

**TREATY BETWEEN
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
AND
THE PEOPLE'S REPUBLIC OF CHINA
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Democratic Socialist Republic of Sri Lanka and the People's Republic of China (hereinafter referred to as "the Parties"),

Guided by the friendly relations between the two countries;

Recognizing the need to facilitate the widest possible measures of mutual legal assistance in criminal matters;

Reaffirming the principles of sovereignty, territorial integrity and non-interference in internal affairs of the countries;

Deeply concerned with the rising trends and escalation of organized crimes and determined to effectively combat the commission of criminal acts, both national and transnational;

Recognizing the importance of a treaty on mutual legal assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crimes in new forms and dimensions;

Desirous of extending to each other the widest possible measures of cooperation in combating crimes by strengthening cooperation in the prevention, investigation, prosecution and judicial proceedings;

Have agreed as follows:

Article 1

Scope of Application

1. The Parties shall, in accordance with the provisions of this Treaty, provide widest mutual legal assistance in criminal investigations, prosecutions and judicial proceedings in criminal matters.

2. Such assistance shall include:

- (a) serving documents of criminal proceedings;
- (b) taking testimonies or statements from persons;
- (c) providing evidence, including but not limited to physical evidence, documentary evidence, audio-visual materials and electronic data;
- (d) obtaining and providing expert opinions;
- (e) locating and identifying persons;
- (f) conducting inspections or examining sites or objects;
- (g) making persons available for giving evidence or assisting in investigations;
- (h) transferring persons in custody temporarily for giving evidence or assisting in investigations;
- (i) conducting inquiries, searches, freezing and seizures;
- (j) assistance relating to proceeds from criminal activities and instrumentalities of crime;
- (k) notifying results of criminal proceedings and supplying criminal records;
- (l) exchanging information on law; and
- (m) any other forms of assistance which is not contrary to the laws of the Requested Party.

3. This Treaty shall only apply to mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. For the purpose of this Treaty, the Central Authorities designated by the Parties shall communicate directly with each other for matters concerning mutual legal requests and assistance.

2. The Central Authorities referred to in Paragraph 1 of this Article shall be the Ministry of Justice for the People's Republic of China and the Secretary, Ministry of Justice for the Democratic Socialist Republic of Sri Lanka.

3. Should either Party change its designated Central Authority, it shall inform the other Party of such change through diplomatic channels.

Article 3

Refusal of Assistance

1. The Requested Party may refuse to provide assistance if one of the following circumstances appears:

(a) the request relates to conduct which would not constitute an offence under the laws of the Requested Party. The Requested Party may, nevertheless, agree to provide assistance for a particular request, irrespective of whether the conduct would constitute an offence under the laws of the Requested Party;

(b) the Requested Party considers that the request relates to a political offence. In the application of this Treaty, the following offences shall not be considered as political offences:

- i) an offence related to terrorism;
- ii) an offence which is not considered as a political offence under any international convention to which both States are parties; and
- iii) an offence against the life or person of a Head of State, a Head of Government or any member of their immediate families;

(c) the request relates to an offence which only constitutes a military offence;

(d) there are substantial grounds for the Requested Party to believe that the request has been made for the purpose of investigating, prosecuting, punishing or other proceedings against a person on account of that person's race, sex, religion, nationality or political opinions, or that the position of such person may be prejudiced for any of those reasons;

(e) the Requested Party has terminated criminal proceedings or has already rendered a final judgement against the same suspect or accused for the same offence as related to in the request;

(f) the Requested Party believes that the execution of the request would impair its sovereignty, territorial integrity, security, public order or public policy.

2. The Requested Party may postpone to provide assistance if execution of a request would interfere with any ongoing investigation, prosecution or judicial proceedings in the Requested Party.

3. Before refusing a request or postponing its execution, the Requested Party shall consider whether assistance may be granted subject to such

conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.

4. If the Requested Party refuses or postpones to provide assistance, it shall inform the Requesting Party of the reasons for the refusal or postponement.

Article 4

Form and Content of Requests

1. A request for assistance shall be made in writing and affixed with the signature or seal of the Central Authority of the Requesting Party. In urgent situations, the Requesting Party may make a request in other forms such as telegram, facsimile or electronic mail, which are acceptable to the Requested Party and the Requesting Party shall confirm the request in writing promptly thereafter.

2. A request for assistance shall include the following:

(a) the name of the competent authority conducting the investigation, prosecution or judicial proceedings to which the request relates;

(b) a description of the nature and the facts of the case to which the request relates, and the text of the provisions of the applicable laws;

(c) a description of the assistance sought, its purpose and its relevance to the case; and

(d) the time limit within which the request is desired to be executed.

3. To the extent necessary and possible, a request for assistance shall also include the following:

(a) information on the identity and residence of the person from whom evidence is sought;

(b) information on the identity and residence of the person to be served

and that person's connection to the proceedings;

(c) information on the identity and whereabouts of the person to be located or identified;

(d) a description of the object to be inspected or examined;

(e) a description of the property to be inquired, searched, frozen or seized;

(f) a description of any particular procedure desirous to be followed in executing the request and the reasons therefor;

(g) a description of the requirement of confidentiality and the reasons;

(h) information as to the allowances and expenses to which a person invited to appear in the Requesting Party to give evidence or assist in investigation will be entitled;

(i) list of questions to be answered by witnesses; and

(j) such other information which may facilitate execution of the request.

4. If the Requested Party considers the contents in the request are not sufficient to enable it to deal with the request, it may request additional information.

5. Requests and supporting documents requested in accordance with this Treaty shall be made in duplicate.

Article 5

Language

Requests and supporting documents submitted pursuant to this Treaty shall be accompanied by a translation into either the official language of the Requested Party or English.

Article 6

Execution of Requests

1. The Requested Party shall execute a request for assistance in accordance with its national laws.

2. Insofar as not contrary to its national laws, the Requested Party may execute the request for assistance in the manner requested by the Requesting Party.

3. The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the assistance requested can not be provided or can not be provided within the time limit specified by the Requesting Party, the Requested Party shall promptly inform the Requesting Party of the reasons.

Article 7

Confidentiality and Limitation on Use

1. The Requested Party shall keep confidential a request, including its contents, supporting documents and any action taken in accordance with the request, if so requested by the Requesting Party. If the request can not be executed without breaching such confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should, nevertheless, be executed.

2. The Requesting Party shall keep confidential the information and evidence provided by the Requested Party, if so requested by the Requested Party, or shall use such information or evidence only under the terms and conditions specified by the Requested Party.

3. The Requesting Party shall not use any information or evidence obtained under this Treaty for any purpose other than for the case stated in the request without the prior consent of the Requested Party.

Article 8

Service of Documents

1. The Requested Party shall, in accordance with its national laws and upon request, effect service of documents that are transmitted by the Requesting Party. However, the Requested Party shall not be obliged to effect service of a document which requires the person to be served to appear as accused.

2. The Requested Party shall, after effecting service, provide the Requesting Party a proof of service that shall indicate the date, place and manner of service, and be signed and/or sealed by the authority which served the document.

Article 9

Taking of Evidence

1. The Requested Party shall, in accordance with its national laws and upon request, take evidence and transmit it to the Requesting Party.

2. When the request concerns the transmission of documents or records, the Requested Party may transmit certified copies or photocopies thereof. However, where the Requesting Party explicitly requires transmission of originals, the Requested Party shall meet such requirement to the extent possible.

3. Insofar as not contrary to the national laws of the Requested Party, the documents and other materials to be transmitted to the Requesting Party

in accordance with this Article shall be certificated in such forms as may be requested by the Requesting Party in order to make them admissible in evidence according to the national laws of the Requesting Party.

4. Insofar as not contrary to the national laws of the Requested Party, the Requested Party shall permit the presence of such persons as specified in the request during the execution of the request, and may allow such persons to pose questions, through personnel of competent authorities of the Requested Party, to the person from whom evidence is to be taken. For this purpose, the Requested Party shall promptly inform the Requesting Party of the time and place of the execution of the request.

Article 10

Refusal to Give Evidence

1. A person who is required to give evidence under this Treaty may refuse to give evidence if the national laws of either Party permit the person not to give evidence in similar circumstances.

2. If a person who is required to give evidence under this Treaty claims a right or privilege of immunity from giving evidence under the national laws of the Requesting Party, the Requested Party shall inform the Requesting Party of that person's opinion and require the Requesting Party to provide evidence of whether such a right or privilege exists. The evidence provided by the Requesting Party shall be deemed as sufficient proof of whether such a right or privilege exists unless explicit evidence to the contrary is available.

Article 11

Availability of Persons to Give Evidence or Assist in Investigations

1. The Requested Party, at the request of the Requesting Party, shall invite the person concerned to appear before relevant authorities in the territory of the Requesting Party to give evidence or assist in investigations. The Requesting Party shall indicate the extent to which allowances and expenses will be paid to that person. The Requested Party shall promptly inform the Requesting Party of that person's response.

2. The Requesting Party shall transmit request for the appearance of a person to give evidence or assist in investigations in its territory no less than sixty days before the scheduled appearance. The Requested Party may consent to a shorter period of time in case of urgency.

Article 12

Transfer of Persons in Custody

for Giving Evidence or Assisting in Investigations

1. The Requested Party may, at the request of the Requesting Party, temporarily transfer a person in custody in its territory to the Requesting Party for giving evidence or assisting in investigations, provided that the person to be transferred so consents and the Parties have previously reached a written agreement on the conditions of the transfer.

2. If the person transferred is required to be kept in custody under the national laws of the Requested Party, the Requesting Party shall hold that person in custody.

3. The Requesting Party shall return the person transferred to the Requested Party as soon as he/she finished giving evidence or assisting in investigations.

4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested Party for the period of time served in the custody of the Requesting Party.

Article 13

Protection of Witnesses and Experts

1. Any witness or expert present in the territory of the Requesting Party under this Treaty shall not be investigated, prosecuted, detained, punished or subject to any other restriction of personal liberty by the Requesting Party for any acts or omissions which preceded that person's entry into its territory, nor shall that person be obliged to give evidence or to assist in any investigation, prosecution or other proceedings other than that to which the request relates without the prior consent of the Requested Party and that person.

2. Paragraph 1 of this Article shall cease to apply if the person referred to in Paragraph 1 of this Article stayed on in the territory of the Requesting Party fifteen days after that person has been officially notified that his/her presence is no longer required or, after having left, has voluntarily returned. But this period of time shall not include the time during which the person fails to leave the territory of the Requesting Party for reasons beyond his/her control.

3. A person who declines to give evidence or assist in investigations in accordance with Articles 11 or 12 shall not be subject to any penalty or mandatory restriction of personal liberty for such decline.

Article 14

Inquiry, Search, Freezing and Seizure

1. The Requested Party shall, to the extent its national laws permit, execute a request for inquiry, search, freezing and seizure of evidential materials, articles and assets.

2. The Requested Party shall provide the Requesting Party results of executing the request, including results of inquiry or search, the place and circumstances of freezing or seizure, and the subsequent custody of such materials, articles or assets.

3. The Requested Party may transmit the seized materials, articles or assets to the Requesting Party if the Requesting Party agrees to the terms and conditions for such transmission as proposed by the Requested Party.

Article 15

Return of Documents, Records and Articles of Evidence

Upon request of the Requested Party, the Requesting Party shall return to the Requested Party the originals of documents or records and articles of evidence provided to it by the Requested Party under Articles 9 and 14 of this Treaty as soon as possible.

Article 16

Proceeds from Criminal Activities and Instrumentalities of Crime

1. The Requested Party shall, upon request, endeavour to ascertain whether any proceeds and yields from criminal activities or instrumentalities of crime are deposited within its territory and shall notify the Requesting Party of the result. In making the request, the Requesting Party shall notify the Requested Party of the reasons why the proceeds or

instrumentalities mentioned above may be deposited in the latter's territory.

2. Once the suspected proceeds and yields or instrumentalities of crime are found in accordance with Paragraph 1 of this Article, the Requested Party shall, at the request of the Requesting Party, take measures to freeze, seize and forfeit such proceeds or instrumentalities according to its national laws.

3. At the request of the Requesting Party, the Requested Party may, to the extent permitted by its national laws and under the terms and conditions agreed by the Parties, transfer all or part of the proceeds and yields or instrumentalities of crime, or the proceeds from the sale of such assets to the Requesting Party.

4. In applying this Article, the legitimate rights and interests of the Requested Party and any third party to such proceeds or instrumentalities shall be respected.

Article 17

Notification of Results of Proceedings in Criminal Matters

The Requesting Party shall, upon request, inform the Requested Party of the results of the criminal proceedings to which the request of assistance relates.

Article 18

Transmission of Criminal Records

If a person is being investigated or prosecuted in the Requesting Party, the Requested Party shall transmit, upon request, that person's criminal records in the Requested Party.

Article 19

Exchange of Information on Law

The Parties may, upon request, furnish each other with the national laws and information on judicial practice in their respective countries related to the implementation of this Treaty, or any other connected matters.

Article 20

Authentication

For the purpose of this Treaty, any documents transmitted in accordance with this Treaty shall not require any form of authentication, unless otherwise provided for in this Treaty.

Article 21

Expenses

1. The Requested Party shall meet the cost for executing the request, but the Requesting Party shall bear the following:

(a) expenses for persons to travel to, stay in and leave from the Requested Party under Article 9 (4) of this Treaty;

(b) allowances or expenses for persons to travel to, stay in and leave from the Requesting Party under Articles 11 or 12 of this Treaty in accordance with the standards or regulations of the place where such allowances or expenses have been incurred;

(c) expenses for expert opinions; and

(d) expenses for translation and interpretation.

2. The Requesting Party shall, upon request, pay in advance the

expenses it is expected to bear.

3. If it becomes apparent that the execution of a request requires extraordinary expenses, the Parties shall consult to determine the terms and conditions under which the request can be executed.

Article 22

Other Basis for Cooperation

This Treaty shall not prevent either Party from providing assistance to the other Party according to other applicable international agreements or its national laws. The Parties may also provide assistance in accordance with any other arrangement, agreement or customs.

Article 23

Settlement of Disputes

Any dispute arising out of the interpretation and application of this Treaty shall be resolved through consultation via diplomatic channels if the Central Authorities of the Parties are themselves unable to reach an agreement.

Article 24

Entry into Force, Amendment and Termination

1. This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Beijing. The Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.

2. This Treaty may be amended at any time by written agreement

between the Parties. Any such amendment will enter into force in accordance with the same procedure prescribed in Paragraph 1 of this Article and will form part of this Treaty.

3. Either Party may terminate this Treaty at any time by giving notice in writing to the other Party through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given. The requests for assistance which have been received prior to the termination of the Treaty shall nevertheless be processed in accordance with the terms of the Treaty.

4. This Treaty applies to any requests presented after its entry into force even if the related acts or omissions occurred before this Treaty enters into force.

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

DONE in duplicate at Colombo on this 16th day of September 2014, in the Sinhala, Chinese and English languages, all texts being equally authentic. In case of any divergence of interpretation of this Treaty, the English text shall prevail.



**For the Democratic
Socialist Republic of Sri Lanka**



**For the People's
Republic of China**