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**CONVENTION A/P.1/7/92 ON MUTUAL ASSISTANCE IN
CRIMINAL MATTERS**

THE GOVERNMENTS OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES

CONSIDERING that the main objective of the Community is to achieve integration in all fields of activity of its Member States;

BELIEVING that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to this aim by furthering the development of integration;

DESIROUS of extending to each other the widest mutual legal assistance to combat offences of all kinds particularly of serious crimes, as an effective way of dealing with the complex aspects and serious consequences of criminality in all its forms and new dimensions;

AWARE of the interest in the proper administration of justice while conscious of the need to respect human dignity and to assure the orderly pursuit of criminal proceedings among the Member States, thus reinforcing mutual assistance in criminal matters;

Have agreed as follows:

ARTICLE 1

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

"Treaty" means the Treaty of the Economic Community of West African States;

"Community" means the Economic Community of West African States, created by Article 1 of the Treaty;

"Member State" or "Member States" means a Member State or Member States of the Community;

"Requesting Member State" means a Member State which has made a request for assistance under this Convention;

"Requested Member State" means a Member State to which a request for assistance under this Convention has been made;

"Authority" means the Authority of Heads of State and Government of the Community, created by Article 5 of the Treaty;

"Council" means the Council of Ministers of the Community created by Article 6 of the Treaty;

"Competent Authority" means the Minister of Justice of a Member State;

"Executive Secretariat" means the Executive Secretariat of the Community created by Article 8, paragraph 1 of the Treaty;

"Executive Secretary" means the Executive Secretary of the Community, appointed by virtue of Article 8, paragraph 2 of the Treaty;

"Offence" or "Offences" means the fact or facts which constitute a criminal offence or criminal offences under the laws of the Member State;

"Sanctions" means all penalties or measures incurred or pronounced as a result of a criminal offence;

"Proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits from the commission of an offence.

CHAPTER II

MUTUAL ASSISTANCE

Article 2

Scope of Application

1. Member States undertake to afford to each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings or investigations in respect of offences the punishments of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Member State.
2. Mutual assistance in the provisions of this Convention applies to:
 - (a) taking evidence or statements from persons;
 - (b) assisting in assuring the availability of detained persons or others to give evidence or assist in investigations;
 - (c) effecting service of judicial documents;
 - (d) executing searches and seizures;
 - (e) forfeitures and confiscations of the proceeds of crime;
 - (f) examining objects and sites;
 - (g) providing information and evidentiary items;
 - (h) providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The Convention does not apply to:

- (a) the arrest or detention of any person with a view to the extradition of that person;
- (b) the enforcement in the requested Member State of criminal judgments imposed in the requesting Member State except to the extent permitted by the laws of the requested Member State;
- (c) the transfer of persons in custody to serve sentences.

Article 3

Competent Authority

Request for mutual assistance shall be made or received by the competent authority in a Member State.

Article 4

Refusal of Assistance

1. Assistance may be refused if:

- (a) the requesting Member State is of the opinion that the request, if granted, would prejudice its sovereignty, security and public order;
- (b) the offence is regarded by the requested Member State as being of a political nature;
- (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 persons' race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
- (d) the request relates to an offence that is subject to investigation or prosecution in the requested Member State or the prosecution of which in the requesting Member State would be incompatible with the requested Member State's law on double jeopardy;
- (e) the assistance requested requires the requested Member State to carry out compulsory measures that would be contrary to its laws and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

- (f) the request is in respect of offences related to military law which do not constitute offences under ordinary criminal law.
- 2 Assistance shall not be refused solely on the grounds of secrecy of banks and of similar financial institutions.
- 3. The requested Member State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the territory of the requested Member State.
- 4. Before refusing a request or postponing its execution, the requested Member State shall consider whether assistance may be granted subject to certain conditions. If the requested Member State accepts assistance subject to these conditions, it shall comply with them.
- 5. Reasons shall be given for any refusal or postponement of mutual assistance.

Article 5

Contents of Requests

- 1. Request for assistance shall be made in writing and shall include:
 - (a) the name of the competent authority coordinating the investigation or court 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 or text of the relevant laws, except in cases of a request for service of documents;
 - (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 requirements that the requesting Member 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) such other information as is necessary for the proper execution of the request.
- 2 Requests, supporting documents and other communications made pursuant to this Convention shall be written in one or the other of the official languages of the Community or in another language acceptable to the requested Member State.

3. If the requested Member 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.

Article 6

Execution of Requests

- 1 Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practice of the requested Member State. To the extent consistent with its laws and practice, the requested Member State shall carry out the request in the manner specified by the requesting Member State.
- 2 At the request of the requesting Member State the requested Member State shall state the date and place of execution of the demand. Officials and interested persons may be present if the requested Member State consents.

Article 7

Return of Material to the Requested State

Any property, as well as original records or documents, handed over to the requesting Member State under this Convention shall be returned to the requested Member State as soon as possible unless the latter waives its right of return thereof.

Article 8

Limitation on Use

The requesting Member State shall not, without the consent of the requested Member State use or transfer information of evidence provided by the requested Member State for investigation 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 this Convention.

Article 9

Protection of Confidentiality

Upon Request:

- (a) the requested Member State shall do its utmost to keep confidential the request for assistance, its contents and supporting documents as well as the fact of granting such assistance. If the request cannot be executed without breaching confidentiality, the requested Member State shall so inform the requesting Member State which shall then determine whether the request should be executed notwithstanding;

- (b) the requesting Member State shall keep confidential evidence and information provided by the requested Member State, except to the extent that such evidence and information is needed for the investigation and proceedings described in the request.

Article 10

Service of Documents and Decisions

- 1 The requested Member State shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Member State.
- 2 Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Member State expressly so requests, service shall be effected by the requested Member State in the manner so provided for the service of analogous documents under its own laws or in the special manner consistent with such laws.
- 3 Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Member State that service has been effected and stating the form and date of such service. One or the other of these documents shall be sent immediately to the requesting Member State. The requested Member State shall if the requesting Member State so requests, state whether service has been effected in accordance with the law of the requested Member State. If service cannot be effected, the reasons shall be communicated immediately by the requested Member State to the requesting Member State.
- 4 A request to effect service of summonses shall be made to a requested Member State not less than 60 days before the date on which the appearance of a person is required. In urgent cases, the requested Member State may reduce the time requirement.

Article 11

Obtaining of Evidence

- 1 The requested Member State shall, in conformity with its laws and 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 Member State.
- 2 Upon request of the requesting Member State, the parties to the relevant proceedings in the requesting Member State, their legal representatives and representatives of the requesting Member State may, subject to the laws and procedures of the requested Member State, be present at the proceedings.

Article 12

Right or Obligation to Decline to Give Evidence

1. A person who is requested to give evidence may decline where either:

- (a) the laws of the requested Member State permit or require that person to decline to give evidence in similar circumstances in proceedings originating in the requested Member State; or
 - (b) that laws of the requesting Member State permit or require that person to decline to give evidence in similar circumstances in proceedings originating in the requesting Member State.
- 2. If a person claims that there is a right or obligation to decline to give evidence under the laws of the other Member State, the Member State where that person is present shall, with respect thereto, rely on a certificate of a competent authority of the other Member State as evidence of the existence or non-existence of that right or obligation.

Article 13

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

- 1. At the request of the requesting Member State, and if the requested Member State agrees and its laws so permit, a person in custody in the territory of the requested Member State may, subject to his or her consent, be temporarily transferred to the territory of the requesting Member State to give evidence or to assist in the investigations.
- 2. While the person transferred is required to be held in custody under the laws of the requested Member State, the requesting Member State shall hold that person in custody and shall return that person in custody to the requested Member State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.
- 3. Where the requested Member State advises the requesting Member State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be dealt with in accordance with Article 14 of this Convention.

Article 14

Availability of Other Persons to Give Evidence or Assist in Investigations

- 1. The requesting Member State may request the assistance of the requested Member State in inviting a person:
 - (a) to appear in proceedings in relation to a criminal matter in the requesting Member State unless that person is the person charged; or
 - (b) to assist in the investigations in relation to a criminal matter in the requesting Member State.

2. The requested Member State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested Member State shall satisfy itself that necessary measures have been taken for the person's safety.
3. The request of the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting Member State. This amount shall be determined by the two Member States concerned.
4. Upon request, the requested Member State may grant the person an advance, which shall be refunded by the requesting Member State.

Article 15

Safe Conduct

1. Subject to paragraph 2 of this Article, where a person is in the requesting Member State pursuant to a request made under Article 13 or 14:
 - (a) that person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting Member State in respect of any acts or omissions or convictions that preceded the person's departure from the requested Member State.
 - (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 proceeding or investigation to which the request relates.
2. Paragraph 1 of this Article shall cease to apply if that person, being free to leave, has not left the territory of the requesting Member State within a period of 15 consecutive days, or any longer period otherwise agreed on by the Member States, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.
3. A person who does not consent to a request pursuant to Article 13 or accept an invitation pursuant to Article 14 shall not, even if summons contains a notice of penalty, be subjected to any punishment or measure or restraint, unless subsequently he voluntarily enters the territory of the requested Member State and is there again duly summoned.

Article 16

Provision of Public Available Documents and Other Records

1. The requested Member State shall provide copies of documents or records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.
2. The requested Member State may provide copies of any other document or record

under the same conditions as such document or record may be provided by its own law enforcement and judicial authorities.

Article 17

Search and Seizure

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

CHAPTER III

FORFEITURE OR CONFISCATION OF PROCEEDS OF CRIMES

Article 18

Request for Forfeiture or Confiscation

The requested Member State shall, upon request, endeavour to ascertain whether any proceeds of the crime alleged are located within its jurisdiction and shall notify the requesting Member State of the results of its enquiries. In making the request, the requesting Member State shall notify the requested Member State of the basis of its belief that such proceeds of crime may be located within its jurisdiction.

Article 19

Investigations for Forfeiture or Confiscation

- 1 In pursuance of a request made under Article 18, of this Convention, the requested Member State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.
- 2 Where, pursuant to Article 18 of this Convention suspected proceeds of crime are found, the requested Member 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 of those proceeds by a court of the requesting Member State.

Article 20

Effects of the Decision on Forfeiture or Confiscation

- 1 The requested Member State shall, to the extent permitted by its laws, give effect to

or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting Member State or take other appropriate action to secure the proceeds following a request by the requesting Member State.

- 2 The Member States shall ensure that the rights of bona fide third parties and victims shall be respected.

CHAPTER IV

TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

Article 21

Scope of Application

- 1 When a person is suspected of having committed an offence under the laws of a State, that State may, if the interests of the proper administration of justice so require, request another Member State to take proceedings in respect of this offence.
- 2 For the purposes of applying this Convention, the Member States shall take the necessary legislative measures to ensure that a request of the requesting Member State to take proceedings shall allow the requested Member State to exercise the necessary jurisdiction.

Article 22

Channel of Communication

The request, supporting documents and subsequent communications shall be transmitted to the competent authority in conformity with the provisions of Article 3 of this Convention.

Article 23

Contents of Requests

1. The request to take proceedings shall be made in writing and shall contain or be accompanied by documents containing the following information:
 - (a) the authority presenting the request;
 - (b) a description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;
 - (c) a statement on the results of investigations which substantiate the suspicion of an offence;
 - (d) the legal provisions of the requesting Member State on the basis of which the

act is considered to be an offence;

- (e) a reasonably exact statement of the identity, nationality and residence of the suspected person.
2. Request, supporting documents and other communications made pursuant to this Convention shall be written in one or the other of the official languages of the Community or in another language acceptable to the requested Member State.
 3. If the requested Member 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.

Article 24

Decision on the Request

The competent authorities of the requested Member 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 Member State

Article 25

Dual Criminality

A request to take proceedings can be complied with if only the act on which the request is based would be an offence if committed in the territory of the requested Member State.

Article 26

Grounds for Refusal

If the requested Member State refuses acceptance of a request for transfer of proceedings it shall communicate the reasons for refusal to the requesting Member State. Acceptance may be refused if:

- (a) the suspected person is not a national of or ordinary resident of the requested Member State;
- (b) the act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) the offence is regarded by the requested Member State as being of a political nature

Article 27

The Position of the Suspected Person

- 1 The suspected person may express to either Member State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.
- 2 Before a request for transfer of proceedings is made, the requesting Member State shall, if practicable, allow the suspected person to present his or her view on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

Article 28

The Rights of the Victim

1. The requesting Member State and the requested Member State shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be 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 Member State shall permit the representation of the claim in the transferred proceedings, if its laws provide for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependents accordingly.

Article 29

Effects of the Transfer of Proceedings on the Requesting Member State (*non bis in idem*)

Upon acceptance by the requested Member State of the request to take proceedings against the suspected person, the requesting Member State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested Party, until the requested Member State informs the requesting Member State that the case has been finally disposed of. From that date on, the requesting Member State shall definitely refrain from further prosecution of the same offence.

Article 30

Effects of the Transfer of Proceedings on the Requested Member State

- 1 The proceedings transferred upon agreement shall be governed by the laws of the requested Member State. When charging the suspected person under its laws, the requested Member State shall make necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the

requested Member State is based on the provision set forth in paragraph 2 of Article 23, the sanction pronounced in that Member State shall not be more severe than that provided by the laws of the requesting Member State.

- 2 As far as compatible with the laws of the requested Member State, any act with a view to proceedings or procedural requirements performed in the requesting Member State in accordance with its law shall have the same validity in the requested Member State as if the act had been performed in or by the authorities of that Member State.
- 3 The requested Member State shall inform the requesting Member State of the decision taken as a result of the proceedings. To this end a copy of the final decision shall be transmitted to the requesting Member State.

Article 31

Provisional Measures

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

Article 32

The Plurality of Criminal Proceedings

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

CHAPTER V

VALIDATION AND COSTS

Article 33

Authentication and Certification of Documents

A request under this Convention and the supporting documents thereto, as well as the documents and other materials supplied in response to such a request shall not require certification or authentication.

Article 34

Costs of Executing Requests

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

CHAPTER VI

FINAL PROVISIONS

Article 35

Arrangement

1. The present Convention repeals all preceding Treaties, Conventions or Agreements concluded between two or several Member States on mutual legal assistance in areas specified in Article 2 paragraph 2 and Article 23 of this Convention.
2. The Member States may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Article 36

Accession

1. After entry into force of this Convention, the Council of Ministers may invite, by unanimous decision, any State not a member of the Community to accede to this Convention.
2. When a non-Member State of the Community requests to be invited to accede to this Convention, it shall submit this request to the Executive Secretary.
3. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Executive Secretary.

Article 37

Amendment and Review

- 1 Any Member State may submit proposals for the amendment or review of this Convention.
- 2 All proposals shall be submitted to the Executive Secretary, who shall forward them to Member States within thirty (30) days upon receipt. Proposed amendments or reviews shall be considered by the Authority upon expiration of the thirty (30) days notice given to Member States.

Article 38

Deposit and Entry Into Force

- 1 This Convention shall enter into force provisionally upon signature by Heads of State and Government of Member States and definitively upon ratification by at least seven (7) Member States, in conformity with the constitutional provisions of each Member State.
- 2 This Convention and all the instruments of ratification shall be deposited with the Executive Secretariat which shall forward certified true copies to all Member States, notify them of the dates of deposit of the instruments of ratification and register this Convention with the Organisation of African Unity, the United Nations and any other organisation determined by Council.

**IN WITNESS WHEREOF, WE THE HEADS OF STATE AND GOVERNMENT OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES HAVE SIGNED THIS
CONVENTION.**

**DONE AT DAKAR, THIS 29TH DAY OF JULY, 1992 IN A SINGLE ORIGINAL IN THE
ENGLISH AND FRENCH LANGUAGES, BOTH
TEXTS BEING EQUALLY AUTHENTIC.**

Signed

H.E. Mr. Nicephore Dierdone SOGLO

President of People's Republic of BENIN

Signed

H.E. Blaise COMPAORE

*President of FASO, Head of Government
BURKINA FASO*

Signed

H.E. Carlos Wahanon de Carvalho Viegas

*Prime Minister and Minister of Defence for and on
behalf of the President of the Republic of CAPE
VERDE*

Signed

Lt. General Arnold QUAINOO

*Member of the Provisional National Defence
Council (PNDC) of the Republic of Ghana, for and
on behalf of the Head of State of the Republic of
GHANA*

Signed

H.E. Alhaji Sir Dauda K. JAWARA

President of the Republic of THE GAMBIA

Signed

H.E. General Lasanna CONTE

*Head of State, President of the Republic of
GUINEA*

Signed

H.E. Dr. Amos Claudius SAWYER

President of the Interim Government of LIBERIA

Signed

Honourable Luis SANCA

*Minister of Trade and Tourism for and on behalf of
the President of the Council of State of The
Republic of GUINEA BISSAU*

Signed

Hon. Ahmed Ould ZEIN

*Minister, Secretary General in the office of the
President for and on behalf of the Head of State
of the Islamic Republic of MUARITANIA*

Signed

H.E. Alpha Oumar KONARE

President of the Republic of MALI

H.E. Felix Houphouet BOIGNY

President of the Republic of COTE D'VOIRE

Signed

Honourable Amadou CHEIFOU

*Prime Minister, for and on behalf of the Head of
Government of the Republic of Niger*

Signed

H.E. General Ibrahim Badamasi

BABANGIDA

*President, Commander-in-Chief of the Armed
Forces of the Federal Republic of Nigeria*

Signed

H.E. ABDOU DIOUF

President of the Republic of SENEGAL

Signed

H.E. Captain Valentine E. M. STRASSER

*Chairman, Supreme Council of State of the
National Provisional Ruling Council and Head of
State of the Republic of SIERRA LEONE*

Signed

Honourable Kwassivi Elias KPETIGO

*Minister of Finance and Economy, for and on
behalf of the Prime Minister, Head of Transitional
Government of the TOGOLESE Republic*