

FINAL NATIONAL INTEREST ANALYSIS (NIA)

**BIMSTEC Convention on
Mutual Legal Assistance in Criminal Matters**
(Prepared in consultation with Stakeholders)

Department of Law and Order
Ministry of Home Affairs
Thimphu 2024

Proposed treaty action

It is called the BIMSTEC Convention on Mutual Legal Assistance (MLA) in Criminal Matters. Through this convention, it is expected to contribute towards more effective cooperation amongst the member states to combat cross border criminal activities including international terrorism and transnational organized crimes in the regional and world at large. It is made possible through exchange of mutual legal assistance services between the countries. This helps strengthen the criminal justice system.

The Convention was signed on 30th March, 2022 during the Fifth BIMSTEC Summit held in Colombo, Sri Lanka. Following the signing of the Convention, the member states are required to ratify and deposit the instrument with the BIMSTEC Secretariat. Bhutan is therefore required to initiate internal process in keeping with the Rules of Procedures for Treaty Making, 2016 to ratify the convention.

Subject matter

BIMSTEC Convention on Mutual Legal Assistance in Criminal Matters is one of the agreements among BIMSTEC Member States concerning counter terrorism and transnational organized crimes. This Convention is for the purpose of gathering and exchanging information in an effort to enforce criminal laws within BIMSTEC region.

While reaffirming the principles of sovereignty, territorial integrity and non-interference in the internal affairs of States, its Member States have recognized the importance of this convention on mutual legal assistance in criminal matters as an effective way of dealing with complex cross border crimes that are of different forms and dimensions.

The Convention has 25 Articles aimed at strengthening cooperation among the member states in the prevention, investigation and prosecution of crime, including but not limited to crime relating to terrorism, transnational organized crime, drug trafficking, money laundering and cyber-crimes. This Convention is expected to contribute towards more effective cooperation for the control of criminal activities.

MLA is a cooperation mechanism to provide legal assistance in facilitating appearance of its citizens as witness before the court of law in the requesting state, assisting investigation, furnishing evidence and sharing documents, records, objects and information about proceeds and instruments of crime which are located within its jurisdiction. The MLA may also require the member states, subject to its domestic laws, take up measures to prevent further dealing, transfer or disposal of proceeds of crime. Similarly, subject to its national laws, the member states will also be expected to execute request for search and seizure and delivery of any material.

The purpose of such assistance is for strengthening criminal justice system and facilitating fair and effective court trial.

Advantages and disadvantages of the treaty

a) Advantages:

- The Convention would help enhance international cooperation in the field of criminal justice system. It would help expedite trials which includes gathering of evidences and requirement for presence of person from other State parties;
- Help delineate clear roles and powers of the relevant agencies pertaining to MLA in criminal matters and put in place a comprehensive system in providing and receiving legal assistance to and from foreign countries upon request as per the convention;
- Further, the implementation of this cooperation in mutual legal assistance under this convention is subject to domestic legislation, thereby, limiting interference into the internal affairs of the country.
- There would be limited cases of international criminal incidences for a small country like ours as compared to other larger ones and hence we may stand to benefit more by such conventions.

b) Disadvantages

- The MLA process may incur expenses for obligations such as transmitting evidences to foreign countries. It may also entail installation of adequate equipment to carry out the required functions.
- Resources both in terms of human and finance may have to be strengthened including capacity building for law enforcement officials. For instance, some of the MLA matters would require intelligence input and data collection.

Bhutan's possible main obligations under the treaty

Although the convention requires that Bhutan, as a member state of BIMSTEC, provide mutual legal assistance to the requesting member states whenever requested for under this regional legal framework, it would largely depend on reciprocity. Besides, since the enforcement of the convention is subject to domestic laws, our national law would take the precedence over the convention. Therefore, the member states are not subjected to obligations that are detrimental to the national sovereignty and its independence.

Article 3 ensures that the rights and obligations of the members states is not affected if they are already party to other similar conventions concerning MLA in criminal matters. According to article 5, member states can refuse or postpone to comply with request of assistance under certain conditions including if it undermines country's sovereignty and if it contradicts domestic laws. Article 10 provides that the person, who is required to appear before the court of law, is returned immediately once the presence is no longer required upon completion of the matter. Article 11.3.

provides that a person, who is required to appear before the court of law as witness, has the right to refuse the request without being subjected to penalty or measure of compulsion. As per Article 21, cost and expenses incurred on complying with the request will be borne by the requesting states.

Reservation

Since MLA is a basic international cooperation mechanism and that the convention is subject to our domestic laws, that it does not provide unrealistic obligations and that Bhutan is already a party to many other conventions that provides similar obligations, there are no specific reservation in ratifying this convention.

Associated instruments that provide the same obligations

1. United Nation Convention against Transnational Organized Crime
2. BIMSTEC Convention on Cooperation in Combating International Terrorism, Transnational Organized Crime and Illicit Drug Trafficking.
3. SAARC Convention on Mutual Legal Assistance in Criminal Matters
4. SAARC Regional Convention on Suppression of Terrorism
5. Member of Asia Pacific Group on Anti-money Laundering and Countering the Financing of Terrorism

Ministerial Responsibilities

Once the MLA convention is put in place, the Department of Law and Order under the Ministry of Home Affairs is required to function as a Central Authority for MLA. It is responsible to receive, examine and process for execution of requests for assistance received from the concerned requesting member states and decide on whether to provide the assistance in consultation with the concerned agencies or individuals.

Designation of Central Authority for MLA

One of the ministerial responsibilities is to identify a Central Authority. It may be submitted that the Lhengye Zhungtshog vide letter No. C-3/150/847 dated 26th February, 2018 has identified the MoHA as the central Authority for MLA.

Implementation

At the moment, Bhutan does not have a domestic law on mutual legal assistance. The Department of Law and Order has already submitted the Mutual Legal Assistance Bill to the Government for submission to the parliament in 2022 and 2023. Since the bill could not be discussed during the third parliament, it will be submitted to the first session of the fourth parliament along with this BIMSTEC Convention on Mutual Legal Assistance. Besides the need to enact a domestic law on mutual legal assistance, no major legal and policy changes are required for fulfilling the obligations therein. As per the above-mentioned international instruments, Bhutan is required to put in place

the MLA Act. Therefore, the MLA law will have to be put in place as a basic international cooperation mechanism sooner or later.

The BIMSTEC Convention on Mutual Legal Assistance will not have any social, cultural, environmental and political implications. It is a basic legal framework and a crucial part of the international cooperation mechanism.

Costs

There will be no major cost implication for Bhutan to enforce the convention. All administrative and operational cost will be borne by the requesting states. Only when we require such assistance through this mechanism, it will incur cost but it is in the interest of our own criminal justice. It is also in our hand to seek the assistance or not. This mechanism does not entail need for payment of any contribution to the international organization.

However, we will be required to carry out additional mandate to coordinate, manage and facilitate mutual legal assistance services which may entail an establishment of a mutual legal assistance unit within the Central Authority in the future. It will depend on the number of requests that we may receive and we may seek. Agencies like ACC, OAG and RBP may be required to incur expenses if it may require MLA service from other member states in the interest of solving serious cases. Such expenses are already being incurred in seeking MLA services from other countries through a letter of rogatory and other means in the absence of an MLA law. Going by the current scenario, the number of requests that we receive and seek is not very significant.

Future treaty action

FINAL CONSULTATION

As required by the Rule of Procedure for Treaty Making, 2016, a consultation meeting was held amongst the concerned stakeholder agencies. The agencies agreed and acknowledged the importance of this convention and recommended that the convention be ratified. The Record of the Consultation Meeting is attached for ready reference.

FINAL NATIONAL INTEREST ANALYSIS
SUMMARY PAGE
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Proposed treaty action

The BIMSTEC Convention on Mutual Legal Assistance (MLA) was signed on 30th March, 2022 during the Fifth BIMSTEC Summit held in Colombo, Sri Lanka. Following the signature by all the member states, the convention will have to go through ratification process by the parliament to be able to come into force.

In view of the above, the ratification of the convention is proposed in this first session of the fourth parliament during the summer session of the parliament, 2024.

Summary

The purpose of the ratification of this convention is to join the regional and international community to strengthen criminal justice system and fight against transnational organized crime by facilitating legal assistance at regional level. It will also help countries join hands to not only fight common fugitive offences carried out beyond borders but also combat international terrorism, counter financing of terrorism and deal with trafficking in persons etc. in a more effective manner. The ratification of this convention is strongly recommended to demonstrate our commitment to international rules and standards.

Besides, Bhutan is being reviewed under Asia Pacific Group on Anti-money Laundering and Countering the Financing of Terrorism, the United States' Trafficking in Person review process and other international review mechanisms. By ratifying this convention, Bhutan's international credibility will be enhanced.

Mutual Legal Assistance mechanism, be it national or regional or international, is a basic legal framework which is expected to be put in place by all countries and international forums. It is a very basic cooperation mechanism between the countries for dealing with crime, terrorism and transnational organized crime.

Stakeholder Consultation Meeting on Bay of Bengal Initiative on Multi-Sectoral Technical Economic Cooperation (BIMSTEC) Convention on Mutual Legal Assistant (MLA) in Criminal Matters

Venue: Hon'ble Home Secretary's Conference Hall, Ministry of Home Affairs, Thimphu

Date and Time: 21st March, 2023. 10AM-1PM

Introduction

The Department of Law and Order (DLO) had convened the consultation meeting amongst the relevant stakeholders to carry out (NIA) National Interest Analysis on the BIMSTEC convention on MLA in Criminal Matters as per Rule of Procedure for Treat Making, 2018 for ratification by the parliament. The meeting was held on 21st March 2023 at the Hon'ble Home Secretary's Conference Hall, Ministry of Home Affairs.

The DLO informed the meeting that the convention was signed on March 30, 2022 during the fifth BIMSTEC Summit. The BIMSTEC Secretariat had requested all the member states to deposit the instrument following ratification by parliament of the respective countries. Therefore, it was pertinent to carry out NIA as part of internal process in keeping with the Rules of Procedures for Treaty Making, 2016.

It was informed that Preliminary NIA was carried out during the time of signing the Convention. Following thorough consultation amongst the concerned agencies and upon carrying out PNIA, RGoB decided to approve and sign the convention.

Discussions on the provisions of the Convention:

The meeting observed the following:

1. The stakeholder's consultation meeting concluded that the BIMSTEC Convention on Mutual Legal Assistance is a basic legal framework and would need to be ratified to exhibit our commitment to the regional and international effort in fighting international terrorism, transnational organized crime and help strengthen criminal justice system which is aimed at building regional and international peace. Besides, the convention does not pose a serious implication to the national security interest since our domestic law would take precedence over the convention. Moreover, there are provisions which clearly spells out conditions under which the request can be denied.
2. The need to provide information, documents, records and objects which are in the possession of the government department or agency will not be publicly available. It will be available only to the law enforcement and judicial authorities. However, judgments in other countries are available publicly. The meeting felt that it is not a serious concern since the requested state can choose not to share information which are not appropriate.

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3. Taking evidence in the requested party as per Article 9 mentions about taking evidence in the requested party including sworn and affirmed testimony from a person including a person in custody. In this regard, it was discussed that such request should be made to the court and not to the police.

List of Participants

1. Col. Kunley Tenzin, Legal Officer, Royal Bhutan Police
2. Phuntsho Namgay, Anticorruption Commission (ACC)
3. Sherab Tharchen, Deputy Chief Legal Officer, ACC
4. Tshering Tobzang, Financial Intelligence Department, Royal Monetary Authority
5. Jamyang Tenzin, Deputy Chief Legal Officer, Cabinet Secretariat
6. Tshering Om, Deputy Chief Attorney, Office of Attorney General
7. Khenrab Yeshey, Ministry of Foreign Affairs and External Trade (MoFAET)
8. Kinga Lhamo, Deputy Chief Desk Officer, Dept. of Protocol and Consular Affairs, MoFAET
9. Kinley Chuki, Legal Officer, MoHA Secretariat
10. Karma Dorji, Officiating Chief Programme Officer, DLO
11. Kelzang Wangmo, Deputy Chief Legal Officer, DLO