

UNDCP CARIBBEAN REGIONAL OFFICE

CARIBBEAN MUTUAL LEGAL ASSISTANCE TREATY IN SERIOUS CRIMINAL MATTERS, 2000¹

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- ¹ In this text, reference has been made to the following instruments and the following abbreviations have been used:
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 - UN Drug Conv
 - United Nations Model Treaty on Mutual Assistance in Criminal Matters (General Assembly Resolution 45/117) - UN Model Treaty
 - UNDCP Model Mutual Assistance in Criminal Matters Bill 1998 - UNDCP Model Bill
 - UNDCP Model Witness Protection Bill 1998 - UNDCP Model WPB
 - Economic Community of West African States Convention A/P.1/7/92 on Mutual Assistance in Criminal Matters 1992 - ECOWAS
 - Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth - Harare Scheme
 - Revised draft United Nations Convention against Transnational Organized Crime, July 1999 - UNTOC
 - United Nations Model Treaty on the Transfer of Proceedings in Criminal Matters (45/118)
 - Inter-American Convention on Mutual Assistance in Criminal Matters - Inter-American Conv
 - Caribbean Mutual Legal Assistance Treaty on Serious Criminal Matters, Draft August 2000 - CMLAT
 - Treaty between the United Kingdom of Great Britain and Northern Ireland and the United States of America Concerning the Cayman Islands Relating to Mutual Legal Assistance in Criminal Matters - UK-US Treaty
 - Treaty between the Government of Barbados and the Government of the United States of America in Mutual Legal Assistance in Criminal Matters - Barbados-US Treaty.

CHAPTER I

Article 1 **Definitions**²

For the purpose of this Treaty, the following definitions shall apply:

“Treaty” means the Caribbean Treaty of Mutual Legal Assistance in Serious Criminal Matters;

“State Party” means State which has acceded to this Treaty;

“Requesting State” means a State which has made a request for assistance under this Treaty;

“Requested State” means a State to which a request for assistance under this Treaty has been made;

“Offence” means the activity or facts which constitute a criminal offence under the laws of a party to this Treaty; **DUAL CRIMINALITY IS NOT REQUIRED TO RENDER ASSISTANCE UNDER THIS TREATY, EXCEPT FOR A REQUEST TO TRANSFER PROCEEDINGS**³

²Most of definitions in this Article are derived from the UNDCP Model Bill.

³ECOWAS Art. 25 A request to take proceedings can be compiled with if only the act on which the request is based would be an offence if committed in the requested state.

Harare: Para 7(1)(a) Requested country may refuse to comply in whole or in part with a request for assistance under this scheme if the criminal activity appears to the central authority of that country to concern conduct which would not constitute an offence under the law of that country.

Inter-American Conv Art. 5 assistance shall be rendered even if the act that gives rise to it is not punishable under the legislation of the requested state. When the request pertains to the following procedures: (a) immobilization and sequestration of property and (b) searches and seizures, including house searches, the requested state may decline to render the assistance if the act that gives rise to the request is not punishable under its legislation.

UK-US Treaty Art. 19(3) “Criminal Offense” means (a) any conduct punishable by more than one year’s imprisonment under the laws of both the requesting and requested parties. The definition of “criminal offense” goes on to list specific activities, such as “racketeering” and narcotics trafficking” that apparently do not require double criminality.

US-BD Treaty Art. 1(3) Except as other wise provided in this Treaty, assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the requesting state would constitute an offense under the laws of the requested state.

Art. 3 (1)(e) The central authority of the requested state may deny assistance if the request is made pursuant to Article 16 (Assistance in Forfeiture Proceedings) or Art 14 (Search and Seizure) of this Treaty and relates to conduct which if committed in the requested state would not be an offense in that state.

UNDCP Model Bill Para 3 “Serious Offence” means an offence against a provision of: (ii) a law of a foreign state, in relation to acts or omissions, which had they occurred in [requested state], would have

“Serious crime” means conduct constituting a criminal offence punishable by a maximum deprivation of liberty for a period of not less than [12]⁴ months [except/including an offence against a law relating to taxation]⁵

“Person” means any natural or legal person THIS DEFINITION INCLUDES CORPORATIONS;⁶

“Property” means real or personal property of every description, whether situated in the requested State or elsewhere and whether tangible or intangible, and includes an interest in any such real or personal property;⁷

“Premises” includes the whole or any part of a structure, building, aircraft, or vessel;⁸

“Proceedings” means any procedure conducted by or under the supervision of a judge, magistrate, or judicial officer however described in relation to any alleged or proven offence, and includes an inquiry, investigation, or preliminary or final determination of facts;⁹

“Interest” in relation to property means:

- (i) legal or equitable estate or interest in the property;
 - (ii) right, power or privilege in connection with the property
- whether present or future or vested or contingent;¹⁰

“Proceeds of crime” means any property suspected or found by a court to be derived or realised directly or indirectly from the commission of a serious offence and includes on a proportional basis, property into which any property derived or realised directly from the offence was later successively converted, transformed or intermingled, as well as capital or other economic gains derived or

constituted an offence for which the maximum penalty of imprisonment or other deprivation of liberty for a period not less than [12 months], or more severe penalty [except/including an offence of a purely fiscal character].

⁴UNDCP Model Bill Para 3 (n)
See UK-US Treaty: Art 19(3)

⁵UNDCP Model Bill: Para 3 (n)

⁶UNDCP Model Bill Para 3(h)

⁷UNDCP Model Bill Para 3(l)
See UN Drugs Conv Art 1(q)
See UNTOC Art 2bis (d)

⁸UNDCP Model Bill Para 3(J)

⁹UNDCP Model Bill Para 3(k)

¹⁰UNDCP Model Bill Para 3(g)

realised from such property at any time since the offence;¹¹

“Freezing or seizure” means temporarily prohibiting the transfer, conversion, disposition, or movement of property or temporarily assuming custody or control of the property on the basis of an order issued by a court or a competent authority;¹²

“Confiscation” which includes forfeiture where applicable, means the permanent deprivation of property, proceeds or instrumentalities of an offence by order of a court;¹³

“Witness” means a person who has given, is obliged to give or has agreed to give a written statement or oral testimony or both in relation to the commission or possible commission of a serious criminal offence or in respect of which there are reasonable grounds to believe will be committed;¹⁴

Article 2 **Purpose and Scope**

(1) The purpose of this Treaty is to increase cooperation among Caribbean countries in serious criminal matters.

(2) State Parties shall afford one another the widest measure of mutual legal assistance at any stage of investigations, prosecution and judicial proceedings in relation to serious criminal offences.¹⁵

(3) The Treaty shall be open for signature to all Member States of the Caribbean Community (CARICOM) as well as states having territories in or bordering on the Caribbean sea. TO BE DISCUSSED.

(4) Mutual assistance to be afforded in accordance with this article shall include but not be limited to:¹⁶

- (a) identifying and locating persons;
- (b) assisting or assuring the availability of detained persons or others to give evidence or assist in investigations;

¹¹See UNDCP Model Bill Para 3(m)

¹²UNTOC Art 2bis(f)

¹³UNTOC Art 2bis(g)

¹⁴UNDCP Mod WPB Part 1(2)(c)(i)

¹⁵See ECOWAS Art 2(1). Similar language also appears in the other instruments

¹⁶See matrix on “Scope” to compare the assistance provided for by the different instruments.

- (c) taking evidence or statements from persons;
- (d) obtaining production of judicial or other documents;
- (e) effecting service of judicial documents;
- (f) examining objects and sites;
- (g) providing information and evidentiary items;
- (h) providing originals or certified copies of any documents and records, including bank, financial, corporate or business records which are deemed relevant by the requesting state;
- (i) facilitating the personal appearance of witnesses;
- (j) effecting a temporary transfer of persons in custody to appear as a witness;
- (k) executing search;
- (l) tracing, seizing and confiscating the proceeds or instrumentalities of crime;

Article 3
Liability of Legal Persons¹⁷

- (1) Each State Party shall take such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes.
- (2) Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
- (3) Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences.
- (4) Each State Party shall, in particular, ensure that legal persons held liable in accordance with this Article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

¹⁷UNTOC Art 5

Article 4
Effective Implementation

(1) Each State Party shall take all necessary measures, including legislative and administrative measures, to ensure the effective implementation of the object and aims of the Treaty within its territory.¹⁸

CHAPTER II
REQUESTS FOR ASSISTANCE

Article 5
Competent Authority

(1) State Parties shall designate authorities, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution.¹⁹

(2) Requests for mutual legal assistance shall be made or received by the competent authority of a State Party.²⁰

(3) The competent authority may, in respect of any request for mutual legal assistance in any investigation commenced or proceedings instituted in that State relating to a serious offence:

- (a) grant the request, in whole or in part, on such terms and conditions as he or she thinks fit;
- (b) refuse the request, in whole or in part;
- (c) after consulting with the competent authority of the requesting State, postpone the request, in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of an investigation or proceedings in the territory of the requested State.²¹

¹⁸See UNTOC Art 23 ter(1)

¹⁹UN Drugs Conv Art 7 (8)

²⁰ECOWAS Art 3

²¹UNDCP Model Bill Para 4(2)

Article 6
Contents of Requests for Assistance

- (1) A request for mutual assistance shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing within seven (7) days.²²
- (2) Every request shall include:²³
- (a) the name of the competent authority coordinating the investigations or proceedings to which the request relates;
 - (b) the purpose of the request and a brief description of the assistance sought;
 - (c) a description of the facts alleged to constitute the offence and a statement of the text of the relevant facts and laws;
 - (d) the identity, nationality and address of the person to be served, where necessary;
 - (e) the reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;
 - (f) specifications of any time-limit within which compliance with the request is desired;
 - (g) where applicable, details of the property to be traced, restrained, seized or confiscated, and the grounds for believing that the property is believed to be in the requested State;
 - (h) in the case of a request to restrain or forfeit assets believed on reasonable grounds to be located in the requested State, details of the offence in question, particulars of any proceedings commenced in respect of that offence accompanied by a copy of any relevant restraint or forfeiture order;²⁴
 - (i) a statement setting out any wishes of the requesting State concerning confidentiality relating to the request and the reasons for those wishes;
 - (j) any other information that may assist in giving effect to the request.

²²See ECOWAS Art. 5
See UN Drug Conv Art 7(9)
See US-Barbados Treaty Art. 4(1)

²³See Matrix comparing the required contents of requests under the different instruments.

²⁴See UNDCP Model Bill Para. 7(1)(d)

(3) Requests, supporting documents and other communications made pursuant to this Treaty shall be transmitted in written form in English or in the official language of the requested state.

(4) If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.²⁵

Article 7 **Execution of Requests**

(1) The requested State shall act on requests for assistance as expeditiously as practicable.²⁶

(2) At the request of the requesting State, the requested State shall state the date and place of execution of the demand. Officials and interested persons may be present if the requested State consents.²⁷

(3) Assistance may be refused if:²⁸

(a) granting the request would prejudice national security, public order, other essential public interests in the requested State;²⁹

(b) the offence is regarded by the requested State as being of a political nature;³⁰

²⁵ECOWAS Art 5(3)
UN Mod Treaty Art 5(3)
See Inter-American Conv Art 26
See UNTOC Art 14(16)
See UN Drug Conv Art 7(11)

²⁶See Harare Para 6(1)
See ECOWAS Art 6(1)

²⁷ECOWAS Art 6(2)
See Inter-American Conv Art 16.

²⁸See matrix comparing the bases for refusal permitted by the different instruments

²⁹See Harare Para 7(2)(a)
See UN Model Treaty Art 4(a)
See UN-Barbados Treaty Art 3(1)(b)

³⁰ECOWAS Art 4(1)(b)
UN Model Treaty Art 4(1)(b)

- (c) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin, or political opinions or that that person's position may be prejudiced for any of those reasons;³¹
 - (d) the request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy;³²
 - (e) the request is in respect of offences related to military law which do not constitute offences under ordinary criminal law.³³
- (4) State Parties shall not decline to render mutual legal assistance on the ground of secrecy of banks or of similar financial institutions.³⁴
- (5) Dual criminality shall not be a pre-requisite for the rendering of assistance under this Treaty save in the case of requests for the transfer of proceedings as governed by Chapter VII.
- (6) Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.³⁵
- (7) Reasons shall be given by the requested State for any refusal or postponement of mutual assistance.³⁶

³¹ECOWAS Art 4(1)(c)
UN Model Treaty Art 4(1)(c)
See Harare Para (7)(2)(b)

³²ECOWAS Art 4(1)(d)
UN Model Treaty Art 4 (1)(d)

³³ECOWAS Art 4(1)(f)

³⁴See UNTOC Art 12(10)
See ECOWAS Art 4(2)
UN Model Treaty Art 4(2)

³⁵ECOWAS Art 4(4)
UN Model Treaty Art 4(4)
See UNTOC Art 14(26)

³⁶ECOWAS Art 4(5)
UN Model Treaty Art 4(5)
See UNTOC Art 14(23)
UN Drug Conv Art 7(16)

Article 8
Limitation on Use

The requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used, in so far as the offence, as charged, is an offence in respect of which mutual assistance may be provided under the present Treaty.³⁷

Article 9
Protection of Confidentiality

(1) The requested State shall use its best efforts to keep confidential the request for assistance, its contents, supporting documents and the fact of granting such assistance. In the event that the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State which shall then determine whether the request should be executed notwithstanding and inform the requested State of its decision.³⁸

(2) State Parties shall keep evidence and information provided by other State Parties confidential except where such evidence and information is required for the investigation and proceedings to which the request for assistance pertains.³⁹

Article 10
Costs of Executing Requests

(1) The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties, except that the requesting State shall bear.⁴⁰

- (i) the costs of travel and other expenses related to the transportation of persons from the territory of one state to that of another;
- (ii) the costs of fees for experts witnesses.⁴¹

³⁷ECOWAS Art 8
UN Model Treaty Art 8

³⁸ECOWAS Art 9(a)
UN Model Treaty Art 9(a)

³⁹See UNTOC Art 14(20)
See UN Drug Conv Art 7(9)
See UN Model Treaty Art 9(b)

⁴⁰See UN Model Treaty Art 19
See ECOWAS Art 34

⁴¹Inter-American Conv Art 29(a)

(2) If expenses of a substantial 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.⁴²

Article 11 **Identifying and Locating Persons**⁴³

(1) Requests may be made under this Treaty for assistance in identifying or locating persons believed to be within the territory of the requested State.

(2) In making such a request, the requesting State shall indicate in writing the purpose for which such assistance or cooperation is being sought and shall provide such information as is available to it as to the whereabouts of the person to which the request pertains and any other information which may facilitate the identification of the person.

Article 12 **Effecting Service of Documents**

(1) A request may be made for assistance in the service of documents relevant to a serious criminal offence covered by this Treaty. The request shall be accompanied by the documents to be served.⁴⁴

(2) The requested State shall effect service of documents which are transmitted to it for this purpose by the requesting State.⁴⁵

(3) Proof of service by means of a receipt dated and signed by the person served or a declaration by the requested State stating the form and date of service, shall be transmitted to the requesting State immediately.⁴⁶

⁴²ECOWAS Article 34
UN Model Treaty Art (19)

⁴³See Harare Para 14

⁴⁴See Harare Para 15

⁴⁵UN Model Treaty Art 10 (1)

⁴⁶See Harare Para 15 (4)
See UK-US Treaty Art 13 (3)
See Barbados-US Treaty Art 13 (3)

(4) If service cannot be effected, the reason for this shall be communicated to the competent authority of the requesting State as soon as practicable.⁴⁷

(5) A request to effect service of summonses shall be made to the requested State at least forty-five (45) days/[a reasonable time]⁴⁸ before the date on which the appearance of the person is required. In urgent cases, the requested State may waive the time requirement.⁴⁹

Article 13 **Assistance in Gathering Evidence**⁵⁰

(1) The requested State shall, upon request, take the sworn or affirmed testimony or otherwise obtain statements of persons or require them to provide items of evidence for transmission to the requesting State.⁵¹

(2) Requested states shall, in so far as is practicable, accede to requests for the legal representatives of the parties to the relevant proceedings, and representatives of the requesting State to be present at the proceedings.⁵²

Article 14

⁴⁷See Harare Para 15 (4), which required that the requested State “transmit to the Central Authority of the requesting country a certificate as to the service of the documents, or if they have not been served, as to the reason which have prevented the service.”

⁴⁸The UN Model Treaty does not provide a specific period between service of summons and required appearance. See UK-US Treaty Art 13 (2) and Barbados-US Treaty Art 13 (2), which both provide that requests for service of summons be transmitted “a reasonable time before the scheduled appearance.”

⁴⁹UN Model Treaty Art 10(2): all of the language in this paragraph is taken from the UN Model Treaty, except for the 45 day time period.

⁵⁰See ECOWAS Art 11

⁵¹See Barbados-US Treaty Art 8(1) which provides that “A person in the requested States from whom testimony or evidence is requested shall be compelled, if necessary, to appear and testify or produce items, including documents, records, and articles of evidence.”

⁵²See UK-US Treaty Art 8(4): “The Requested Party shall authorize the presence of such persons as are specified in the request during the tasking of any evidence in the territory of the Requested Party and shall allow persons designated in the request to question the person whose testimony or evidence is being taken.” See Barbados-US Treaty Art 8(3): “The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question the persons giving the testimony or evidence.”

Right to Decline to Give Evidence⁵³

- (1) A person who is requested to give evidence may decline where the laws of either the requested or requesting State permit that person to decline to give evidence in the circumstances of the proceedings or in similar circumstances. However, where proceedings are transferred, the laws of the State where the proceedings are taking place shall govern the right to decline.
- (2) If a person claims that there is a right or obligation to decline to give evidence under the law of the requesting or requested State, the State where that person is present shall, with respect thereto, rely on a certificate of a competent authority of the other State Party as evidence of the existence or non-existence of that right or obligation.⁵⁴

Article 15

Availability of Persons in Custody to Give Evidence or to Assist in Investigations

- (1) Subject to Article 14 above and the laws of the requesting State, at the request of a State Party and if the requested State agrees, a person in custody in the territory of the requested State may be transferred to the territory of the requesting State to give evidence or to assist in investigations.⁵⁵
- (2) While the person transferred is required to be held in custody under the laws of the requested State, the requesting State shall hold that person in custody and shall return that person to the requested State at the conclusion of the proceedings or investigation in relation to which the transfer was sought or at such earlier time as the person's presence is no longer required.⁵⁶
- (3) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as he remains in custody and is of good behaviour.⁵⁷
- (4) Where the requested State advises the requesting State that the person is no longer required

⁵³See UN Model Treaty Art. 12
See ECOWAS Art. 12

⁵⁴UN Model Treaty Art 12(2)
See matrix for variance in treatment of the person's right to decline to evidence by the different instruments, especially the approach taken by the UK-US and Barbados-US Treaties.

⁵⁵ECOWAS Art 13(2)

⁵⁶See ECOWAS Art 13(3)
See UN Model Treaty Art 13(2)

⁵⁷UN Model Bill Para 9(4)

to be held in custody, that person shall be set at liberty and be dealt with in accordance with Article 16 of this Treaty.⁵⁸

Article 16

Availability of Other Persons to Give Evidence or Assist in Investigations

- (1) The requesting State may request the assistance of the requested State in inviting a person:
 - (a) to appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or
 - (b) to assist in the investigations in relation to a criminal matter in the requesting State.⁵⁹
- (2) The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that necessary measures have been taken for the person's safety.⁶⁰
- (3) The request or summons shall indicate the approximate allowances and subsistence expenses payable by the requesting State. This amount shall be determined by the two State Parties involved.⁶¹
- (4) Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.⁶²

⁵⁸ECOWAS Art 13(3)
See UN Model Treaty Art 13(3)

⁵⁹ECOWAS Art 14(1)
UN Model Treaty Art 14(1)

⁶⁰ECOWAS Art 14(2)
UN Model Treaty Art 14(2)

⁶¹ECOWAS Art 14(3)
See UN Model Treaty Art 14(3)

⁶²ECOWAS Art 14(4)
UN Model Treaty Art 14(4)

Article 17
Search and Seizure

(1) The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidential purposes, provided that the rights of bona fide third parties are protected.⁶³

CHAPTER III
VICTIM AND WITNESS PROTECTION PROGRAMME

Article 18⁶⁴

(1) Each State Party shall adopt appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in its criminal proceedings who give testimony concerning crimes covered by this Treaty and, as appropriate, for their relatives and other persons close to them.

(2) The measures envisaged in paragraph (1) above may include, among other things, without prejudice to the rights of the defendant, including the right to due process:

- (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
- (b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology, such as video links or other adequate means.

(3) State parties shall consider entering into arrangements with other States for the relocation of persons described in paragraph 1 of this Article.

(4) The provisions of this Article shall apply also to victims insofar as they are witnesses.

(5) States Parties shall take appropriate measures within their means to provide assistance and protection to victims of offences covered by this Treaty, in particular in cases of threat of retaliation or intimidation.

(6) State Parties shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Treaty.

⁶³ECOWAS Art 17
UN Model Treaty Art 17

⁶⁴UNTOC Art 18 and Art 18bis

(7) State Parties shall, subject to their own domestic laws, enable views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings against offenders in a manner not prejudicial to the rights of the defense.

Article 19 **Safe Conduct Guarantee**

(1) (a) Where a person, whether or not detained, is in the requesting State, in response to a request under paragraph [] of this Treaty to give evidence in a proceeding or to assist in an investigation, prosecution or related proceeding, the person shall not, while in that State be:⁶⁵

- (i) detained, prosecuted or punished;⁶⁶
- (ii) subjected to civil process;⁶⁷ or
- (iii) subjected to any other restriction of personal liberty⁶⁶

in respect to any act, omission or conviction prior to his departure from the requested State.⁶⁸

(b) that person shall not, without that person's consent, be required to give evidence in any proceedings or to assist in any investigation other than the proceedings or investigations to which the request relates.⁶⁹

(2) Paragraph 1 of the present Article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of 15 consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.⁷⁰

⁶⁵UNDCP Model Bill Para 11(1)

⁶⁶See UNTOC Art 14(27)
See UNDCP Model Bill Para 11(1)(a)
See UN Model Treaty Art 15 (1)(a) and (b)
See ECOWAS Art 15(1)(a) and (b)

⁶⁷UNDCP Model Bill Para 11(1)(b)

⁶⁸See UNDCP Model Bill Para 11(1)
See UNTOC Art 14 (27) and UN Drugs Conv Art 7(18) for inclusion of convictions

⁶⁹ECOWAS Art 15(1)(b)
UN Model Treaty Art 15(1)(b)

⁷⁰UN Model Treaty Art 15(2)
ECOWAS Art 15(2)

CHAPTER IV
RESTRAINT AND FORFEITURE OF PROCEEDS OF CRIME

Article 20
Requests for Location of Proceeds of Crime

- (1) A State Party may seek assistance in identifying, locating, and assessing the value of property believed to have been derived or realised, directly or indirectly from, or to have been used in, or in connection with, the commission of a serious offence and believed to be within the requested State.⁷¹ In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds of crime may be located within the jurisdiction.⁷²
- (2) The request shall contain such information as is available to the requesting State as to the nature and location of the property and as to any person in whose possession or control the property is believed to be.⁷³
- (3) The requested State shall endeavor to ascertain whether any proceeds of the crime alleged are located within its jurisdiction and shall notify the requesting State of the results of its enquiries.⁷⁴
- (4) In pursuance of a request made under this Treaty, the requested State shall endeavor to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.⁷⁵

Article 21
Requests for Restraint of Assets

- (5) Where, pursuant to Article 20 of this Treaty, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect to those proceeds by a court of the requesting State.⁷⁶

⁷¹See Harare Para 26(1) and 29. The Harare Scheme requires that the person whose assets are at issue under this Article be convicted or charged to be subject to the procedures described.

⁷²ECOWAS Art. 18

⁷³Harare Para 26(2)

⁷⁴ECOWAS Art 18
Optional Protocol to the UN Model Treaty Concerning the proceeds of Crime Para 2

⁷⁵ECOWAS Art 19(1)
Optional Protocol to the UN Model Treaty Concerning the proceeds of Crime Para 3

⁷⁶ECOWAS Art 19(2)
Optional Protocol to the UN Model Treaty Concerning the proceeds of Crime Para 4

Article 22
Enforcement of Foreign Orders for the Forfeiture of Proceeds of Crime

- (1) A State Party may request assistance of another State Party in securing the recognition or enforcement of an order relating to the proceeds of crime within the jurisdiction of the requested State.⁷⁷
- (2) The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State.⁷⁸
- (3) The request shall be accompanied by a copy of any order made in the requesting country and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting State which may be required in connection with the procedures to be followed in the requested State.⁷⁹
- (4) The law of the requested country shall apply to determine the circumstances and manner in which an order may be made, recognized or enforced in response to the request.⁸⁰
- (5) (a) Upon receipt of a request for enforcement of a foreign order relating to proceeds of crime, the competent authority of the requested State, may apply to a court for registration of the order.
- (b) A court in the requested State shall register an (foreign) order if the court is satisfied that:
- (i) at the time of registration, the order is in force in the requesting state and is not subject to appeal;
 - (ii) the person was given notice of the proceedings in sufficient time to enable him or her to defend them; or
 - (iii) the person had absconded or died before such notice could be given.⁸¹

Article 23

⁷⁷See Harare Para 28(1)

⁷⁸Optional Protocol to UN Model Treaty Concerning the Proceeds of Crime.

⁷⁹Harare Para 28(2)

⁸⁰Harare Para 28(3)

⁸¹See UNDCP Model Bill Para 13

Protection of Third Parties

(6) The State Parties shall ensure that the rights of bona fide third parties and victims are respected in all requests relating to the restraint and forfeiture of the proceeds of crime.⁸²

CHAPTER V

Article 24 **Disposal of Assets**

(1) When acting on the request made by another State Party in accordance with this Treaty, States Parties shall give priority consideration to returning the confiscated assets to the requesting State Party so that it can give compensation to the victims of the crime or return such assets to their legitimate owners.⁸³

(2) The proceeds of crime confiscated by a State Party pursuant to request under this Treaty or the funds derived from the sale of such proceeds, shall be shared among:

- (a) the requested State;
- (b) the requesting State;
- (c) the Secretariat; and
- (d) the Regional Fund for Caribbean Cooperation⁸⁴

The proportions shall be determined by the State in which the assets were seized.

CHAPTER VI

Article 25 **Transfer of Proceedings**

(1) State Parties shall give consideration to the possibility of transferring to one another, proceedings for criminal prosecution of an offence covered by this Treaty, in cases where such transfer is considered to be in the interests of the proper administration of justice, and in particular in cases where more jurisdictions are involved, with a view to concentrating the prosecution.⁸⁵

(2) For the purposes of applying this Treaty, State Parties shall take the necessary legislative measures to ensure that a request for the transfer of proceedings under this Treaty shall allow the

⁸²ECOWAS Art 20(2)

See Optional Protocol to the UN Model Treaty Concerning the Proceeds of Crime Para (5)

⁸³UNTOC Art 7ter

⁸⁴See CMLAT Art. 35 for establishment of the fund.

⁸⁵UNTOC Article 16

See UN Drugs Conv Art 8

requested State to exercise the necessary jurisdiction.⁸⁶

Article 26

Requests for Transfer of Proceedings

(1) The request, supporting documents and other communications shall be transmitted to the competent authority of the requested State in conformity with the provisions of Article 5 of this Treaty.⁸⁷

(2) The request to transfer proceedings shall be made in writing and shall contain or be accompanied by documents containing the following information:⁸⁸

- (a) the authority presenting the request;⁸⁹
- (b) a description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;⁹⁰
- (c) a statement on the results of investigations which substantiate the suspicion of an offence;⁹¹
- (d) the legal provisions of the requesting State on the basis of which the act is considered to be an offence;⁹²
- (e) a reasonably exact statement of the identity, nationality and residence of the suspected person; and⁹³
- (f) any other information that may assist in giving effect to the request.⁹⁴

(3) Requests under Article 24, supporting documents and all other communication pertaining to

⁸⁶See ECOWAS Art 21(2)

⁸⁷See ECOWAS Article 22

⁸⁸See ECOWAS Art 23(1)(a)

⁸⁹ECOWAS Article 23(1)(a)

⁹⁰ECOWAS Article 23(1)(b)

⁹¹ECOWAS Article 23(1)(c)

⁹²ECOWAS Article 23(1)(d)

⁹³ECOWAS Art 23(e)

⁹⁴CMLAT Art 6(1)(j)

a request for the transfer of proceedings pursuant to this Treaty shall be transmitted in written form in English or in the official language of the requested State.⁹⁵

(4) If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.⁹⁶

Article 27 **Decision on the Request**

The competent authority of the requested state shall examine what actions to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own laws, and shall promptly communicate their decision to the requesting State.⁹⁷

Article 28 **Dual-Criminality**

A request to transfer proceedings can only be compiled with if the act on which the request is based constitutes an offence under the laws of the requested State.⁹⁸

Article 29 **Grounds for Refusal**⁹⁹

- (1) A request may be refused if:
 - (a) The suspected person is not a national of or has no connection with the requested State;
 - (b) The act is an offence under military law, which is not also an offence under criminal law;
 - (c) The offence is regarded by the requested State as being of a political nature.
- (2) If the requested State refuses acceptance of a request for transfer of proceedings it shall

⁹⁵See CMLAT Art 6(2)
See ECOWAS Art 23(2)

⁹⁶CMLAT Art 6(3)
ECOWAS Art 23(3)

⁹⁷See ECOWAS Art 24

⁹⁸See ECOWAS Art 25
United Nations Model Transfer of Proceedings

⁹⁹See ECOWAS Art 26

communicate in writing the reasons for refusal to the requesting State.

Article 30
The Position of the Suspected Person

(1) The suspected person, his legal representative, or next of kin may express to either State Party his or her interest in the proceedings.¹⁰⁰

(2) Before making a request for the transfer of proceedings, the requesting State, shall, as far as practicable, allow the suspected person to present his or her views on the offence which it is alleged that he or she has committed, and on the intended transfer, unless that person has absconded or otherwise obstructed the course of justice or is likely to abscond or obstruct justice.¹⁰¹

Article 31
The Rights of the Victim¹⁰²

State Parties shall ensure in the transfer of proceedings that the rights of the victim in the offence, in particular his or her right to restitution or compensation, shall not be adversely affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, provided that the laws of the requested State allow this. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

Article 32
Effects of the Transfer of Proceedings in the State Parties

(1) Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally suspend prosecution, except necessary investigation, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall discontinue further prosecution of the offence which was the subject of the transfer for which transfer of proceedings was sought.¹⁰³

(2) The proceedings transferred pursuant to this Treaty, shall be governed by the laws of the requested state. When charging the suspected person under its laws, the requested State may make adjustment to particular elements in the legal description of the offence so as to conform with its laws.

Where the competence of the requested State is based on the provision set forth in Article [] of this

¹⁰⁰See ECOWAS Art 27(1)

¹⁰¹ECOWAS Art 27(2)

¹⁰²See ECOWAS Art 28

¹⁰³See ECOWAS Art 29

Treaty, the sanction imposed by the requested State shall not be more severe than that provided by the laws of the requesting State.¹⁰⁴

(3) Any act pertaining to proceedings or procedural requirements performed in the requesting State in accordance with its laws shall have the same validity in the requested State as if the act had been performed in or by the authorities of that state Party in so far as compatible with the laws of the requested State.¹⁰⁵

(4) The requested State shall inform the requesting State of the decision taken as a result of the proceedings. A copy of the final decision shall be transmitted to the requesting State.¹⁰⁶

Article 33 **The Plurality of Criminal Proceedings**

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequence of a request for transfer of proceedings.¹⁰⁷

Article 34 **Provisional Measures**

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own laws if the offence in respect of which transfer of proceedings as requested, had been committed in its territory.¹⁰⁸

CHAPTER VII

¹⁰⁴See ECOWAS Art 30(1)

¹⁰⁵See ECOWAS Art 30(2)

¹⁰⁶ECOWAS Art 30(3)

¹⁰⁷ECOWAS Art 32
UN Model Treaty on the Transfer of Proceedings in Criminal Matters Art. 13

¹⁰⁸ECOWAS Art. 31

Article 35
Secretariat

- (1) A Treaty Secretariat shall be established. The size and proposed budget of the Secretariat shall be determined by the Law Ministers of CARICOM.
- (2) The functions of the secretariat shall be:
 - (a) To compile and submit reports on all requests for assistance made pursuant to this Treaty and the outcome of such requests. These reports shall be prepared annually and shall be submitted to the competent authority of each State Party and to the annual sessions of CARICOM;
 - (b) To facilitate the provision of assistance to the Parties, in the implementation of the Treaty, the compilation of information required in accordance with the provisions of this Treaty and in any other way that may ensure the widest possible measure of co-operation;
 - (c) To ensure coordination with the secretariats of other relevant international bodies where necessary;
 - (d) To promote and facilitate the organization of seminars and conferences for State Parties and national experts on mutual legal assistance, penal law developments, changes in drug and money laundering legislation, and any other matters which may be relevant to regional cooperation in the prevention of serious criminal offences;
 - (e) To provide guidelines on asset-sharing;
 - (f) To manage the Regional Fund for Caribbean Cooperation referred to in Article 35 below.

CHAPTER VIII

Article 36
Confiscated Proceeds of Drug Related Offences to be credited to Regional Fund for Caribbean Cooperation

- (1) State Parties will give special consideration to contributing a portion of the value of proceeds from drug-related offences to the Regional Fund for Caribbean Cooperation or to other Intergovernmental bodies specializing in the fight against transnational crime.

CHAPTER IX

Article 37

Settlement of Disputes¹⁰⁹

- (1) In the case of a dispute, between two or more State Parties, relating to the interpretation or application of this Treaty, the State Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, judicial process or other peaceful means of their own choice.
- (2) If, nine (9) months after the date of the request for resolution of the dispute in the manner referred to in paragraph 1 above, the dispute cannot be settled, the matter may be referred to the Caribbean Court of Justice by any one of the State Parties.
- (3) Each State Party may, at the time of signature or ratification, acceptance or approval of this Treaty, declare that it does not consider itself bound by paragraph 2 of this article. The other State Parties shall not be bound by paragraph 2 with respect to any State Party that has made such a reservation.

CHAPTER X

Article 38 **Arrangement**¹¹⁰

State Parties may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Treaty, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Article 39 **Accession**

- (1) After entry into force of this Treaty, a maximum of fifteen (15) non-Member States of CARICOM may be invited to accede to this Treaty.
- (2) When a non-Member State of CARICOM requests to be invited to accede to this Treaty, it shall submit this request to the Secretariat, which shall immediately notify all CARICOM Member States.

Article 40 **Amendment and Review**

- (1) Any State Party may submit proposals for the amendment or review of this Treaty.

¹⁰⁹UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 Article 32

¹¹⁰See ECOWAS Art 35

(2) The text of any such amendment and the reasons therefor shall be submitted to the Secretariat

who shall forward them to all State parties within thirty (30) days of receipt and ask them whether they accept the proposed amendment.¹¹¹

(3) If a proposed amendment has been rejected by any Party, the Secretariat shall consult with the Parties and, if a majority so requests, the Secretariat shall bring the matter, together with any comments made by the Parties, before the CARICOM Legal Affairs Committee which may decide to call a conference. Any amendment resulting from such a Conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretariat.

Article 41 **Deposit and Entry into Force**

(1) This Treaty shall enter into force provisionally upon signature by heads of State and Governments of State parties and definitively upon ratification by at least five (5) State Parties in conformity with the constitutional provisions of each State party.

(2) This Treaty and all the instruments of ratification shall be deposited with the Secretariat which shall forward certified true copies to all State parties, notify them of the dates of deposit of the instruments of ratification and register this Treaty with CARICOM, the United Nations and any other organization determined by Council.

Article 42 **Denunciation**

(1) A State Party may denounce this Treaty at any time by a written notification addressed to the Secretariat.

(2) Such denunciation shall take effect for the State Party concerned one (1) year after the date of receipt of the notification by the Secretariat.¹¹²

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

¹¹¹See ECOWAS Art 37

¹¹²See UN Drugs Conv Art 30.

