

# MUTUAL ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH (ENACTMENT AND ENFORCEMENT) ACT

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## **An Act to make legislative provisions to give the force of law to the Scheme for Mutual Assistance in Criminal Matters within the Commonwealth.**

[1998 No. 13.]

[See section 30 (2)]

[Commencement.]

### **1. Enactment and enforcement of the provisions of the Scheme on Mutual Assistance in Criminal Matters**

(1) As from the commencement of this Act, the provisions of the Scheme for Mutual Assistance in Criminal Matters within the Commonwealth as are set out in this Act shall have the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

(2) This Act shall apply to every separate country within the Commonwealth.

(3) For the purposes of this Act, each of the following areas shall be treated as a separate country, that is to say-

- (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates; and
- (b) each country within the Commonwealth which though not sovereign and independent, is not designated for the purposes of paragraph (a) of this subsection.
- (4) An order under subsection (3) (a) of this section designating a dependent country as forming part of a sovereign and independent country shall be made if, but only if, the dependent country has signified to the Government of the Federation that it desires that its territory be designated as part of the independent country, for the purposes of this Act.
- (5) If it appears to the President that the law of a country to which this Act applies by virtue of subsection (3) of this section contains provisions substantially equivalent to the provisions of this Act, the President may by order published in the *Gazette* direct that this Act shall apply in relation to that country with such modifications (whether by way of addition, alteration or omission) as may be specified in the order, and where an order under this section is in force in relation to a country, this Act shall have effect in relation to that country with the modification specified in the order.
- (6) Every order made under subsection (5) of this section applying this Act to a country shall include a provision inserting in the Schedule to this Act an entry consisting of the name of that country and the year and number of the statutory instrument containing the order and where any such order is varied or revoked, the varying or revoking order shall include a provision deleting the relevant entry in that Schedule, as the case may require.

[Schedule.]

## 1. **Objects of the Act**

(1) The purpose of this Act is-

- (a) to increase the level and scope of assistance rendered between Commonwealth governments in criminal matters;
- (b) to augment, but in no way to derogate from, similar existing forms of formal and informal co-operation between Commonwealth countries; and
- (c) to encourage the development of enhanced co-operation arrangements in other fora.

(2) This Act makes provision for the giving of assistance by the competent authorities of one country (in this Act referred to as "the requested country") in respect of criminal matters arising in another country (in this Act referred to as "the requesting country").

(3) Assistance which may be exchanged between Nigeria and any other Commonwealth country under this Act include the following, that is to say-

- (a) identifying and locating criminal offenders;
- (b) the service of relevant documents;
- (c) examination of witnesses;
- (d) search and seizure of assets;
- (e) obtaining evidence;
- (f) facilitating the personal appearance of witnesses before an administrative panel, a court, a tribunal or such similar proceedings;
- (g) effecting a temporary transfer of a person in custody to enable him appear as a witness;
- (h) securing the production of official or judicial records; and
- (i) tracing, seizing and forfeiting the proceeds of criminal activities.

#### **1. Designating a Central Authority, etc.**

(1) For the purposes of this Act, the President may by an order published in the Federal *Gazette* designate any person as the Central Authority or competent authority for Nigeria for the purposes of this Act.

(2) Accordingly-

- (a) all requests from Nigeria to any other country in the Commonwealth; and
- (b) all requests to Nigeria from any other Commonwealth country,

concerning any assistance to which section 2 (3) of this Act relates, shall be channelled through the person or authority designated for the purposes of this Act.

#### **4. Action in the requesting country**

(1) A request for any assistance specified under section 2 (3) of this Act may be commenced by any law enforcement agency, public prosecution or judicial authority competent to do so under the law of the requesting country.

(2) The designated Central Authority of the requesting country, if he is satisfied that the request can properly be made under this Act, shall transmit the request to the Central Authority of the requested country and shall ensure that the request contains all the supporting information required under the provisions of this Act.

(3) The designated Central Authority of the requesting country shall as far as practicable, provide such additional information as the Central Authority of the requested country may seek.

## **5. Action in the requested country**

(1) Subject to this section, where Nigeria is the requested country, the Central Authority shall, in an appropriate case, grant the assistance requested as expeditiously as practicable; and for that purpose, the Central Authority of Nigeria shall ensure that all competent authorities in Nigeria comply with the request.

(2) If the Central Authority in Nigeria considers that-

(a) the request does not comply with the provisions of this Act;

(b) in accordance with the provisions of this Act, the assistance ought to be refused either in whole or in part; or

(c) there are circumstances which are likely to cause a significant delay in complying with the request,

then the Central Authority of Nigeria shall promptly so inform the Central Authority of the requesting country, adducing reasons.

## **6. Refusal of assistance**

(1) The Central Authority for Nigeria after consultation with the President, may refuse to comply in part or in whole with a request for assistance under this Act if the criminal matter in respect of which assistance is sought appears to the Central Authority in Nigeria to concern-

(a) conduct which does not constitute an offence under any law in force in Nigeria;

(b) an offence or proceedings of a political character;

(c) conduct which in the requesting country is an offence only under military law or relating to military obligations;

(d) conduct in relation to which the person now accused or suspected of having committed an offence had previously been acquitted or convicted by a court in Nigeria.

(2) The Central Authority for Nigeria after consultation with the President may refuse to comply in whole or in part with a request for assistance under this Act-

(a) to the extent that it appears to the Central Authority aforesaid that compliance would be contrary to the Constitution of the Federal Republic of Nigeria, 1999 or would be prejudicial to the security, international relations or other essential public interests of Nigeria; or

(b) where there are substantial grounds leading the Central Authority to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice on account of any of the reasons aforesaid, to the person affected by the request.

(3) The Central Authority for Nigeria may after consultation with the President, refuse to comply in whole or, in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot lawfully be taken under any law in force in Nigeria in respect of criminal matters arising in Nigeria.

(4) An offence shall not be regarded as an offence of a political character for the purpose of subsection (1) (b) of this section, if it is an offence within the scope of any international convention to which both Nigeria and the requesting or requested country, as the case may be, are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

(5) The provisions of sections 4, 5 and 6 of this Act shall apply *mutatis mutandis* to any case in which Nigeria is either the requesting or requested country, as the case may require.

## **7. Measures of compulsion**

(1) All competent authorities in Nigeria shall, in complying with a request for assistance under this Act, use only such measures of compulsion as are permissible in matters arising under the laws of Nigeria in respect of criminal matters.

(2) Where under the laws of Nigeria measures of compulsion cannot be applied to any person in order to secure compliance with a request under this Act but the person concerned is willing to act voluntarily in total or partial compliance with the terms of the request, the competent authority in Nigeria shall make available the necessary facilities.

## **8. Act not applicable to arrest or extradition**

Nothing in this Act shall be construed as authorising the extradition or the arrest with a view to extradition of any person in respect of whom a request for assistance has not been received.

### **1. Confidentiality**

The Central Authority and all competent authorities in Nigeria and the requesting or requested countries respectively, as the case may be, shall use their best endeavours to keep confidential any request and its contents and the information and materials supplied in compliance with a request, unless such disclosure occurs in the course of criminal proceedings or where the disclosure is otherwise authorised by the Central Authority for Nigeria or that other country.

## **10. Limitation on use of information or evidence**

A requesting country under this Act shall not use any information or evidence obtained in response to a request for assistance under this Act in connection with any matter other than the criminal matter specified in the request without the prior consent of the requested country.

## **11. Expenses of compliance**

(1) Except as provided in the following provisions of this section, a requesting country shall not incur any claim for expenses arising out of compliance by the Central Authority or other competent authorities of the requested country.

(2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to and from the requested country, including the travelling and incidental expenses of accompanying officials, fees of experts and the costs of any translation required by the requesting country.

(3) If in the opinion of the requested country the expenses to be incurred in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue and in the absence of such agreement, the requested country may refuse to comply with the request.

## **12. Contents of request for assistance**

(1) A request for assistance under this Act shall contain all appropriate information as specified in this section, that is to say-

(a) specify the nature of the assistance requested;

(b) indicate any limit within which compliance with the request is desired, stating the reasons therefor;

(c) specify the identity of the agency or authority initiating the request;

- (d) specify the nature of the criminal matter concerned;
- (e) specify whether or not criminal proceedings have been instituted; and
- (j) where criminal proceedings have been instituted, disclose the following information, that is to say-

- (i) the court exercising jurisdiction in the matter;
- (ii) the identity of the accused person;
- (iii) the offences of which he stands accused and a summary of the facts;
- (iv) the stage reached in the proceedings; and

(v) any date fixed for further stages in the proceedings;

(g) where criminal proceedings have not been instituted, the request shall disclose the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of the known facts.

(2) A request shall normally be in writing but if having regard to the urgency of the matter it is expedient to make a request orally, such request shall be confirmed in writing forthwith.

### **13. Identifying and locating persons**

(1) Without prejudice to the generality of this Act, a request may seek assistance in identifying or locating persons believed to be within the requested country.

(2) A request under this section shall indicate the purpose for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses which would facilitate the identification of the person concerned.

### **14. Service of documents**

(1) A request under this Act may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.

(2) A request under this section shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of the requesting country is able to provide pertaining to any outstanding warrants or other judicial orders in criminal matters issued or made against the person to be served.



(3) The Central Authority of the requested country shall endeavour to have the documents served-

(a) in the particular method stated in the request unless such method is incompatible with the law of the requested country; or

(b) by any method prescribed by the law of the requested country for the service of documents in criminal proceedings.

(4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of documents or, if the documents have not been served, as to the reasons which have prevented service.

## **15. Examination of witness**

(1) A request under this Act may seek assistance in the examination of witnesses in the requested country.

(2) A request under this section shall in an appropriate case and in so far as the circumstances of the case permit, contain the following particulars-

(a) the names, addresses and official designations of the witnesses to be examined;

(b) the questions to be put to the witnesses or the subject-matter about which they are to be examined;

(c) whether it is desired that the witnesses be examined orally or in writing;

(d) whether it is desired that the oath be administered to the witnesses or, as the

law of the requested country allows, that they be required to make a solemn affirmation;

(e) the provisions of any law of the requesting country as to privilege or exemption from giving evidence which appears especially relevant to the request; and

(f) any special requirement of the law of the requesting country as to the manner of taking evidence relevant to its admissibility in that country.

(3) A request under this section may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and may ask questions of the witness.

## **16. Production of judicial or official records**

(1) A request under this Act may seek the production of judicial or official record relevant to a criminal matter arising in the requesting country.

(2) For the purposes of this section, "judicial record" means judgments, orders and decisions of courts and tribunals and other documents held by judicial or tribunal authorities and "official record" means documents held by government departments or agencies or prosecution authorities.

(3) The requested country shall provide copies of judicial or official records not publicly available, to the same extent and under the same circumstances as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

## **17. Personal appearance of witnesses in the requesting country**

(1) A request under this Act may seek assistance in facilitating the personal appearance of witnesses before a court exercising jurisdiction in the requesting country.

(2) A request under this section shall specify-

- (a) the subject-matter upon which it is desired to examine the witness;
- (b) the reasons for which the personal appearance of the witness is required; and
- (c) details of the traveling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witness.

(3) The competent authorities of the requested country shall invite persons whose appearance as witness in the requesting country is desired; and-

- (a) ask whether they agree to appear;
- (b) inform the Central Authority of the requesting country of the answer of the witnesses;
- (c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

## **18. Personal appearance of persons in custody**

(1) A request under this Act may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.

(2) A request under this section shall specify-

- (a) the subject-matter upon which it is desired to examine the witness;
- (b) the reason for which the personal appearance of the witness is required.

(3) The requested country shall refuse to comply with a request for the transfer of a person in custody if the person concerned does not consent to the transfer.

(4) The requested country may refuse to comply with a request for the transfer of a person in custody and shall be under no obligation to inform the requesting country of the reason for such refusal.

(5) Where a person in custody is transferred, the requested country shall notify the requesting country of-

(a) the dates upon which the person concerned is due under the law of the requested country to be released from custody; and

(b) the date by which the requested country requires the return of such person, and shall similarly notify any variations in such dates.

(6) The requesting country shall keep in custody a person transferred under this section and shall return the person to the requested country when his presence as witness in the requesting country is no longer required; and in any case, by the earlier of the dates specified under subsection (5) of this section.

(7) The obligation to return any person transferred under this section shall subsist notwithstanding the fact that the witness is citizen of the requesting country.

(8) The period during which the person transferred is in custody in the requesting country shall for all purposes be deemed to be service in the requested country of an equivalent period in custody in that country.

(9) Nothing in this section shall preclude the release in the requesting country without return to the requested country of any person transferred under this section if both the requested and the requesting countries agree to such release.

## **19. Other assistance**

After consultation between the requesting and the requested countries, either party may seek and receive other areas of assistance in criminal matters not specified in this Act on such terms and conditions as may be agreed between the two countries.

## **PART II**

### *Provisions as to the proceeds of criminal activities*

## **20. Tracing the proceeds of criminal activities: search and seizure**

(1) A request for assistance under this Part of this Act may seek assistance in-

(a) identifying, searching and locating property within the requested country believed to be acquired with the proceeds of criminal activities; and

(b) the security of property in the requested country believed to be acquired with the proceeds of criminal activities.

(2) A request under this section shall contain such information as is available to the Central Authority of the requesting country regarding the nature and location of the property and regarding any person in whose possession or control the property is believed to be.

(3) A request under this section shall specify so far as is reasonably practicable, all relevant information available to the Central Authority of the requesting country which may be required to be adduced in an application under the laws of the requested country for any necessary warrant, order or authorisation to effect the forfeiture or seizure.

(4) “**Seizure**” in this section, includes the taking of measures to prevent any dealing in, transfer or disposal of, or the creation of any charge over property pending the determination of proceedings for the forfeiture of the proceeds of criminal activities.

(5) The law of the requested country shall apply to determine the disposal of any proceeds of criminal activities forfeited as a result of a request under this section.

## **21. Other assistance in obtaining evidence**

(1) A request under this Part of this Act may seek other assistance in obtaining evidence.

(2) A request under this section shall specify as appropriate and, in so far as the circumstances of the case permit-

(a) the documents, records or property to be inspected, preserved, photographed, copied or transmitted;

(b) the samples of any property to be taken, examined or transmitted; and

(c) the site to be viewed or photographed.

## **22. Confirmation and enforcement of orders for forfeiture of the proceeds of criminal activity**

(1) A request under this Part of this Act may seek assistance in invoking procedures in the requested country leading to the recognition or review and confirmation and the enforcement of an order for the forfeiture of the proceeds of criminal activities made by a court or other authority in the requesting country.

(2) A request under this section shall be accompanied by a certified copy of the order and shall contain, so far as is reasonably practicable, all such information available to the Central Authority of the requesting country as may be required in connection with the procedures to be followed in the requested country.

(3) The law of the requested country shall apply to determine the circumstances and manner in which an order may be recognised, confirmed or enforced.

### **23. Meaning of proceeds of criminal activities**

In this part of this Act, the expression “**proceeds of criminal activities**” means any property derived or realised, directly or indirectly, by a person convicted of an offence in the requesting country or against whom criminal proceedings have been instituted in that country as a result-

(a) of the commission of the offence concerned; or

(b) where the commission of the offence is shown to be part of a course of conduct by the person convicted or charged alone or in association with other persons, having as its purpose the carrying out or furtherance of criminal activities, of any part of that course of conduct.

## **PART III**

### *Miscellaneous provisions*

### **24. Privilege**

(1) No person shall be compelled in response to a request under this Act to give any evidence in the requested country, which he would not be compelled to give-

(a) in criminal proceedings in that country; or

(b) in criminal proceedings in the requesting country.

(2) For the purposes of this section, any references to giving evidence includes a reference to answering any question and to producing any document.

### **25. Indemnity of persons appearing**

(1) Subject to the provisions of section 20 of this Act, any witness appearing in the requested country in response to a request under section 18 of this Act or persons transferred to that country in response to a request under section 18 of this Act shall be immune in the requesting country from prosecution, detention or any other restriction of

personal liberty in respect of criminal acts, omissions or convictions before the time of the departure of the witness from the requested country.

(2) The immunity conferred under subsection (1) of this section shall cease-

(a) in the case of a witness appearing in response to a request under section 17 or 18 of this Act, when the witness having had for a period of fifteen consecutive days after the date when the witness had been notified by the appropriate authority that his presence was no longer required and having afforded him the opportunity to leave the country, he has continued to remain in the requesting country or having left it, has returned to it; and

(b) in the case of a person in custody transferred in response to a request under section 19 of this Act and remaining in custody, when he has been returned to the requested country.

## **26. Transmission and return of material**

(1) Where compliance with a request under this Act involves the transmission to the requesting country of any document, record or property, the requested country-

(a) may postpone the transmission of such material if it is required in connection with proceedings in that country, and in such a case shall provide certified copies of a document or record pending transmission of the original; or

(b) may require the requesting country to agree to such terms and conditions as may protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.

(2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Act, it shall be returned to the requested country when it is no longer required in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.

## **27. Authentication**

(1) The requested country shall authenticate all material that is to be transmitted by that country.

(2) Authentication shall be by a stamp or seal of a Minister, Ministry, government department or Central Authority of the requested country.

## **28. Notification of designation**

Designation of-

- (a) dependent territories under section I of this Act; and
- (b) the Central Authority in Nigeria for the purposes of section 3 of this Act,
- shall be notified to the Commonwealth Secretary-General in London, United Kingdom.

## 29. Interpretation

In this Act, unless the context otherwise requires-

**“assistance”** means request for any of the various forms of assistance available under the provisions of this Act;

**“Central Authority”** means a person designated as such under section 3 of this Act;

**“criminal proceedings”** means proceedings have been instituted in a court exercising jurisdiction in that country or that there is reasonable cause to believe that an offence in respect of which such proceedings would be instituted has been committed;

**“requested country”** means a country to which a request for assistance under this Act has been made;

**“requesting country”** means a country making a request for assistance under this Act.

## 30. Short title and commencement

(1) This Act may be cited as the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act.

(2) This Act shall come into force on such date as the President may by order published in the Federal *Gazette*, direct.

## SCHEDULE

[Section I (6).]

### *Countries to which this Act applies*

<i>Country</i>	<i>Legal Notice containing the Order</i>
Antigua and Bermuda	
Australia	
The Bahamas	
Bangladesh	
Barbados	

Belize

Botswana

Brunei Darussalam

Canada

Cyprus

Dominica

Fiji

The Gambia

Ghana

Grenada

Guyana

India

Jamaica

Kenya

Kiribati

Lesotho

Malawi

Malaysia

Maldives

Malta

Mauritius

New Zealand

Papua New Guinea

St. Christopher and Nevis

St. Lucia

St. Vincent

Seychelles

Sierra Leone

Singapore



Solomon Islands

Sri Lanka

Swaziland

Tanzania

Trinidad and Tobago

Tuvalu

Uganda

United Kingdom

Western Samoa

Zambia

Zimbabwe

## **SUBSIDIARY LEGISLATION**

*No Subsidiary Legislation*