



Inter Governmental Authority on Development (IGAD)
Convention on
Mutual Legal Assistance in Criminal Matters

IGAD CONVENTION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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PREAMBLE

We, the Representatives of the Governments of:

The Republic of Djibouti

The State of Eritrea

The Federal Democratic Republic of Ethiopia

The Republic of Kenya

The Somali Republic

The Republic of Sudan

The Republic of Uganda

Being members of the Inter Governmental Authority on Development (IGAD) and

DESIRING to make our co-operation in the prevention and suppression of crime, tracing and confiscating the proceeds of crime more effective by concluding an agreement on Mutual Legal Assistance;

RECOGNIZING that regional and international cooperation is necessary to prevent and combat crime.

MINDFUL of our responsibility to guarantee the security and stability of our peoples in order to minimize the vulnerability of our States;

INSPIRED by the noble purpose of promoting peace, security and stability, and eliminating the sources of conflict as well as preventing and resolving conflicts in the sub-region;

RECALLING the Ministers of Justice statement of 21st of September 2007 in Kampala, Uganda on the vital need for an IGAD wide instrument on Mutual Legal Assistance;

HEREBY AGREE AS FOLLOWS:

**PART I
DEFINITIONS**

“Any other convention” means any universal or regional instruments relating to crime.

Central Authority means an authority designated under Article 2 of this Convention.

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Competent Authority means any organization, agency or body of a State Party competent under the domestic law of that State Party to make or receive Mutual Legal Assistance requests.

Communications includes telecommunications and the transmission of an item through the public postal service.

Communications data means any of the following:

- a) traffic data;
- b) subscriber information;
- c) any information not falling within paragraph (a) or (b) that is held or obtained by the provider of a postal service or a telecommunications service and which relates to the provision of that service but does not include content data.

Confiscation proceedings means proceedings, whether civil or criminal, for an order whether it is for freezing or confiscating any items that are proceeds of crime or an instrumentality of unlawful activity:

- a) Confiscating any property derived or obtained whether directly or indirectly from an offence or used in, or in connection with, the commission of an offence; or
- b) imposing a pecuniary penalty calculated by reference to the value of any property derived or obtained whether directly or indirectly from an offence or used in, or in connection with, the commission of an offence.

Content data means the subject or purpose of the communication, or the message or information being conveyed by the communication, whether or not any interpretation, process, mechanism or device needs to be applied or used to make the meaning of the communication intelligible.

Covert surveillance means surveillance carried out in a manner that is calculated to ensure that the persons who are subject to the surveillance are unaware that it is or may be taking place.

Covert surveillance by the use of a surveillance device means covert surveillance carried out by or with an electronic surveillance device which transmits records or otherwise captures audio product or visual images, but does not include either surveillance by a tracking device which only provides of location or position, or the interception of telecommunications.

Criminal matter means, comprises and includes every investigation, prosecution or judicial proceeding relating to a criminal offence.

This includes an investigation, prosecution or proceedings relating to:

- (a) the forfeiture or confiscation of proceeds of crime;

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- (b) the imposition or recovery of a pecuniary penalty in respect of a prescribed offence;
- (c) the tracing, freezing and restraint of property that may be forfeited or confiscated.

Dual criminality means conduct which would constitute an offence under the laws of both the Requesting and Requested State Parties.

Freezing means to prohibit the transfer, conversion, disposition, or movement of funds or other assets on the basis of, and for the duration of the validity of an action initiated by the appropriate authority or a court.

IGAD means Inter Governmental Authority on Development.

IGAD Secretariat means the headquarters of IGAD.

Instrumentality of unlawful activity means any property:

- a) used in, or in connection with, the commission of an offence or unlawful activity; or
- b) intended to be used in, or in connection with, the commission of an offence or unlawful activity;

Interception of communications means the disrupting, destroying, opening, interrupting, suppressing, stopping, seizing, recording, copying, listening to and viewing of communications in the course of its transmission so as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.

Offence means criminal conduct under the laws of a State and in the case of a Federal State or a State having more than one legal system, includes criminal conduct under the laws of that State or any part thereof.

Postal item means any letter, parcel, package, or other thing which is being or will be carried by a public postal service.

Postal service means any service which:

- (a) consists in the following, or in any one or more of them, namely, the collection, sorting, conveyance, distribution and delivery of postal items; and
- (b) is offered or provided as a service the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, a means of transmission from place to place of postal items containing communications.

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Preservation of communications data means the protection of communications data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate. Communications data that is stored on a highly transitory basis as an integral function of the technology used in its transmission is not communications data which already exists in a stored form for the purposes of this definition.

Proceeds of crime includes any property, benefit or advantage that is wholly or partly obtained, derived or realised directly or indirectly as a result of the commission of a criminal act or omission.

Property includes any item that is relevant for evidentiary purposes.

Public postal service means any postal service which is offered or provided to the public, or to a substantial section of the public, in any one or more parts of the territory of a State Party.

Requested State Party means a State being requested to provide mutual legal assistance under the terms of this Convention.

Requesting State Party means the State requesting for mutual legal assistance under the terms of this Convention.

State Party means any party to this Convention.

Stored communication means the content data that is no longer in the course of transmission and which has been stored in a form allowing retrieval.

Subscriber information means any information that is held by a provider of a postal service or telecommunications service relating to subscribers to its services and by which subscriber's identity, affairs or personal particulars can be established, but does not include traffic data.

Surveillance includes:

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
- (b) recording anything monitored, observed or listened to in the course of surveillance; and
- (c) surveillance by or with the assistance of a surveillance device.

Surveillance device is a device, whether electronic or otherwise, made, designed or adapted for:

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;

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- (b) recording anything monitored, observed or listened to in the course of surveillance

Telecommunication means a communication transmitted or received by means of guided or unguided electromagnetic or other forms of energy.

Telecommunications service means a service provided to any person for transmitting and receiving telecommunications, being a service the use of which enables communications to be transmitted or received over a telecommunications system operated by a service provider.

Telecommunications system means any system (including the apparatus comprised in it) which exists (whether wholly or partly in the territory of a State Party or elsewhere) for the purpose of transmitting and receiving telecommunications.

Third State means a State other than the requesting State Party or requested State Party.

Traffic data means any information:

- (a) that is attached to (whether by the sender or otherwise) or associated with a communication by means of which the communication has been, is being or may be transmitted or received; and
- (b) by which can be established the use by any person of any postal service or telecommunications service.

PART II GENERAL PROVISIONS

Article 1: Obligation to assist

1. States Parties shall co-operate with each other, to the widest extent possible for the purposes of criminal matters in accordance with this Convention.
2. This Convention provides for the giving of assistance by the competent authorities of the requested State Party in respect of criminal matters arising in the requesting State Party.
3. The Convention does not affect any existing forms of co-operation, either formal or informal; nor does it preclude the development of any future forms of co-operation.
4. Each State Party shall adopt, if it has not already done so, such legislative and any other measures necessary to give effect to the obligations under this Convention.

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5. Mutual Legal Assistance under this Convention includes, but is not limited to, assistance in:
- a) Identifying and locating of persons for evidential purposes;
 - b) Examining witnesses;
 - c) Effecting service of judicial documents;
 - d) Executing searches and seizures;
 - e) Examining objects and sites;
 - f) Providing (including formal production where necessary) originals or certified copies of relevant documents and records, including but not limited to government, bank, financial, corporate or business records;
 - g) Providing information, evidentiary items and expert evaluations;
 - h) Facilitating the voluntary attendance of witnesses or potential witnesses in the requesting State Party;
 - i) Facilitating the taking of evidence through video conference;
 - j) Effecting a temporary transfer of persons in custody to appear as a witness;
 - k) Intercepting of items during the course of carriage by a public postal service;
 - m) Identifying, freezing and tracing proceeds of crime;
 - n) Recovering of assets;
 - o) Preserving communications data;
 - p) Intercepting of telecommunications;
 - q) Conducting covert surveillance by the use of a surveillance device;
 - r) Any other type of assistance or evidence gathering that is not contrary to the domestic law of the requested State Party.

Article 2: Central Authority

1. Each State Party shall designate a Central Authority to transmit and to receive requests for assistance under this Convention.
2. For the purposes of this Convention, the function of a Central Authority may include:
 - a) making and receiving requests for assistance and executing or arranging for the execution of such requests;
 - b) where necessary, certifying or authenticating, or arranging for the certification and authentication of any documents or other material supplied in response to a request for assistance;
 - c) taking practical measures to facilitate the orderly and rapid disposition of requests for assistance;

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- d) negotiating and agreeing on conditions related to requests for assistance, as well as to ensure compliance with those conditions;
 - e) making any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to a request for assistance to the competent Authority of the requesting State or to authorize any other authority to do so;
 - f) carrying out such other tasks as provided for by this Convention or which may be necessary for effective assistance to be provided or received.
3. Communication between Central Authorities shall take place directly.
 4. States Parties shall notify the IGAD Secretariat of their designated Central Authorities.
 5. The IGAD Secretariat shall maintain an updated register of Central Authorities as notified by States Parties, and make the register available to Central Authorities of States Parties.

Article 3: Applicable law

1. The law of the requested State Party will govern the procedure for complying with a request under this Convention.
2. Where admissibility of evidence to be gathered requires certain formalities and procedures to be adhered to under the laws of the requesting State Party, it may ask the requested State Party, where possible, to comply with those formalities and procedures.

Article 4: Form of the request

1. Requests shall be in writing, except that in an urgent matter a request may be made orally provided that it is confirmed in writing forthwith.
2. For the purpose of paragraph (1) 'in writing' includes e-mail, facsimile or other agreed forms of electronic transmission provided appropriate levels of security and authentication are in place.

Article 5: Contents of the request

1. Except in the case of a request for the preservation of communications data under Article 25, a request under this part of the Convention shall:

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(a) specify the nature of the assistance requested and details of any particular procedure that the Requesting State Party wishes to be followed;

(b) the purpose for which evidence, information or material is sought;

(c) contain the information relevant to the assistance sought;

(d) indicate any time limit within which compliance with the request is desired, stating reasons;

(e) contain the following information:

(i) the identity of the agency or authority initiating the request;

(ii) the nature of the criminal matter,

(iii) whether or not criminal proceedings have been instituted.

(f) where criminal proceedings have been instituted, contain the following information:

(i) the court exercising jurisdiction in the proceedings;

(ii) the identity of the accused person;

(iii) the offence(s) of which he stands accused, and a summary of the facts;

(iv) the stage reached in the proceedings; and

(v) any date fixed for further stages in the proceedings.

(g) where criminal proceedings have not been instituted, state the offence which the Competent Authority of the Requesting State Party has reasonable grounds to suspect has been, is being or will be committed with a summary of known facts.

2. Notwithstanding the absence of any of formalities set out above the requested State Party may in its discretion execute the request.

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

PART III
TRANSMISSION AND EXECUTION OF REQUEST

Article 6: Action in the Requesting State Party

1. A request for assistance under this Convention may be initiated by a competent authority in the requesting State Party.
2. The Central Authority of the requesting State Party shall, if it is satisfied that the request can properly be made under this Convention, transmit the request as soon as practicable to the Central Authority of the requested State Party and shall ensure that the request contains all the information required by the provisions of this Convention.
3. In the event of urgency, or as permitted by domestic law, requests may be sent by direct transmission from a competent authority of the requesting State Party to a competent authority of the requested State Party, for execution in accordance with its domestic law. A copy of the request shall be submitted by the competent authority of the requesting State Party to the Central Authority of the requesting State Party forthwith.
4. Where further information is required before a request under this Convention can be executed, in so far as practicable, such information shall be provided by the appropriate competent authority of the requesting State Party and within any deadlines, where necessary, set by the requested State Party.

Article 7: Action in the Requested State Party

1. The Central Authority of the requested State Party shall, as soon as is reasonably practicable, acknowledge receipt of the request.
2. Subject to the provisions of this Convention, the requested State Party shall grant the assistance requested as expeditiously as practicable.
3. The Central Authority of the requested State Party shall take the necessary steps to ensure that the request is complied with.

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4. Requests may be received directly by a competent authority of the requested State Party from a competent authority of the requesting State Party for execution in accordance with the domestic law of the requested State Party.
5. The competent authority of the requested State Party may seek additional information from the competent authority of the requesting State Party.
6. If the Central Authority of the requested State Party considers that:
 - a) the request does not comply with the provisions of this Convention; or
 - b) in accordance with the provisions of this Convention the request for assistance is to be refused in whole or in part; or
 - c) the request cannot be complied with, in whole or in part; or
 - d) there are circumstances which are likely to cause a significant delay in complying with the request;

it shall inform the Central Authority of the requesting State Party promptly, giving reasons.

Article 8: Postponement of the execution of request

The requested State Party may, after consultation with the requesting State Party postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State Party.

Article 9: Defence requests

1. Where criminal proceedings have been instituted against a person, or where a person is joined in such proceedings as a *partie civile*, a competent authority of a State Party may, on application by either the said person or his or her legal representative, issue a request for assistance to another State Party.
2. The fact that a request originates from a person charged or his or her legal representative shall not be a ground for refusal by the requested State Party.

**PART IV
GROUNDS FOR REFUSAL**

Article 10: Grounds for refusal

1. The requested State Party may refuse to comply in whole or in part with a request for assistance under this Convention:
 - a) if the requested State Party considers that the criminal matter concerns:
 - (i) an offence or proceedings of a political character; or
 - (ii) conduct which in the requesting State Party is an offence only under military law or a law relating to military obligations; or
 - (iii) an offence the prosecution of which in the requesting State Party would be incompatible with the Requested State Party's law on double jeopardy (*ne bis in idem*).
 - b) to the extent that it appears to the requested State Party that compliance would be contrary to the constitution of the requested State Party, or would prejudice the security, international relations or other essential public interests of the requested State Party; or
 - c) where there are substantial grounds leading the requested State Party to believe that compliance would facilitate the prosecution or punishment of any person on account of race, ethnic origin, gender, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.
2. The requested State Party may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the law of that State be taken.
3. An offence of a political nature shall not include any offence in respect of which the States Parties have assumed an obligation, pursuant to any multilateral convention, or under international law, to take prosecutorial action where they do not extradite, or any other offence that the State Parties have agreed is not an offence of a political character for the purposes of extradition.

Article 11: Consultation between States Parties

1. Before refusing a request, or postponing its execution, in whole or in part, under any part of this Convention the requested State Party shall consider forthwith whether assistance may be granted subject to certain conditions. If the requesting State Party accepts assistance subject to these conditions, it shall comply with them.

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2. If the requesting State Party refuses to give the undertaking or to comply with the conditions, the requested State Party may refuse to grant the assistance sought in whole or in part.
3. The requested State Party shall give the requesting State Party an opportunity to present its reasons in favour of providing the assistance sought.

**PART V
REQUESTS FOR CERTAIN FORMS OF ASSISTANCE**

Article 12: Service of documents

1. A request under this Convention may seek assistance in the service of documents relevant to a criminal matter arising in the requesting State Party.
2. The request shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting State Party, such notice as the requested State Party is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.
3. The requested State Party shall endeavour to have documents served:
 - a) by any particular method stated in the request, unless such method is incompatible with the laws of the requested State Party; or
 - b) by any method prescribed by its laws for the service of document in criminal proceedings.
4. The requested State Party shall transmit to the Central Authority of the requesting State Party a certificate or other proof as to the service of the document or, if they have not been served, as to the reasons which have prevented service.

Article 13: Provision or production of records

1. A request under this Convention may seek the provision or production of any documents, records or other material relevant to a criminal matter arising in the requesting State Party.

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2. The requested State Party may provide copies of documents, records or other material not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

Article 14: Examination of witnesses

1. A request under this Convention may seek assistance in the examination of a witness in the requested State Party.
2. The request shall specify, as appropriate and so far as the circumstances of the case permit:
 - a) the name and address or the official designation of the witness to be examined;
 - b) the question to be put to the witness or the subject matter about which he is to be examined;
 - c) whether it is desired that the witness be examined orally or in writing;
 - d) whether it is desired that the oath be administered to the witness (or, as the law of the requested State Party allows, that they be required to make a solemn affirmation);
 - e) any provisions of the law of the requesting State Party as to privilege or exemption from giving evidence which appear especially relevant to the request; and
 - f) any special requirements of the law of the requesting State Party as to the manner of taking evidence relevant to its admissibility in requesting State.
3. The request may seek permission for, so far as the law of the requested State Party permits, the accused person or his legal representative to attend the examination of the witness and ask questions of the witness.

Article 15: Attendance of witnesses in the requesting State Party

1. A request under this Convention may seek assistance in facilitating the personal appearance of a witness before a court exercising jurisdiction in the requesting State Party.
2. The requesting State Party shall inform the requested State Party of the date on which the appearance of the witness is required. The requesting State Party shall inform the requested State Party at least 30 days prior to the date of the attendance. In the event of urgency, the requested State Party may accept a shorter period of notice.

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3. The request shall specify:
 - a) the subject matter upon which it is desired to examine the witness;
 - b) the reasons why the personal appearance of the witness is required; and
 - c) details of the travelling, subsistence and other expenses payable by the requesting State Party in respect of the personal appearance of the witnesses.

4. The competent authorities of the requested State Party shall notify a person, in accordance with domestic law, whose appearance as a witness in the requesting State Party is desired; and
 - a) ask whether the person agrees to appear;
 - b) inform the Central Authority of the requesting State Party of the answer; and
 - c) if the person is willing to appear, make appropriate arrangements to facilitate the personal appearance of the witness.

5. A person whose appearance as a witness is the subject of a request may refuse to appear as witness where the law of the requested State Party either permits such a refusal or does not make the witness a compellable witness under its law.

6. 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 liable to any penalty or measure of compulsion in either the requesting or requested State Party.

Article 16: Attendance of witnesses

A person served, in compliance with a request, with a summons to appear as a witness in the requesting State Party and who fails to comply with the summons shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or the requested State Party notwithstanding any contrary statement in the summons.

Article 17: Voluntary attendance of persons in custody

1. A request under this Convention may seek the temporary transfer of a person in custody in the requested State Party for purposes of identification, providing assistance in obtaining evidence for investigations or prosecutions or to appear as a witness before a court exercising jurisdiction in the requesting State Party.

2. The request shall specify:
 - a) the subject matter upon which it is desired to examine the witness;

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- b) the reasons for which the personal appearance of the witness is required.
3. The consent of the person in custody is a pre-requisite for the transfer. A statement of consent or a copy shall be provided. The requested State Party shall refuse to comply with a request for the transfer of a person in custody if the person concerned does not consent to the transfer.
 4. A person in custody whose transfer is the subject of a request and who does not consent to the transfer shall not by reason thereof be liable to any penalty or measure of compulsion in either the requesting or requested State Party.
 5. Where a person in custody is transferred, the requested State Party shall notify the requesting State Party of:
 - a) the dates upon which the person is due under the law of the requested State Party to be released from custody; and
 - b) the dates by which the requested State Party requires the return of the person; and shall notify the requesting State Party of any variations in such dates.
 6. The requesting State Party shall keep the person transferred in custody, and shall return the person to the requested State Party when the presence of the person as a witness in the requesting State Party is no longer required, and in any case by the earlier of the dates notified under paragraph 5 of this Article.
 7. The obligation to return the person transferred shall subsist notwithstanding the fact that the person is a national of the requesting State Party.
 8. The requesting State Party to which the person is transferred shall not require the requested State Party from which the person was transferred to initiate extradition proceedings for the return of the person.
 9. The period during which the 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 custody in that State for all purposes.
 10. Nothing in this Article shall preclude the release in the requesting State Party without return to the requested State Party of any person transferred where the two States and the person concerned have agreed to such release.

Article 18: Undertaking to witness

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1. A witness appearing in the requesting State Party in response to a request shall be given an undertaking by the requesting State Party that he shall not be subject to prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions occurring before the time of the departure of the person from the requested State Party.
2. The undertaking provided for in paragraph 1 above shall cease in the case of a witness appearing in response to a request under Article 17; when the witness having had, for a period of 15 consecutive days from the dates when the person was notified by the competent authority of the requesting State Party that his/her presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving, has nevertheless remained in the requesting State Party, or having left that State has voluntarily returned to it.

Article 19: Privilege

1. In response to a request under this Convention, no person shall, in attendance for examination be compelled to give any evidence in the requested State Party which a witness could not be compelled to give:
 - a) in criminal proceedings in that State; or
 - b) in criminal proceedings in the requesting State Party.
2. For the purposes of this Article any reference to giving evidence includes references to answering any question and/or to producing any document, or other thing.

Article 20: Search and seizure

1. A request under this Convention may seek assistance in the search for, and seizure of property in the requested State Party.
2. The request shall specify the property to be searched for and seized and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting State Party which may be required to be adduced in an application under the law of the requested State Party for any necessary warrant or authorization to effect the search and seizure.
3. Insofar as permitted by its domestic law, the requested State Party shall provide such certification as may be required by the requesting State Party concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property seized.

PART VI
INTERCEPTION OF COMMUNICATIONS, PRESERVATION OF
COMMUNICATIONS DATA AND COVERT SURVEILLANCE

Article 21: Requests for interception of telecommunications

1. For the purpose of a criminal investigation, a State Party may, in accordance with the provisions of this Convention and the requirements of its domestic law, make a request to a Central Authority of another State Party for:
 - a) the interception and immediate transmission to the requesting State Party of telecommunications; or
 - b) the interception, recording and subsequent transmission to the requesting State Party of telecommunications.

2. Without prejudice to the generality of paragraph 1, a request under it may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present in:
 - a) the requesting State Party and the requesting State Party needs the technical assistance of the requested State Party to intercept his communications; or,
 - b) the requested State Party and his communications are capable of being intercepted in the requesting State Party.

3. A request under this Article shall include:
 - a) an indication of the authority making the request;
 - b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation, if such an order or warrant is required by the domestic law of the requesting State Party;
 - c) information for the purpose of identifying the subject of the requested interception;
 - d) details of the criminal conduct under investigation;
 - e) the desired duration of the interception; and
 - f) if possible, the provision of sufficient technical data, in particular the relevant network connection number, communications address or service identifier to ensure that the request can be met.

4. Where a request has been made under paragraph 1(a) above and immediate transmission of the contents of an intercepted communication is not possible, the requested State Party may undertake to comply with the request as though it were made under paragraph 1(b).

5. The State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its domestic law.

Article 22: Stored communications

1. A State Party may make a request for assistance in accordance with the domestic laws of the requested State Party for provision of stored communications.
2. Each State Party shall consider adopting such provisions as may be necessary to enable it to comply with such a request.

Article 23: Request for the interception of items during the course of carriage by a public postal service

For the purpose of a criminal investigation, a competent authority of the requesting State Party may, in accordance with the requirements of its domestic law, make a request to a competent authority of the requested State Party for the interception of an item during the course of its carriage by a public postal service and immediate transmission to the requesting State Party of the said item or a copy thereof.

Article 24: Bilateral or multilateral arrangements

Nothing in this Part shall preclude any bilateral or multilateral arrangements between States Parties for the purpose of facilitating the enhanced use of present and future technical possibilities regarding the lawful interception of telecommunications.

Article 25: Requests for the preservation of communications data

1. A request for the preservation of communications data may be made under this Article by an agency or authority competent to make such a request under the laws of the requesting State Party.
2. Such a request may be directly transmitted to an agency or authority competent to receive such a request under the laws of the requested State Party.
3. A request for the preservation of communications data shall:
 - a) specify the identity of the agency or authority making the request;
 - b) contain a brief description of the conduct under investigation;
 - c) contain a description of the communications data to be preserved and its relationship to the investigation or prosecution, and in particular identifying whether the communications data to be preserved includes:
 - (i) subscriber information;

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- (ii) traffic data;
 - (iii) any other information falling within the definition of communications data;
 - d) contain a statement that the requesting State Party intends to submit a request for mutual legal assistance to obtain the communications data within the period permitted under this Article.
4. The preservation of communications data pursuant to a request made under this Article shall be for a period of one hundred and twenty (120) days, pending submission by the requesting State Party of a request for assistance to obtain the preserved communications data. Following the receipt of such a request, the data shall continue to be preserved pending the determination of that request and, if the request is granted, until the data is obtained pursuant to the request for assistance.
5. If the requested State Party considers that the preservation of communications data pursuant to a request made under this Article will not ensure the future availability of the communications data, or will threaten the confidentiality of, or otherwise prejudice the investigation in the requesting State Party, it shall promptly inform the requesting State Party, which shall then determine whether the request should nevertheless be executed.
6. Notwithstanding the general grounds for refusal contained in Article 9, a request for the preservation of communications data under this Article may be refused only to the extent that it appears to the requested State Party that compliance would be contrary to the laws or Constitution of that country, or would prejudice the security, international relations, or other essential public interests of that country.

Article 26: Covert surveillance by the use of a surveillance device

1. A request may be made under this Convention for the deployment of covert surveillance by the use of a surveillance device.
2. Covert surveillance by the use of a surveillance device shall take place in accordance with the domestic law and procedures of the requested State Party. The duration of the covert surveillance by the use of a surveillance device, the detailed conditions, and the monitoring and preserving of the product of such surveillance shall be agreed between the requesting and requested State Parties in accordance with their domestic law and procedures.
3. A State Party may make a request for assistance involving surveillance, including the use of a tracking device, other than that provided for in this Article.

PART VII
ASSET RECOVERY, FREEZING AND CONFISCATION

Article 27: General provisions

1. States Parties shall assist each other in proceedings involving the identification, tracing, freezing, and confiscation of the proceeds and instrumentalities of crime in accordance with the domestic law of the requested State Party and shall include:
 - a) details of the property in relation to which co-operation is sought;
 - b) the location of the property;
 - c) the connection, if any between the property and the offences in respect of which the request is made;
 - d) where known, details of any third party interests in the property;
 - e) a certified copy of the freezing decision or final decision of confiscation made by the court.

2. Nothing in this Article shall prejudice the rights of *bona fide* third parties.

Article 28: Recognition of the claims of a State

Each State Party shall, in accordance with its domestic law, take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognise another State Party's claim as a legitimate owner of property acquired through the commission of a criminal offence.

Article 29: Mechanisms for asset recovery through international co-operation

1. In accordance with its domestic law, each State Party, in order to provide mutual legal assistance with respect to proceeds and instrumentalities of crime, shall take such measures as may be necessary to:
 - a) permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;
 - b) permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and
 - c) allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

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2. In accordance with its domestic law, each State Party, in order to provide mutual legal assistance upon a request made pursuant to this Convention, shall, in accordance with its domestic law:
 - a) take such measures as may be necessary to permit its competent authorities to freeze property upon a freezing order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this Article;
 - b) take such measures as may be necessary to permit its competent authorities to freeze property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this Article; and
 - c) consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Article 30: International co-operation for purposes of confiscation

1. A State Party that has received a request from another State Party, having jurisdiction over a criminal offence for the execution of a confiscation order for the proceeds of crime or instrumentalities of crime in its territory shall, to the greatest extent possible within its domestic legal system:
 - a) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party insofar as it relates to proceeds of crime or instrumentalities situated in the territory of the requested State Party; or
 - b) Submit the request to its Competent Authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it.
2. Following a request made by another State Party having jurisdiction over a criminal offence, the requested State Party shall take measures to identify, trace and freeze proceeds of crime or instrumentalities for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under sub-paragraph 1(b) of this Article, by the requested State Party.
3. Requests made pursuant to this Article shall contain:
 - a) in the case of a request pertaining to paragraph 1 (a) of this Article, a legally admissible copy of an order of confiscation upon which the request is based

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issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to *bona fide* third parties and to ensure due process and a statement that the confiscation order is final;

- b) in the case of a request pertaining to paragraph 1 (b) of this Article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;
 - c) in the case of a request pertaining to paragraph 2 of this Article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.
3. The decisions or actions provided for in paragraphs 1 and 2 of this Article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.
 4. In addition to the general grounds of refusal as set out under Article 10 above, cooperation under this Article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence within a reasonable period, or if the property is of a *de minimis* value.
 5. Before lifting any provisional measures taken pursuant to this Article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.
 6. The provisions of this Article shall not be construed as prejudicing the rights of *bona fide* third parties.

Article 31: Return and disposal of assets

1. In accordance with its domestic law and with the provisions of this Convention property confiscated by a State Party shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this Article, by that State.
2. In accordance with its domestic law, each State Party shall take such measures as may be necessary to enable its competent authorities to return confiscated property, when acting

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on the request made by another State, in accordance with this Convention, taking into account the rights of *bona fide* third parties.

3. The requested State Party shall:
 - a) in the case of embezzlement of public funds or of laundering of embezzled public funds, when confiscation was executed in accordance with the provisions contained within this Convention and on the basis of a final judgment in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;
 - b) in the case of proceeds of any criminal offence, when the confiscation was executed in accordance with the provisions contained within this Convention and on the basis of a final judgment in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognises damage to the requesting State Party as a basis for returning the confiscated property;
 - c) in all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this Article.

5. Where appropriate, State Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Article 32: Financial Intelligence Unit

State Parties shall co-operate with one another for the purpose of preventing and combating the transfer of proceeds of criminal offences and of promoting ways and means of recovering such proceeds and, to that end, shall establish a Financial Intelligence Unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

**PART VIII
MISCELLANEOUS PROVISIONS**

Article 33: Dual criminality

1. Each State Party is encouraged, where consistent with the basic concepts of its legal system, to render assistance in the absence of dual criminality.
2. Each State Party shall consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance in the absence of dual criminality.

Article 34: Reciprocity

1. Each State Party is encouraged to render assistance in the absence of reciprocal arrangement with the requesting State Party.
2. Each State Party shall consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance in the absence of reciprocity.

Article 35: Rule of specialty

The requesting State Party shall not transmit to another State or use any information or evidence obtained in response to a request for assistance under this Convention in connection with any matter other than the criminal matter specified in the request without the prior consent of the requested State Party.

Article 36: Confidentiality

The Central Authorities and the competent authorities of the requesting and requested States Parties shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in the criminal matter specified in the request and where otherwise authorised by the requested State Party.

Article 37: Fiscal offences

Assistance shall not be refused solely on the grounds that the offence amounts to an offence of a fiscal nature or on the grounds of bank or other financial institution secrecy rules.

Article 38: Language

1. The documents in support of a request for mutual legal assistance shall be in the language of the requesting or requested State Party. The requested State Party may require a translation into one of the official languages of IGAD to be chosen by it.
2. The official languages of IGAD are English and French.

Article 39: Costs

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

Article 40: Transmission and return of material

1. Where compliance with a request under this Convention would involve the transmission to the requesting State Party of any document, record or property, the requested State Party
 - a) may postpone the transmission of the material if it is required in connection with proceedings in that State, and in such a case shall provide certified copies of a document or record pending transmission of the original;
 - b) may require the requesting State Party to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.
2. The requested State Party shall as appropriate authenticate material transmitted by that State.
3. Where any document, record or property is transmitted to the requesting State Party in compliance with a request under this Convention, it shall be returned to the requested State Party when it is no longer required in connection with the criminal matter specified in the request unless that State has indicated that its return is not desired.

Article 41: Special co-operation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of criminal offences to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this Convention.

Article 42: Witness protection measures

1. In the event of a request for the attendance of a witness for examination in the requested State Party, to which the witness consents, both the requesting and requested State Parties

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shall consult one another as to the level of risk, if any, to the witness and shall put in place such measures as are appropriate to address the said risk.

2. The decision as to appropriate measures is a matter for the requesting State Party in accordance with its national laws. The decision shall only be reached after a risk assessment has taken place in both the requesting and requested States and consultation has occurred on those assessments.

Article 43: Consultation in the event of concurrent jurisdiction

1. Where criminal proceedings are contemplated or pending in two or more State Parties against the same person in respect of the same conduct, those State Parties shall consider the appropriate venue for the proceedings to be taken in the interests of the proper administration of justice.
2. In considering the appropriate venue for proceedings, State Parties shall *inter alia* take into account the following:
 - a) location of accused;
 - b) location, protection and other interests of witnesses and third parties;
 - c) interests of any victim and third parties;
 - d) location of documents, exhibits and other relevant material;
 - e) availability and nature of sanctions in the event of conviction;
 - f) capability to address sensitive or confidential information or material;
 - g) delay;
 - h) evidential problems;
 - i) confiscation and proceeds of crime;
 - j) resources and costs;
 - k) any other issue of public interest.

Article 44: Depositing of national laws and regulations

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Each State Party is urged to furnish copies of its laws and regulations that give effect to this Convention and of any subsequent changes to such laws and regulations or a description thereof to the IGAD Secretariat.

Article 45: Request for Mutual Legal Assistance not to cover arrest or extradition

Nothing in this Convention is to be construed as authorising the extradition, or the arrest or detention with a view to extradition, of any person.

PART IX FORMALITIES

Article 46: Signature and accession

1. Until its entry into force, this Convention shall be open for signature by IGAD member States.
2. Subsequent to its entry into force, this Convention shall be open to accession by any IGAD member State. For each such non signatory, this Convention shall enter into force on the 60th day following the date of deposit of its instrument of accession.

Article 47: Reservations

1. Any State Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any State Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the IGAD Secretariat.
3. A State Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another State Party save in so far as it has itself accepted the provision.

Article 48: Relationship with other treaties

The provisions of any treaty or bilateral agreement governing Mutual Legal Assistance between any two States Parties shall be complementary to the provisions of this Convention and shall be construed and applied in harmony with this Convention. In the event of any inconsistency, the provisions of this Convention shall prevail.

Article 49: Ratification, Secretariat and Depositary

1. This Convention is subject to acceptance, approval or ratification¹ by the signatories, in accordance with their respective domestic laws.
2. Instruments of acceptance, approval, ratification or accession shall be deposited with the IGAD Secretariat which shall serve as Depositary and Secretariat of this Convention.

Article 50: Entry into force

1. This Convention shall enter into force on the 60th day following the date upon which three (3) of the IGAD member States have deposited their instruments of acceptance, approval and ratification. For each signatory depositing its instrument after the said entry into force, this Convention shall enter into force on the 60th day after deposit of its instrument.
2. If, after 31 December 2009, this Convention has not entered into force under paragraph 1 of this Article, any signatory which has deposited its instrument of acceptance, approval and ratification may declare in writing to the Executive Secretary of IGAD its readiness to accept entry into force of this Convention under this paragraph. This Convention shall enter into force for any such signatory on the 60th day following the date upon which two (2) such declarations have been deposited by at least two (2) signatories. For any signatory depositing its declaration after such entry into force, this Convention shall enter into force on the 60th day following the date of such deposit.

Article 51: Amendment

1. Any State Party to this Convention may propose its amendment. A proposed amendment shall be submitted to the Executive Secretary of IGAD who shall communicate it to the other States Parties at least 90 days before convening a meeting of the States Parties to consider the proposed amendment.
2. An amendment adopted by consensus of the States Parties shall enter into force 60 days after such adoption and ratification by all of the States Parties.

Article 52: Withdrawal

¹ The Republic of Djibouti and the Federal Democratic Republic of Ethiopia are the only member States that have ratified the convention.

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A State Party may withdraw from this Convention by submitting written notification to the Executive Secretary of IGAD. Such withdrawal shall be effective six (6) months after the date of the receipt of the said notification. After such withdrawal, co-operation shall continue between the States Parties and the State Party which has withdrawn in relation to all requests for Mutual Legal Assistance made before the effective date of withdrawal and which remain pending.

Article 53: Registration

In compliance with Article 102 Of the United Nations Charter the present convention shall be registered with the United Nations Secretary General in New York by the depository.