

Electronic Evidence Country Fiche: NEPAL

1) DEFINITIONS

Nepal
What are the definitions in your laws/regulations, if any, of:
Electronic evidence
In the legislation of Nepal, the term “electronic evidence” is not defined. However, the Electronic Transaction Act 2063 (2008) provides definitions for "electronic record" means the data, record, image or sound transmitted, received or stored in an electronic form by generating the same through any means (Section 2 (v)) and "electronic form" means a form of information transmitted, received or stored by generating the same through the means of magnetic, optical, computer memory or similar other devices (Section 2 (w)).
Computer system
Electronic Transaction Act 2063 (2008) provides definition of “computer system”, which means a device or a group of devices, containing all computer programmes including input and output support devices, electronic instructions, input and output data that performs logical, arithmetic, data storage and retrieval, communication including controlling functions (Section 2 (g)). Additionally, the term “computer” means an electro-magnetic, optical or other high-speed data processing device or system, which performs logical, arithmetic and memory functions by manipulating electro-magnetic or optical impulses, and also includes all acts of input, output, processing, storage and computer software or communication facilities which are connected or related to the computer in any computer system or computer network (Section 2 (d)). “Computer Resource” means a computer, computer system, computer network, data, computer database or software (Section 2 (h)). "Information system" means a system to generate, produce, transmit, receive, store and display information or to process the same by other method (Section 2 (z)).
Computer data
“Computer database” means an information, knowledge and concept or presentation of instructions, which are being prepared or have already been prepared in word, image, voice or audio-visual form in a formalized manner or which have been produced

by a computer, computer system or computer network, with a view to use in a computer, computer system or computer network (Section 2 (e)).

“Information” means the data details of the scripted texts, images, sounds, codes, computer programmes, software and computer databases (Section 2 (y)).

Categories of computer data (e.g. basic subscriber information, traffic data and content data)

Nepal’s legislation does not provide definitions for specific types of data. However, according to the Electronic Transaction Act 2063 (2008), “data” means the presentation of information, knowledge, fact and concept or instructions in any form, which are kept in a formalized manner in a computer system or computer network and is intended for processing the same or processed or stored in a computer memory. While “subscriber” means a person who has obtained a certificate under Subsection (3) of Section 31.

Any specific definition of “content data” or “traffic data” seem to be available.

Electronic surveillance or real-time collection of computer/communication data

The term “Electronic surveillance” is not explicitly defined by the law. However, within the Privacy Act 2075 (2018), section 19 is regulated the provisions related to privacy of electronic means. It claims that every person shall have the right to maintain privacy of the matter relating to any of his or her personal information, document, correspondence, data or character that remained in electronic means. No one shall obtain the notice, information, correspondence of any person remained in electronic means in unauthorized manner, violate or provide its privacy for anybody in unauthorized manner. Except for the consent given by the concerned person or order issued, under law, by authorized official, no one shall listen to any dialogue or talks held between two or more than two persons through electronic means, or mark or record the sound of such talks by making use of any mechanical device. Provided that in the case of a speech or statement made publicly, the provision of this sub-section shall not be applicable.

Notwithstanding anything above any notice, information or correspondence may be listened to, marked or recorded, or cause to be listened to, marked or recorded with the consent of the concerned person or order of the authorized official. Other provisions relating to the privacy of electronic notice and data shall be as prescribed.

According to the Special Service Bill gives the National Investigation Department’s (NID) staff the authority to “enter any office, organization or privately owned place, building, house or vehicle by showing their identity card” and after giving “notice in writing.” Furthermore, “while conducting counter-espionage work in accordance with this law, the department can monitor, observe, and intercept, as well as document any

conversation carried out through public or other means of communication, along with audio, visual, or electronic signals or details transmitted by any person or organization that seems suspicious.” The only authorization required is “the permission of the chief investigation director.”

Service provider (e.g. ISP, hosting)

Any specific definition of “Service provider” seems to be available. However, Section 42 of 2006 Electronic Transaction Act 2063 (2008) is entitled “Liability of Network Service Providers.”, due to which intermediaries providing their services as network service providers shall undertake the following liabilities in regard to such service provided by them: (a) Liabilities referred to in the agreement made with the subscriber in regard to service provision (b) Liabilities referred to in the license of network service providers, and, (c) Any such other liability as prescribed.

2) DATA RETENTION REGIME

Nepal

Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?

Section 23(1) of the Privacy Act provides that an officer authorised under the law, or a person authorised by such an officer may store an individual's personal information as an exception. However, the Privacy Act and the Privacy Regulation neither provide for a specific procedure nor a time duration for the retention of data.

3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE CRIMINAL TRIAL

Nepal

What is the requirement under your domestic law for electronic evidence to be admissible in criminal trial?

Section 35, Chapter 6 of the 1974 Evidence Act 2031, is dedicated to documentary evidence, grounding the fundamental rules for admissibility.

Moreover, Chapter 11 of the National Criminal Procedure Code Act (2017) contains provisions relating to the examination of evidence.

Section 4 of the Electronic Transaction Act 2063 (2008) recognises legal value to the electronic records, establishing that where the prevailing law requires any information, documents, records or any other matters to be kept in written or printed typewritten form, then, if such information, document, record or the matter is maintained in an electronic form by fulfilling the procedures as stipulated in this Act or the Rules made hereunder, such electronic record shall also have legal validity.

Under Section 16 of the MLA Act 2070 (2014), a document obtained by a foreign is considered admissible as evidence in Court when obtained in accordance with the law of that country pursuant to a request made under Section 15 and made available to the Court through the Central Authority. Upon meeting these conditions, documents may be taken into evidence in accordance with the law.

Finally, as stated in Section 39 the documents, evidence attached with a request made for mutual legal assistance pursuant to this Act must be certified by the judge or competent government officer and bear the seal of office, otherwise the document shall not be recognized as evidence.

4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES

4.1. Direct requests from foreign authorities to service providers

4.1.1. Requests for preservation

Nepal
What legal framework(s) is/are applicable, if any?
No legal framework appears to be present within the Nepali system applicable.
Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?
No law that specifically prohibits or allows foreign law enforcement or judicial authorities to send data preservation, voluntary disclosure or emergency disclosure requests directly to Service Providers of Nepal appears to exist under current legislation.

If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?

Nepal is member state of Interpol, hosts an INTERPOL National Central Bureau (NCB). This connects the national law enforcement with other countries and with the General Secretariat via the Interpol secure global police communications network called I-24/7.

Additionally, the following authorities are responsible for coordinating and cooperating on information exchange with national/international organisations/bodies and security agencies:

- Cyber Bureau: part of the Nepali Police, the office was set up in 2018 to: (1) investigate cybercrimes (including on critical infrastructure); (2) undertake capacity building; (3) coordinate and cooperate on information exchange and cybercrime investigations with national and international organisations/bodies and security agencies; (4) form the national CERT.
- Information Security Response Team Nepal (NPCERT): established in 2016, was created to deal with cyber security threats like hacking and phishing, to help identify and respond to cyber risks (and limit their impact on operations), and to coordinate with other domestic and international CSIRTs (Computer Security Information Response Team) and related organisations.

Through the MLA mechanism, according to Art. 5 of the MLA Act 2070 (2014)

Nepal ratified the United Nations Convention Against Corruption (2003), which under the articles 43-50 ruling international cooperation, including to preservation of evidence, but only with regard to request of assistance on corruption-related crimes, through MLA (ART. 46) and via Police-to-Police channel.

Finally, spontaneous information can be shared according to Art. 18 (4) and (5) of the United Nations Convention against Transnational Organized Crime, which specifies the type of MLA that can be requested including, among others, “taking evidence...”, “providing evidentiary items...”, “executing searches and seizures...”, and “other type of assistance not contrary to the domestic law of the requested State”.

Is a judicial order required from the requesting state?

Information not officially provided

Are there any time limits for data preservation? Any possibility of extension?

Information not officially provided
Would service providers in your country notify the data subjects of the request?
Information not officially provided

4.1.2. Requests for voluntary disclosure

Nepal
What legal framework(s) is/are applicable, if any?
There does not appear to be any law that specifically prohibits or allows foreign law enforcement or judicial authorities to send data preservation, voluntary disclosure or emergency disclosure requests directly to Service Providers in Nepal.
Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?
There is no legislation explicitly allowing or prohibiting Service Providers from responding to the requests they may receive. They could act on a voluntary basis.
If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?
Foreign authorities may consider requesting for assistance through the police-to-police cooperation channel, Interpol I-24/7, G7 24/7 or via MLA.
Is a judicial order required from the requesting state? Are there any time limits?
Information not officially provided
Would service providers in your country notify the data subjects of the request?
Information not officially provided
How can the process be simplified or quickened in emergency situations?
Information not officially provided

4.2. Requests received by your central authority for **Mutual Legal Assistance (MLA)**

Nepal

How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)?

Chapter 4 of the MLA Act provides the process for making a request by a foreign state for mutual legal assistance.

Under Nepalese law a request by a foreign state for mutual legal assistance can be made according to:

- Section 19, to request for provision of document, evidence, information or object. If there are adequate grounds to believe that any document, evidence, information or object, which may be of assistance in the investigation of any offence or in the judicial proceedings or enforcement of judgment in a foreign country, is in Nepal, the concerned foreign state may make a request, through the diplomatic channel, to the Government of Nepal for mutual assistance. If, in making the request it appears necessary to search any place or object or seize any object, the foreign state may make a request also for executing search of such place or object or seizure of any object.
- Section 21, to request for service of process or judicial document. If it is necessary to serve any process or judicial document on any person or body who is related with judicial proceeding *sub judice* in a foreign court and is staying in Nepal, the foreign state may, pursuant to the order of the court of the foreign state, make a request through the diplomatic channel to the Government of Nepal for the service of such process or judicial document issued by the foreign court.
- Section 22, to request for taking evidence. If, in relation to any case *sub judice* in a court, it is necessary to examine any evidence in Nepal, the foreign state may, pursuant to the order of the court or body of the foreign state, make a request through the diplomatic channel to the Government of Nepal.

Under Section 26 is described the procedure. Upon receipt of a request from a foreign state for mutual legal assistance under Sections 19, 20, 21, 22, 23 and 24, the Government of Nepal, Ministry of Foreign Affairs must forward such requests and descriptions, documents and evidence attached with the request to the Central Authority for mutual legal assistance.

Once the request is received, the Central Authority shall carry out the necessary study and examination of the request, analyzing if the description, documents and evidence are provided in accordance with Section 26, and consequently make a decision whether or not to initiate action for the provision of mutual legal assistance.

If the description, document and evidence received along with the request are not sufficient to initiate action relating to mutual legal assistance, the Central Authority may write to the foreign state through the diplomatic channel to submit additional description, document and evidence. If the decision is made to initiate action relating to mutual legal assistance under sub-section (1), the Central Authority may, for the purpose of providing mutual legal assistance, order the investigating authority—if the request is for mutual legal assistance related to investigation—and the concerned District Government Attorney to make application to the concerned District Court if the request is for other mutual legal assistance.

If an order to initiate action relating to mutual legal assistance is issued by the Central Authority, the District Government Attorney concerned must make an application, accompanied by the description, document and evidence received from the foreign state to the concerned District Court. The Court may refuse to provide mutual legal assistance if, on examination of the application received under sub-section (1) and the description, document and evidence attached therewith, - (a) it appears prima facie that the offence in relation to which application is made for mutual legal assistance cannot be established, (b) the mutual legal assistance is contrary to a general principle of justice.

Upon the completion of acts including the collection of evidence, document and taking of evidence relating to mutual legal assistance pursuant to this Chapter, the investigating authority, Court or concerned District Government Attorney Office must send the description thereof to the Central Authority. The Central Authority must provide the description relating to mutual legal assistance received pursuant to sub-section (1) to the foreign state through the diplomatic channel (Section 38).

Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)?

Real-time collection of non-content and/or content data upon the receipt of a MLA request, are provided accordingly to Art. 5 of the MLA Act 2070 (2014), due to which, among others, Nepal shall:

- provide information and evidence by inspecting any relevant thing or place,
- provide originals or certified copies of relevant documents including banking, financial or business records,
- execute searches and seizures of objects, locating or identifying persons,
- freeze or confiscate movable or immovable property,

The Central Authority may frame and enforce such procedures or directives as may be required for the effective implementation to the Ordinance and this Regulation and international standards on mutual legal assistance.

In any case, the national procedure to obtain the evidence is relevant to execute the foreign request and gather, collect and provide the requesting state with assistance when not in contrast to any procedure made to regulate international assistance.

There is any *ad hoc* discipline regulating the collection of electronic evidence at the national level in the Nepalese legislative scenario. However, the general rules to collect evidence and to value their admissibility at trial are outlined in the Electronic Transactions Act (ETA), 2063 (2008).

What are the central and competent authorities in your country to:

- a) Receive a request for MLA in criminal matters?**
- b) Execute/recognize the measure (if other than the receiving authority)?**

The competent authority for receiving a request for MLA in criminal matters is indicated under Art. 6 of the MLA Act 2070 (2014) which established the Designation of Central Authority. In this regard, the Government of Nepal shall, by notification in the Nepal Gazette, designate any person or authority as the Central Authority of the Government of Nepal for carrying out acts of mutual legal assistance between Nepal and a foreign state.

- Ministry of Foreign Affairs: via diplomatic channels, seems to be the default Central Authority for mutual legal assistance and extradition matters. However, the Mutual Legal Assistance 2070 (2014) provides that the Central Authority for MLA would be decided for each bilateral treaty upon publication in the Nepal Gazette.
- Ministry of Home Affairs: according to the Extradition Act, 2070 (2014) Section 9, once the request for extradition reaches the Ministry of Foreign Affairs through diplomatic channels, the request is then forwarded to the Ministry of Home Affairs for processing.
- Ministry of Law, Justice, Constitution Assembly and Parliamentary Affairs
- Office of the Prime Minister and Council of Ministers

For executing/recognizing the measure, under to the second paragraph of Art. 6 of the MLA Act 2070 (2014) the authority indicated shall execute functions in accordance with the provisions of this Act.

Specifically, as follow:

- Ministry of Law, Justice, Constitution Assembly and Parliamentary Affairs, under Art. 18(3) of the UNCTOC;
- Office of the Prime Minister and Council of Ministers, under Art. 46(13) of the UNCAC;
- Ministry of Home Affairs, Planning and Special Service Division- Narcotic Drug Control Division, under Art. 7(8) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance of 1988.

<p>What are the accepted languages for MLA requests?</p>
<p>According to Section 40 of the MLA Act 270 (2014) a request sent for mutual legal assistance to be in Nepali language: (1) A request made by a foreign state to the Government of Nepal for mutual legal assistance pursuant to this act must be written in the Nepali language. (2) If a request provided for in sub-section (1) is written in any foreign language and the original of the English text or formal translation of the text from another language to the English language is attached with the request, showing the reason that it is not practicable to translate such request into the Nepali language, such request shall be acceptable to the Central Authority or the concerned Court.</p>
<p>Can the request be submitted electronically to the central authority?</p>
<p>Information not officially provided</p>
<p>Can the request be submitted directly to the central authority?</p>
<p>All the types of requests above mentioned can be received directly to the Central Authority, while if a foreign state which does not have a bilateral treaty with Nepal on the provision of mutual legal assistance makes a request to the Government of Nepal through the diplomatic channel.</p>
<p>What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?</p>
<p>Under Art. 3 of the MLA Act, 2070 (2014), Chapter 2 (Condition for Provision and Matters of Mutual Legal Assistance), are indicated the conditions for exchange of mutual legal assistance. It provides that where there exists a bilateral treaty between Nepal and a foreign state on the exchange of mutual legal assistance, mutual legal assistance may be exchanged between Nepal and such a foreign state. If a foreign state makes a request, through the diplomatic channel, to the Government of Nepal for mutual legal assistance in respect of any particular legal proceedings and the request is accompanied by the assurance of affording mutual legal assistance in similar type of judicial proceedings in the future, nothing shall bar the extension of legal assistance on a basis of reciprocity. Provided that a judgment made by a foreign court in any matter not covered by a treaty may not be enforced.</p> <p>Finally, under Section 4 are established the conditions of not exchanging mutual legal assistance. Specifically, as follow:</p>

- (a) in relation to a matter of civil nature, the judicial proceedings involve the amount in controversy of less than one hundred thousand rupees;
- (b) in relation to a matter of criminal matter, the offence is punishable by imprisonment for less than one year or a fine of less than fifty thousand rupees;
- (c) the extension of mutual legal assistance as requested by a foreign state undermines or results in the undermining of the public order or sovereignty of Nepal.

5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

5.1. Direct requests to foreign service providers

5.1.1. Requests for preservation

Nepal
What legal framework(s) is/are applicable, if any?
There is no law that specifically prohibits or allows Nepalese authorities (law enforcement or judicial authorities) to send data preservation, voluntary disclosure or emergency disclosure requests directly to foreign based Service Providers at present.
Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers?
The law does not appoint a specific agency or authority to deal with direct requests for preservation of data to foreign service providers.
If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?
Requests can be made through Interpol or police-to-police channels (Cyber Bureau and the Information Security Response Team Nepal (NPCERT)). It is possible to obtain assistance in gathering electronic evidence stored outside Nepal, through the MLA mechanism. According to Art. 5 of the MLA Act 2070 (2014) it is possible to take, collect or receive document or evidence.



Specifically, if the competent authority has adequate grounds to believe that any evidence that might assist the criminal investigation is located in a foreign country, Central Authorities can send a request for assistance under:

- Section 7, for provision of evidence. If the authority competent to make investigation or prosecution in accordance with the prevailing law has adequate grounds to believe that any document, evidence, information or object, including any banking, financial or business records, which may be of assistance in the investigation or prosecution of any offence, is in a foreign state, the authority may request the Central Authority for the provision of such document, evidence, information or object. (2) If there are adequate grounds to believe that any document, evidence, information or object, including any banking, financial or business records, which may be of assistance in the judicial proceedings, is in a foreign state, the Court may make an order for that purpose. (3) If an order is made under sub-section (1), the Court shall request the Central Authority for the provision of such document, evidence, information or object. (4) If, in making a request for the provision of any document, evidence, information or object under sub-section (1) or (3), it appears necessary to search any place or object or freeze any object, the concerned authority or Court may make a request also for executing the search of such place or object or freezing any object.
- Section 9, for service of process or judicial document. If, in any case filed in the Court, it is necessary to serve any process or judicial document on any person who is residing or staying in a foreign state, the Court may make an order for that purpose. (2) If an order is made under sub-section (1), the Court shall request the Central Authority for the service of such process or judicial document on the person residing or staying in the foreign country
- Section 10, for taking evidence in a foreign country. If, in respect of any case sub judice in the Court, it is necessary to take any evidence in a foreign country, the Court may make an order for that purpose. (2) If an order is made under sub-section (1), the Court shall write to the Central Authority to that end.
- Section 12, for freezing or confiscating property. If there are adequate grounds to believe that the whole or any part of property related with the judicial proceedings is located in a foreign state, the Court may make an order for the freezing or confiscation of such property. (2) If an order is made under sub-section (1), the Court shall communicate it to the central authority for the freezing or confiscation of such property.
- Section 13, for enforcement of judgment. (1) If it appears that any judgment made by a Court of Nepal is to be enforced by a foreign court, the Court may make an order for that purpose. (2) If an order is made under sub-section (1), the Court shall communicate it to the Central Authority.

Nepal ratified the United Nations Convention Against Corruption (2003), which under the articles 43-50 ruling international cooperation, including to preservation of evidence, but only with regard to request of assistance on corruption-related crimes, through MLA (ART. 46).

Finally, spontaneous information can be shared according to Art. 18 (4) and (5) of the United Nations Convention against Transnational Organized Crime, which specifies the type of MLA that can be requested including, among others, “taking evidence...”, “providing evidentiary items...”, “executing searches and seizures...”, and “other type of assistance not contrary to the domestic law of the requested State”.

Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons?

Information not officially provided.

5.1.2. Requests for voluntary disclosure

Nepal

What legal framework(s) is/are applicable, if any?

It does not appear to be present within Nepalese system, any law that specifically prohibit or allow foreign law enforcement or judicial authorities to send data preservation, voluntary disclosure or emergency disclosure requests directly to Service Providers of Nepal.

Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?

Information not officially provided.

If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?

Requests can be made through Interpol or police-to-police channels, as above.

Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?

Information not officially provided.

5.2. Requests sent by your central authority for Mutual Legal Assistance (MLA)

Nepal

What is your central authority to send requests for MLA in criminal matters?

- Ministry of Law, Justice, Constitution Assembly and Parliamentary Affairs, under Art. 18(3) of the UNCTOC;
- Office of the Prime Minister and Council of Ministers, under Art. 46(13) of the UNCAC;
- Ministry of Home Affairs, Planning and Special Service Division- Narcotic Drug Control Division, under Art. 7(8) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance of 1988.

Are informal contacts with the central authority of the requested states allowed and used?

Information not officially provided.