provide certified copies of the documents or records pending transmission of the original. Uganda may require the requesting State to agree to terms and conditions to protect third party interests and may delay transmission pending such an agreement. Documents, records must be returned to the competent authority once no longer required unless the competent authority indicates that the return is not required.

Documents and other materials transmitted shall be duly authenticated under the laws of Uganda. If additional requirements are required for authentication, the requesting State should make that known in the initial request.

3. SEARCH AND SEIZURE OF PROPERTY OF IN UGANDA

This will require a search warrant to be issued by a court. The LOR should set out, in addition to the points in Part A, the following: (AMLA)

- A production order has been issued and not complied with **OR**
- A production order would not be effective **OR**
- An investigation is on going in the requesting State and would be 'seriously prejudiced' if immediate access for a search without notice to any person, is not granted **OR**
- The document or thing involved cannot be identified or described with sufficient particularity for a production order to be obtained.

In the case of 'tainted property', the request should include confirmation that a person has been charged or convicted of a crime in the requesting State AND there are reasonable grounds for believing that tainted property relating to that crime is present upon any land or premises identified in the request.

Search and seizure of tainted property may be authorised if the requesting State confirms that a charge for a relevant crime will be filed within 30 days of the application for a search warrant.

In addition:

- Set out the reasonable grounds for believing the property or thing is relevant to the proceedings or investigation and the reasonable grounds for believing it is located in Uganda
- Identification of where, as far as possible, the property relevant to the proceedings or investigation can be found.
- A description, as far as possible, as the kind of property being sought.
- Make a clear request as to what the requesting State wishes the competent authority to do with the property once seized e.g. does it require sending to the requesting state or can an inspection/analysis or other form of evidence be taken in Uganda be considered to be sufficient.

For an emergency seizure of ‘tainted property’, the request should state:

- The property is tainted property.
- That a search without warrant is necessary to prevent the concealment, loss or destruction of property and;
- That the circumstances are so urgent they require immediate exercise of the power of search and seizure without a court warrant.
- Such an application must be marked clearly “URGENT”.

The competent authority may then, in writing, authorise a police officer to apply to a magistrate in the area in which the property to which the request relates, is believed to be located.

A magistrate may accordingly authorise a police officer to enter upon land or upon premises, to search the same and seize anything that the police officer believes, on reasonable grounds, to be relevant to the proceedings or investigation.

Once seized, the competent authority shall direct in writing how the property shall be dealt with, which may include a direction to send it to the requesting State.

If it is desirable that a representative of the requesting State be present, then there is nothing to stop that request being made.

Uganda may require the requesting State to agree to terms and conditions to protect third party interests and may delay transmission pending such an agreement. Documents, records must be returned to the competent authority once no longer required unless the competent authority indicates that the return is not required.

Documents and other materials transmitted shall be duly authenticated under the laws of Uganda. If additional requirements are required for authentication, the requesting State should make that known in the initial request.

4. IDENTIFYING AND LOCATION OF PERSONS (S111 AMLA and Harare Scheme)

A request should contain, in addition to Part A above:

- The purpose for which such a person is required e.g. if suspected of a crime, grounds for that suspicion; if such assistance is desirable to eliminate that person from the field of suspects.
- The purpose for which such information relevant to the identification or location of such a person is required.
- As much information as possible to facilitate the identification and location of that person.

5. ATTENDANCE OF WITNESSES – S111 AMLA AND HARARE SCHEME [see also The Witness Summons (Reciprocal Enforcement) Act, Cap 26 of the laws of Uganda]

The competent authority of Uganda may make appropriate arrangements to facilitate the personal appearance of a willing witness in criminal proceedings or to assist in an investigation in a requesting state.

- The request must be received by the competent authority well in advance in terms of days prior to the date of appearance.
- The content of the request must contain: - the name, physical address and/or other identifying details of the witness to facilitate location of that witness.
- Confirmation that the proceedings relating to a criminal matter have commenced in the requesting state.
- Reasonable grounds to believe that the person is capable of giving evidence relevant to the proceedings.
- The date when the appearance is required.
- The details of travelling, subsistence and other expenses payable by the requesting state in respect of personal appearance of the witness.

Undertakings may be required:

- That the person shall not be detained, prosecuted or punished for any offence alleged to have been committed by that person prior to departure from Uganda.

- That the person shall not be subject to any civil suit alleged to relate to any conduct, before his/her departure from Uganda.
- That the person shall not be required to give evidence in any proceedings that are not subject to the request.
- That any evidence given, the person shall be not be admissible in any prosecution of that person for an offence against the laws of the requesting state, save for the offence of perjury in relation to that evidence
- That the person shall be returned to Uganda in accordance with arrangements agreed with the competent authority.

6. VOLUNTARY ATTENDANCE OF PERSONS IN CUSTODY s111 AMLA and Harare Scheme.

The competent authority of Uganda may make appropriate arrangements to facilitate the personal appearance of a willing prisoner in custody in criminal proceedings or to assist in an investigation in a requesting state. If the person refuses consent, he/she will not be punishable nor compellable under Ugandan law.

Any request must state:

- The request must be received by the competent authority well in advance of the date of appearance.
- The content of the request must contain:- the name, and any other details e.g. place of custody, to assist location of the witness.
- Confirmation that the proceedings relating to a criminal matter have commenced in the requesting state.
- Reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceedings.
- The date when the appearance is required
- The details of travelling, subsistence and other expenses payable by the requesting state in respect of personal appearance of the prisoner.

Undertakings may be required to confirm:

- That the person shall not be detained, prosecuted or punished for any offence alleged to have been committed by that person before his/her departure from Uganda.

- That the person shall not be subject to any civil suit alleged to relate to any conduct, before his/her departure from Uganda.
- That the person shall not be required to give evidence in any proceedings that are not subject to the request.
- That any evidence given the person shall be not be admissible in any prosecution of that person for an offence against the laws of the requesting state save for the offence of perjury in relation to that evidence.
- That if the competent authority requests arrangements for the prisoner to remain in custody in the foreign country, the making of appropriate arrangements to so do.
- That the person shall not then be released from custody unless the competent authority notifies the appropriate the authority in the foreign country that the prisoner is entitled to release under the law of Uganda.
- That if the prisoner is released in accordance with such a representation by the competent authority of Uganda, that person's accommodation and other expenses pending completion of proceedings shall be met by the requesting state.
- That the person shall be returned to Uganda in accordance with arrangements agreed with the competent authority.

7. TRANSIT OF PERSONS IN CUSTODY (s111 (I) AMLA)

Transit of a person in custody from one foreign country to another foreign country may be authorised.

The LOR, in addition to the matters set out in Part A above, include:

- Confirmation that the person is required to give evidence in proceedings OR to give assistance in relation an investigation of a criminal matter in a foreign country. Provide as much detail as possible regarding the reasonable grounds upon which it is thought the person is capable of giving that assistance.
- That at least one of the foreign countries is a country with whom Uganda has a MLA agreement with.

8. PROCEEDS OF CRIME - IDENTIFICATION, TRACING, ASSET RECOVERY, FREEZING, CONFISCATION, SEIZURE OF THE PROCEEDS AND INSTRUMENTS OF CRIME.

Before making a request under this section, use law enforcement cooperation to identify and trace assets in Uganda and use, as necessary, MLA to obtain the evidence of those assets e.g. to obtain production orders of banking evidence.

Any request concerning proceedings involving enforcement of a foreign forfeiture order or enforcement of a foreign pecuniary order, asset recovery, tracing, identification, freezing, confiscation, seizure or restraint, must include the following:

- Details of the property in question including type of property, size of the property, geographical location, ownership and registration details, current value.
- Outlining of the connection between the property and offence.
- Whether prior assistance has been given by Uganda and if so, details shall be provided.
- If known, details on the source of funding, direct and indirect acquisition and chain of handling of the property.
- If known, details of third party interest, how it was acquired and the extent of that third party interest.
- A certified 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 confiscation has been ordered in the absence of a conviction, the requesting state must provide evidence of death (i.e. certified death certificate); flight (e.g. immigration/border control details) and/or absence or any other appropriate cases (e.g. death row) as would justify the order in absence of conviction.
- The requesting state should give 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.
- Where the order has been made upon conviction, proof of conviction and confirmation that it is not subject to appeal.

9. OTHER TYPES OF ASSISTANCE.

Requests for evidence via video link

Uganda has one video link facility in the High Court in Kampala. If assistance is required to establish a video link, requesting states should be aware that there are limited court facilities in Uganda to do this. The Judiciary (Visual-Audio Link) Rules 2016 (Statutory Instrument 26/2016) do not directly address MLA but some principles may be extracted when making a LOR (an application form and the relevant rules are at Appendix A):

- The witness lives outside Uganda; or
- Proceedings relate to sexual or violent offences; or
- It is necessary for security reasons;
- It is necessary for the safety of the witnesses or for infirmity or health reasons; or
- For any other reason that is deemed necessary and appropriate.
- Give as much notice as possible to the Ugandan authorities. A minimum of 8 weeks' notice is recommended prior to the date of the video conferencing hearing.
- A proposed time of day that link should be heard and the length of time that the witness is required.
- Provide an email address and telephone number of someone in the requesting authority that can be contacted at short notice to provide technical assistance.
- Sufficient information for the competent authority to identify and contact the witness/es.
- Details of any requirements of procedure to be followed in taking the evidence.
- Any caution or formal notification of rights that should be given to the witness under the law of the requesting state.
- Details of the technical requirements for establishing the link
- A proposed time and date for a 'test run' of the live link.

cc. your letter of request to: **coordinator@judicature.go.ug**

The costs of facilitating the live link shall be borne by the requesting State. The competent authority shall advise the requesting State of these costs before they are incurred.

CONFIDENTIALITY

The competent authority will not disclose content of MLA without the consent of the requesting authority except where disclosure is necessary to obtain the cooperation of a witness or other person concerned.

Where public statements are made by a requesting State about assistance requested from Uganda, the competent authority should be notified so that they may respond appropriately to media or public enquiries.