

TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF PERU ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE REPUBLIC OF PERU, hereinafter referred to as the "Contracting Parties";

DESIRING to improve mutual legal assistance in criminal matters and to cooperate more effectively in the investigation and prosecution, including trial and sentencing, of criminal matters,

HAVE AGREED as follows;

PART I - GENERAL PROVISIONS

ARTICLE 1

OBLIGATION TO PROVIDE MUTUAL LEGAL ASSISTANCE

(1) The Contracting Parties shall, in accordance with this Treaty, provide each other with the widest measure of mutual legal assistance in criminal matters.

(2) Mutual legal assistance is any assistance given by the Requested State in respect of investigations or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.

(3) Criminal matters means, for the Republic of Peru, investigations and proceedings relating to any criminal offence created by penal law and, for Canada, investigations or proceedings relating to any offence created by Parliament or by the legislature of a province.

(4) Criminal matters includes investigations or proceedings relating to offenses concerning taxation, duties and customs.

(5) Assistance includes, particularly:

(a) locating persons and objects;

(b) taking evidence and obtaining statements;

- (c) authorizing the presence of persons from the Requesting State at the execution of requests;
- (d) providing documents, including bank documents, records, and other documentary evidence;
- (e) providing information;
- (f) providing objects, including lending exhibits;
- (g) search and seizure;
- (h) taking measures to locate, restrain and forfeit the proceeds of crime;
- (i) serving documents;
- (j) facilitating the appearance of witnesses or the assistance of persons in investigations;
- (k) making detained persons available to give evidence or assist investigations; and
- (l) providing other assistance consistent with the objects of this Treaty.

ARTICLE 2

APPLICABLE LAW

- (1) Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as not prohibited by that law, in the manner specified by the Requesting State.
- (2) The Requested State shall, upon request, inform the Requesting State of the date and place of execution of the request for assistance.
- (3) The Requested State shall not refuse to execute a request on the ground of bank secrecy.

ARTICLE 3

REFUSAL OR POSTPONEMENT OF ASSISTANCE

- (1) Legal Assistance may be refused where:
 - (a) the Requested State considers that execution of the request would prejudice the sovereignty, security, public order or other essential interests of the Requested State;

(b) the request refers to an offence considered by the Requested State to be a political offence or an offence of a purely military nature.

(2) Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

(3) The Requested State shall:

(a) promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision;

(b) evaluate, prior to refusing or postponing the execution of a request, whether legal assistance may be provided under the conditions it deems necessary. These conditions shall, if accepted, be complied with by the Requesting State.

PART II - OBTAINING EVIDENCE

ARTICLE 4

RESTRICTION OF USE

The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested State.

ARTICLE 5

LOCATING AND IDENTIFYING PERSONS AND OBJECTS

The competent authorities of the Requested State shall make best efforts to ascertain the location and identity of persons and objects specified in the request.

ARTICLE 6

TAKING EVIDENCE IN THE REQUESTED STATE

(1) A person requested to testify and produce documents, records or objects in the Requested State shall be compelled, if necessary, to appear and testify and produce such documents, records or objects, in accordance with the law of the Requested State.

(2) To the extent not prohibited by the law of the Requested State, officials of the Requesting State and other persons specified in the request shall be permitted to be present at the execution of the request and to participate in the proceedings in the Requested State.

(3) The right to participate in the proceedings in the Requested State shall include the right of any official of the Requesting State and other persons specified in the request, and present, to pose questions. The persons present at the execution of a request shall be permitted to make a verbatim record of the proceedings. The use of technical means to make such a verbatim record shall be permitted.

ARTICLE 7

PRESENCE OF PERSONS AT THE EXECUTION OF REQUESTS

To the extent not prohibited by the law of the Requested State, persons specified in the request shall be permitted to be present at the execution of the request.

ARTICLE 8

PROVISION OF DOCUMENTS, RECORDS AND OBJECTS

(1) The Requested State shall provide copies of publicly available information, documents and records of government departments and agencies.

(2) The Requested State may provide any information, documents, records and objects in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as would be available to its own law enforcement and judicial authorities.

(3) The Requested State may provide certified true copies of documents or records, unless the Requesting State expressly requests originals.

(4) Original documents, records or objects provided to the Requesting State shall be returned to the Requested State as soon as possible, upon request.

(5) Insofar as not prohibited by the law of the Requested State, documents, records or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 9

PROVISION OF CRIMINAL RECORDS

Without limiting the provisions of Article 7, the Requested State shall, in accordance with law and upon request, provide records of the previous criminal convictions of a person.

ARTICLE 10

SEARCH AND SEIZURE

(1) The Requested State shall execute a request for a search and seizure.

(2) The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or objects seized and the circumstances of the seizure.

ARTICLE 11

PROCEEDS OF CRIME

(1) The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.

(2) When, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to restrain and forfeit these proceeds;

(3) Proceeds forfeited pursuant to this Treaty shall accrue to the Requested Party, unless specified in a separate agreement.

ARTICLE 12

RESTITUTION AND FINE ENFORCEMENT

The Requested State shall, to the extent permitted by its law, provide assistance concerning restitution to the victims of crime and the collection of fines imposed as a sentence in a criminal prosecution.

ARTICLE 13

SERVICE OF DOCUMENTS

(1) The Requested State shall effect service of any document, including judicial documents, sent to it for this purpose by the Requesting State

(2) Service may be effected by personally delivering the document to the person. The Requested State shall, upon request, effect service in accordance with its law or in the manner specified in the request, provided that it is not prohibited by its law.

(3) The Requested State shall return a proof of service in the manner required by the Requesting State . Where service cannot be effected the Requested State shall promptly inform the Requesting State of the reason.

(4) The Requesting State shall transmit a request for the service of a document requesting the appearance of a person located in the Requested State in order that the document may reach this person within a reasonable period of time prior to the date set for appearance.

ARTICLE 14

ATTENDANCE OF PERSONS INCLUDING WITNESSES AND EXPERTS

IN THE REQUESTING STATE

(1) Where the Requesting State requires the presence of a person to assist in an investigation or to appear as a witness including as an expert witness, in the Requesting State, it shall so indicate in the request.

(2) The Requested State shall encourage the person to appear. The Requested State shall promptly inform the Requesting State of the response of the person.

(3) The Requesting State shall bear the cost of the fees, travel expenses, and allowances payable to a person assisting an investigation or appearing as a witness, including as an expert witness, in the Requesting State pursuant to a request.

ARTICLE 15

FAILURE TO APPEAR

A witness, including an expert witness, who does not comply with a request seeking that person's attendance in the Requesting State shall not be subjected to any sanction or measure of constraint in that state except when, subsequently, that person voluntarily enters the territory of the Requesting State and is then again duly ordered to appear.

ARTICLE 16

SAFE CONDUCT

(1) Subject to Article 17 (2), a person present in the Requesting State in response to a request shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than that to which the request relates.

(2) Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left within thirty days after receiving official notification that the person's attendance is no longer required or, having left, has voluntarily returned.

(3) A person who fails to appear in the Requesting State shall not be subjected to any sanction or compulsory measure in the Requested or Requesting State except as provided in Article 15.

ARTICLE 17

TEMPORARY TRANSFER OF SENTENCED PERSONS IN CUSTODY

(1) Upon request, a person serving a sentence in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.

(2) When the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.

(3) When the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be

set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person=s attendance.

PART III - PROCEDURE

ARTICLE 18

CENTRAL AUTHORITIES

(1) For the purposes of this Treaty, the Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister and the Central Authority for the Republic of Peru shall be the Public Ministry of Peru.

(2) The Central Authorities shall transmit and receive requests for legal assistance and responses thereto under this Treaty.

(3) The Central Authorities of the contracting Parties shall communicate directly with one another.

ARTICLE 19

CONFIDENTIALITY

(1) The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

(2) The Requesting State may require that the request, its contents, supporting documents and any action taken pursuant to the request be kept confidential. If the request cannot be executed without breaching the confidentiality requirement, the Requested State shall so inform the Requesting State prior to executing the request and the latter shall then determine whether the request should nevertheless be executed.

ARTICLE 20

CONTENTS OF REQUESTS

(1) In all cases requests for assistance shall indicate:

- (a) the competent authority conducting the investigation or proceedings to which the request relates;
- (b) the nature of the investigation or proceedings, and include a summary of the facts and a copy of the applicable laws;
- (c) the purpose of the request and the nature of the assistance sought;
- (d) the degree of confidentiality required and the reasons therefor; and
- (e) any time limit within which the request should be executed.

(2) In the following cases requests for assistance shall include:

- (a) in the case of requests for the taking of evidence, search and seizure, or the location, restraint or forfeiture of proceeds of crime, a statement indicating the basis for belief that evidence or proceeds may be found in the Requested State;
- (b) in the case of requests to take evidence from a person, an indication as to whether sworn or affirmed statements are required and a description of the subject matter of the evidence or statement sought;
- (c) in the case of lending of exhibits, the current location of the exhibits in the Requested State and an indication of the person or class of persons who will have custody of the exhibits in the Requesting State, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;
- (d) in the case of making detained persons available, an indication of the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return;

(3) If necessary and where possible requests for assistance shall include:

- (a) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
- (b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor

(4) If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information.

(5) Requests shall be made in writing. In urgent circumstances, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 21

EXECUTION OF REQUESTS

(1) The Central Authority of the Requested State shall, where the request conforms with the provisions of this Treaty, transmit the request to its competent authority.

(2) The Central Authority of the Requested State shall, where the request does not conform with the provisions of this treaty, inform the Central Authority of the Requesting State.

ARTICLE 22

EXEMPTION FROM AUTHENTICATION

Documents, records or objects transmitted or received pursuant to this Treaty shall not require any certification or authentication except as specified in Article 8.

ARTICLE 23

LANGUAGE

(1) Requests made pursuant to this Treaty and supporting documents shall be in an official language of the Requested State.

(2) The Requested State shall submit documents and statements obtained in executing a request in the language in which they are produced in that State.

ARTICLE 24

COSTS INVOLVED IN THE EXECUTION OF REQUESTS

(1) The Requested State shall meet the cost of executing the request for assistance, except that the Requesting State shall bear the following expenses:

(a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State and any expenses payable to that person while in the Requesting or Requested State pursuant to a request under Articles 7, 14 or 17 of this Treaty;

(b) the expenses and fees of experts either in the Requested State or the Requesting State;

(c) the expenses of translation, interpretation and transcription.

(2) If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV - FINAL PROVISIONS

ARTICLE 25

OTHER ASSISTANCE

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties arrangements or otherwise, or prevent the Contracting Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 26

CONSULTATIONS

The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

ARTICLE 27

ENTRY INTO FORCE AND TERMINATION

(1) This Treaty shall enter into force on the date on which the Contracting Parties have notified each other that their legal requirements have been complied with.

(2) This Treaty shall apply to any request presented after its entry into force even if the relevant acts or omissions occurred before that date.

(3) Either Contracting Party may terminate this Treaty. The termination shall take effect one year from the date on which it was notified to the other Contracting Party.

IN WITNESS THEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in two copies at Ottawa, this 27th day of October One thousand nine hundred and ninety height, in the English, French and Spanish languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA

"GRAEME CLARK"

Ambassadeur du Canada