INTERNATIONAL LEGAL COOPERATION

Relations with other states are governed by the principles of equality, equity, reciprocity, cooperation, respect, and the self-determination of nations.

International cooperation among states in criminal matters takes place on the basis of bilateral and multilateral agreements signed with various countries, and, in their absence, are governed by the principles of voluntariness and reciprocity.

Pursuant to the terms of the constitution, all judicial officials are required to interpret the norms of the Code of Criminal Procedure on the basis of the so-called “Constitutionality Block,” namely on the basis of the rules in the Colombian Constitutional Charter and those of international treaties ratified by the Colombian Congress.¹

Judicial criminal assistance is particularly important, since it is the basis for obtaining evidence gathered in a foreign country for prosecution of crimes and illegal conduct, including drug trafficking, money laundering, exchange violations, arms sales, and cyber crimes, among others.

LEGAL FRAMEWORK FOR INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

Colombian criminal procedural law contains the parameters that govern judicial cooperation in criminal matters. Colombia is a party to various multilateral agreements and it also has agreements with a number of countries, which may be consulted under annex 4. The procedures stipulated in the area of judicial cooperation are explained in the Manual for Exchange of Evidence with other countries, issued by the Fiscalía General de la Nación (Res. 0024 of January 15, 2002²).

In the reform of implementation of the accusatory system, the framework for judicial cooperation retains the same criteria of Law 600 of 2000, within the limits and functions established in Articles 484 ff. of Law 906 of 2004. The general principle of cooperation conceived in Article 484 differs from the one established in Article 503 of Law 600 of 2000 by including the possibility of complying with requests to national authorities from the jurisdiction of the International Criminal Court.

¹ Under the 1991 Political Constitution, international relations are governed by the President of the Republic as Head of State; in so doing, he may conclude treaties or conventions with other states and entities of international law; these instruments must be submitted to the Congress of the Republic for approval and to the Constitutional Court to verify their constitutionality.

² This resolution is being studied for reform, in accordance with the terms and conditions of the accusatory system.
In addition, it establishes the possibility of directly executing the requirements in the red circulars of INTERPOL, provided that the person detained in such circumstances is immediately placed at the disposal of the Fiscalía General de la Nación, for the purpose of extradition procedures.

Moreover, the reform adds to this principle of double incrimination, which is repeated in the aforesaid terms, the possibility of creating joint operational units with different countries, based on the requirements of domestic law, under the management and coordination of the Fiscal General de la Nación. In any event, such proceedings are carried out under the observation of the territorial jurisdiction that governs in such circumstances, and with full respect for its requirements.

Finally, it is important to note that criminal judicial assistance may be provided even if the conduit through which it is requested is not defined in domestic law, provided it does not violate the values and principles enshrined in the Political Constitution of Colombia.

**JUDICIAL COOPERATION MECHANISMS**

Under Colombian law, judges and prosecutors may request international legal assistance by using the following judicial cooperation mechanisms:

**A. LETTERS ROGATORY**

They are requests for judicial assistance directed to foreign judicial authorities to obtain information or evidence or to take legal action.

Letters rogatory addressed to foreign authorities must be written in an organized, brief, clear and concise manner, and must contain the following general information:

- Name of the Colombian judicial official in charge of the investigation, including the number of his office and the unit where the official works;
- The judicial official to whom the request is addressed;
- A full description of the evidence and information requested;
- A report of the acts under investigation, with information on the accused (name, nationality, identification number, date of birth);
- The criminal offense under investigation;
The importance of the evidence requested;

A request for certification that the evidence was submitted legally, pursuant to the procedural law of the requested state;

Signature of the request by the judicial official of the hearing;

Certification of the signature and the post of the judicial official. This is understood as proof that the person who signed the request for judicial assistance currently holds that office. The request must be signed by the Departmental Director [Director Seccional] of Fiscalías, for prosecutors working at departmental level. For national units, it must be signed by the chief or coordinating prosecutor of the unit.

RECOMMENDATIONS:

All requests for judicial assistance must be processed according to the domestic law of the requested state and, if possible, in accordance with the procedures specified in the rogatory.

Requests for judicial assistance directed to the United States of America for the purpose of obtaining information on natural persons must be accompanied by an indication of the date of birth of those persons.

Requests for judicial assistance sent to the Swiss Confederation and the United States of America must comply with the requirements dictated by those governments for judicial cooperation requests. (Annex)

The model or format for rogatories is contained in annex number ....

B. EXHORTOS

Requests sent by judicial officials to a diplomatic or consular agent to take certain action that will contribute to a trial or investigation.

It is important to bear in mind that the Colombian authorities issue requests for different procedures or acts. The following are some of the most frequent ones: personal notification of judicial decisions, interrogatories of parties, interviews, receipt of pieces of material evidence, testimony, personal appearances, and video-conferences, among others.

NOTE: In every case it must be noted whether it is a mixed-system proceeding (Law 600 of 2000) or an accusatory system proceeding (Law 906 of 2004)

RECOMMENDATIONS: In processing a request, account must be taken of the following:
Diplomatic or consular agents do not have restraining or admonishing powers;

Diplomatic or consular agents cannot use coercion on persons or property in carrying out the requested procedures;

Diplomatic or consular agents cannot use public force to carry out a request;

This type of request is generally and primarily used in the case of procedures related to Colombian citizens abroad;

In some countries, there is restrictive legislation that requires that judicial action related to their nationals must be carried out by their own officials (letter rogatory – Italy, Argentina, Germany, Middle East, etc.).

It is not viable to request a consul to obtain information that is protected by confidentiality, such as banking, financial, or business information;

Certification of the signature and official function are not required for requests directed to our consular or diplomatic officers;

In the case of evidence to be gathered, the special requirements for taking such evidence must be given and additional information considered useful for adequate fulfillment of the request should be provided (description of the procedure);

In taking testimony, the specific facts to be covered by the interrogatory must be indicated and the list of questions must accompany it. In the case of an investigation, all of the questions to be formulated must be attached.

The appropriate model or format for such requests [exhortos] can be found in annex number....

**C. NOTAS SUPPLICATORIAS**

These are requests for judicial assistance to diplomatic representatives accredited to the Colombian government.

They are sent by diplomatic channels, i.e., through the Ministry of Foreign Affairs. Their main purpose is to obtain information or elements of proof, in cases involving granting visas to citizens, for instance, or to take the testimony of an accredited diplomatic agent or envoy of another country.

RECOMMENDATIONS:
- Draw up the *Nota Suplicatoria* following the parameters of a letter rogatory;
- Address the request to the Ambassador of the foreign nation or republic;
- Explain the purpose of the request
- Summarize the facts of the case
- Explain the rules of procedure and the criminal code pertaining to the case.

The model for *notas suplicatorias* can be found in annex number….

**SPECIAL INVESTIGATIVE TECHNIQUES USED IN INTERNATIONAL LEGAL COOPERATION**

These are specialized operations developed through a complex infrastructure that has sufficient means to intervene and obtain information and useful evidence on a criminal organization. Specialized units may be created for such techniques among police organizations in different states.

In such cases, the following operations, which are derived from different international instruments adopted by the community of nations, such as the 1988 Vienna Convention, the 2000 Palerma Convention, the 2003 Merida Convention against Corruption, and the 1999 Convention against Financing Terrorism, among others, may be carried out:

**Infiltration of a Criminal Organization.** Technique for penetrating a criminal organization for the purpose of obtaining information useful as part of an investigation, following a study, evaluation, decision, and authorization by the public prosecutor in charge of the case.

**Undercover agent:** An investigative police officer or private detective who infiltrates a criminal organization, pursuant to an order by the public prosecutor in charge of the investigation, with authorization by the corresponding National Director of Fiscalías or the Departmental Director of Fiscalías, for the purpose of determining the characteristics of the organization, its members, functions, modus operandi, and any information that may make it possible to break up that organization.

**Controlled delivery:** Investigative technique consisting of allowing illegal goods to be transported, to enter, or to leave national territory, under surveillance by a network of investigative police officers, after filling out permits and complying with procedures required by the code of criminal procedure.
International operation: An international operation is understood to refer to an investigative procedure that involves investigative techniques established by Colombian law and in international instruments signed and ratified by Colombia, that are carried out in partnership with foreign investigative police and authorities. International operations may be conducted at the initiative of Colombian or foreign authorities.

ADVISORY SERVICES AND CONTROL

In the area of international legal cooperation, the Directorate of International Affairs of the Fiscalía General de la Nación, in keeping with the provisions of Law 938 of 2004, is responsible for performing the following functions, among others:

- Advising the Fiscal General in defining the policy and designing the mechanisms for exchange of evidence and information required by other countries and international organizations, and by Colombian courts.

- Meeting the requirements of the competent authorities in judicial cooperation, with regard to control of execution of requests for mutual judicial assistance.

- Under the guidelines of the Fiscal General de la Nación, managing international technical cooperation with various governments and international agencies interested in developing the programs promoted by the Fiscalía General de la Nación.

- At the request of the Fiscal General de la Nación, carrying out the administrative procedures required in the area of extradition.

- Following up on international commitments assumed by Colombia in areas under the jurisdiction of the Fiscalía.

- Other functions related to the work of the Directorate that are assigned to it by the Fiscal General de la Nación.

The Directorate of International Affairs of the Fiscalía General de la Nación, in performing its functions, advises officials of this entity that need to make or respond to requests for evidence in other countries, on the following terms:

- Answering and resolving consultations from prosecutors in the entity whose regular work involves monitoring the development of international cooperation;

- Receiving and centralizing all the international requests that come into and leave the entity;

- Reviewing each of these requests.
NOTE: If they are consistent with the required legal provisions, procedures for sending them to other countries are initiated. If the request does not comply with the legal parameters referred to in the first part, it is returned immediately to the public prosecutor of the hearing. Once the necessary modifications are made, it must be sent once again to the Directorate for the relevant processing.