

CHAPTER 9:06
CRIMINAL MATTERS (MUTUAL ASSISTANCE) ACT

Act 13/1990, 22/2001 (s. 4)

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AN ACT to provide for mutual assistance in criminal matters between Zimbabwe and Commonwealth countries and other foreign countries; to facilitate the provision and obtaining by Zimbabwe of such assistance, and to provide for matters connected therewith or incidental thereto.

[Date of commencement: 1st April, 1991.]

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*].

2 Interpretation

(1) In this Act—

“appropriate authority” means the authority of a foreign country which is authorized in terms of its law to make requests;

“dealing with property” includes removing the property from Zimbabwe or receiving or making a gift of the property;

“financial institution” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*];

“foreign forfeiture order” means an order registered in Zimbabwe in terms of subsection (1) of section *thirtytwo* for the forfeiture of property located in Zimbabwe in respect of a foreign specified offence;

“foreign interdict” means an order registered in Zimbabwe in terms of subsection (2) of section *thirty-two* in respect of a foreign specified offence and restraining any person from dealing with any property referred to in the order;

“foreign pecuniary penalty order” means an order imposing a pecuniary penalty in respect of a foreign specified offence and registered in Zimbabwe in terms of subsection (1) of section *thirty-two* but does not include an order for the payment of money by way of compensation, restitution or damages;

“foreign specified offence” means a specified offence against a law of a foreign country;

“interdict” means an order restraining any person from dealing with property;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“money-laundering offence”, in relation to the proceeds of a serious narcotics offence, means an offence involving—

(a) the engaging, directly or indirectly, in a transaction which involves money or other property which is, in terms of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] proceeds of the serious narcotics offence; or

(b) the receiving, possessing, concealing, disposing of or bringing into a country of money or other property which is, in terms of the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*], proceeds of the serious narcotics offence;

“monitoring order” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*];

“pecuniary penalty order” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*];

“police officer” means any member of the Police Force of or above the rank of inspector;
“production order” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [Chapter 9:17];
“property-tracking document” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [Chapter 9:17];
“serious narcotics offence” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [Chapter 9:17];
“serious offence” means an offence the maximum penalty for which is death or imprisonment for not less than twelve months and “criminal matter” shall be construed accordingly;
“specified offence” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [Chapter 9:17];
“tainted property” has the meaning assigned to it in the Serious Offences (Confiscation of Profits) Act [Chapter 9:17].

(2) A reference in this Act to a law of a foreign country shall include a reference to a law of a part of, or a law in force in a part of, the foreign country.

(3) For the purposes of this Act—

(a) a colony, territory or protectorate of a foreign country; or

(b) a territory for the international relations of which a foreign country is responsible; or

(c) a ship or aircraft of, or registered in, a foreign country; shall, unless a contrary intention appears, be deemed to be part of that country.

3 Application of Act

(1) Subject to subsections (2) and (3), whenever the Minister is satisfied that reciprocal provisions have been made by any foreign country to facilitate the provision to Zimbabwe of assistance in criminal matters, he may, by statutory instrument, declare that this Act shall apply in relation to any such foreign country.

(2) The Minister may, by statutory instrument, direct that the application of this Act in relation to a specified foreign country shall be subject to such conditions or modifications as may be specified in the statutory instrument, and thereupon this Act shall apply accordingly.

(3) This section shall not apply to Part II.

4 Aspects of mutual assistance

For the purposes of this Act, mutual assistance in criminal matters shall include—

(a) the obtaining of evidence, documents or other articles;

(b) the provision of documents and other records;

(c) the location and identification of witnesses or suspects;

(d) the execution of requests for search and seizure;

(e) the making of arrangements for persons to give evidence or assist in investigations;

(f) the forfeiture or confiscation of property in respect of offences;

(g) the recovery of pecuniary penalties in respect of offences;

(h) the interdicting of dealings in property, or the freezing of assets, that may be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences;

(i) the location of property that may be forfeited, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences; and (j) the service of documents.

5 Act not to prevent other provision of mutual assistance

Nothing in this Act shall be construed as preventing the provision or obtaining of assistance in criminal matters otherwise than as provided in this Act.

6 Refusal of assistance

(1) A request by a foreign country for assistance under this Act shall be refused if, in the opinion of the Attorney-General—

(a) the request relates to the prosecution or punishment of a person for an offence that is, by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character; or

(b) there are reasonable grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character; or

(c) there are reasonable grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions; or

(d) the request relates to prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zimbabwe, would have constituted an offence under the military law of Zimbabwe but not under the ordinary criminal law of Zimbabwe; or

- (e) the granting of the request would prejudice public safety, public order, defence or the economic interests of Zimbabwe; or
- (f) the request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent court or authority in the foreign country, or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or
- (g) except in the case of a request under section *eleven*, the foreign country is not a country to which this Act applies.

(2) A request by a foreign country for assistance under this Act may be refused if in the opinion of the Attorney-General—

- (a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zimbabwe, would not have constituted an offence against the law of Zimbabwe; or
- (b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign country and a similar act or omission occurring outside Zimbabwe in similar circumstances would not have constituted an offence against the law of Zimbabwe; or
- (c) the request relates to the prosecution or punishment in respect of an act or omission where, if it had occurred in Zimbabwe at the same time and had constituted an offence against the law of Zimbabwe, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason; or
- (d) the provision of the assistance could prejudice an investigation or proceedings in relation to a criminal matter in Zimbabwe; or
- (e) the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether in or outside Zimbabwe; or
- (f) the provision of the assistance would impose an excessive burden on the resources of Zimbabwe.

7 Assistance may be conditional

Assistance in terms of this Act may be provided to a foreign country subject to such conditions as the Attorney-General may determine.

8 Request by Zimbabwe

Any request by Zimbabwe for assistance in any criminal matter in terms of this Act shall be made by the Attorney-General.

9 Request for assistance by foreign country

(1) A request by the appropriate authority of a foreign country for assistance in a criminal matter shall be made to the Attorney-General.

(2) A request made in terms of subsection (1) shall contain or be accompanied by a document giving the following information—

- (a) the name of the authority concerned with the criminal matter to which the request relates; and
- (b) a description of the nature of the criminal matter and a summary of the relevant facts and laws; and
- (c) a description of the purpose of the request and of the nature of the assistance being sought; and
- (d) details of the procedure that the foreign country wishes to be followed by Zimbabwe in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign country pursuant to the request; and
- (e) the wishes of the foreign country concerning the confidentiality of the request and the reasons for those wishes; and
- (f) details of the period within which the foreign country wishes that the request be complied with; and
- (g) if the request involves a person travelling from Zimbabwe to the foreign country, details of allowances to which the person will be entitled and of the arrangements for accommodation for the person, while the person is in the foreign country pursuant to the request; and
- (h) any other information required to be included with the request under a treaty or other arrangement between Zimbabwe and the foreign country; and
- (i) any other information that may assist in giving effect to the request; but failure to comply with this subsection shall not be a ground for refusing the request.

PART II

ASSISTANCE IN RELATION TO TAKING OF EVIDENCE AND PRODUCTION OF DOCUMENTS OR OTHER ARTICLES

10 Request by Zimbabwe

The Attorney-General may request an appropriate authority of a foreign country to arrange for—

- (a) evidence to be taken in the foreign country; or

(b) documents or other articles in the foreign country to be produced; for the purposes of proceedings in relation to a criminal matter in Zimbabwe. **11 Request for evidence, etc., by foreign country**

(1) Where a request is made by the appropriate authority of a foreign country for— (a) evidence to be taken in Zimbabwe; or

(b) documents or other articles in Zimbabwe to be produced; for the purposes of proceedings in relation to a criminal matter in the foreign country, the Attorney-General may, subject to such terms and conditions as he may determine, authorize the taking of the evidence or the production of the documents or other articles, and the transmission of the evidence, documents or other articles to the foreign country.

(2) Where the Attorney-General authorizes the taking of evidence or the production of documents or other articles in terms of subsection (1)—

(a) in the case of the taking of evidence, a magistrate may take the evidence on oath of each witness appearing before him to give evidence in relation to the matter, and shall—

(i) cause the evidence to be put in writing and certify that the evidence was taken by him; and

(ii) cause the evidence so certified to be sent to the Attorney-General; or

(b) in the case of the production of documents or other articles, a magistrate may, subject to subsection (6), require the production of the documents or other articles and shall send the documents, or copies of the documents certified by him to be true copies, or the other articles, to the Attorney-General.

(3) The evidence of any witness may be taken in the presence or absence of the person to whom the proceedings in the foreign country relate or in the presence of his legal representative, if any.

(4) The magistrate conducting proceedings in terms of subsection (2) may permit—

(a) any other person giving evidence or producing documents or other articles at the proceedings before him; and

(b) the appropriate authority of the foreign country; to be legally represented at the proceedings.

(5) The certificate by the magistrate made in terms of subsection (2) shall state whether, when the evidence was taken or the documents or other articles were produced—

(a) the person to whom the proceedings in the foreign country relate or his legal representative; or

(b) any person other than the person giving evidence or producing documents or other articles or his legal representative; was present.

(6) Subject to subsection (7), the laws of Zimbabwe with respect to the compelling of persons to attend before a magistrate, and to give evidence, answer questions and produce documents or other articles, upon the hearing of a charge against a person for any offence shall apply, *mutatis mutandis*, with respect to the compelling of persons to attend before a magistrate, and to giving evidence, answering questions and the production of documents or other articles, for the purposes of this section.

(7) For the purposes of this section, the person to whom the proceedings in the foreign country relate shall be competent but not compellable to give evidence.

PART III

ASSISTANCE IN RELATION TO SEARCH AND SEIZURE

12 Requests by Zimbabwe for search and seizure

(1) This section applies to proceedings or investigations relating to a serious offence against the law of Zimbabwe if there are reasonable grounds to believe that a thing relevant to the proceedings or investigations may be located in a foreign country to which this Act applies.

(2) Subject to subsection (1), the Attorney-General may request an appropriate authority of a foreign country to obtain a warrant or other instrument authorizing the search for a thing relevant to the proceedings or investigation and, if such a thing, or any other thing that is or may be relevant to the proceedings or investigation, as the case may be, is found pursuant to such a search, authorizing the seizure of that thing.

(3) A request shall be accompanied by an affidavit by a person verifying the grounds on which the request is made.

13 Requests by foreign countries for search and seizure

(1) Where—

(a) proceedings have, or an investigation relating to a criminal matter involving a serious offence has, commenced in a foreign country; and

(b) there are reasonable grounds to believe that a thing relevant to the proceedings or investigation is located in Zimbabwe; and

(c) the appropriate authority of the foreign country requests the Attorney-General to arrange for the issue of a search warrant in terms of this section in relation to that thing;

the Attorney-General may, in writing, authorize a police officer to apply to a magistrate in the province in which that thing is believed to be located for the search warrant requested by the foreign country.

(2) Where a police officer authorized under subsection (1) has reason to believe that the thing to which the request relates is or will be, at a specified time— (a) on a person; or

(b) in the clothing that is being worn by a person; or

(c) otherwise in a person's immediate control; the police officer may lay before a magistrate information on oath setting out the grounds for that belief and apply for the issue of a warrant in terms of this section to search the person for that thing.

(3) Where an application is made in terms of subsection (2), the magistrate may, subject to subsection (6), issue a warrant authorizing a police officer— (a) to search the person for the thing; and

(b) to seize anything found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceedings or investigation.

(4) Where a police officer authorized in terms of subsection (1) has reason to believe that the thing to which the request relates is or will be at a specified time, upon any land, or upon or in any premises, the police officer may—

(a) lay before a magistrate information on oath setting out the grounds for that belief; and

(b) apply for the issue of a warrant in terms of this section to search the land or premises for that thing.

(5) Where an application is made in terms of subsection (4), the magistrate may, subject to subsection (6), issue a warrant authorizing a police officer—

(a) to enter upon the land, or upon or into the premises; and

(b) to search the land or premises for the thing; and

(c) to seize anything found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceedings or investigation.

(6) A magistrate shall not issue a warrant in terms of this section unless—

(a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information, if any, as the magistrate may require concerning the grounds on which the issue of the warrant is sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(7) There shall be stated in a warrant issued in terms of this section—

(a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorized; and

(b) whether the search is authorized at any time of the day or night or during specified hours of the day or night; and

(c) a description of the kind of things authorized to be seized; and

(d) a day, not being later than one month after the issue of the warrant, on which the warrant ceases to have effect.

(8) If in the course of searching under a warrant issued in terms of this section for a thing of a kind specified in the warrant, the police officer finds another thing that the police officer believes on reasonable grounds—

(a) to be relevant to the proceedings or investigation in the foreign country or to afford evidence as to the commission of an offence in Zimbabwe; and

(b) is likely to be concealed, lost or destroyed if it is not seized; the warrant shall be deemed to authorize the police officer to seize the other thing.

(9) Where a police officer finds, as a result of a search in accordance with a warrant issued in terms of this section, a thing which the police officer seizes wholly or partly because he believes on reasonable grounds the thing to be relevant to the proceedings or investigation in the foreign country, the police officer shall deliver the thing into the custody and control of the Commissioner of Police.

(10) Where a thing is delivered into the custody and control of the Commissioner of Police in terms of subsection (9), the Commissioner of Police shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized, pending a direction in writing from the Attorney-General as to the manner in which the thing is to be dealt with, which may include a direction that the thing be sent to an authority of a foreign country.

(11) A police officer who executes a search warrant issued in terms of subsection (3) or (5) shall, as soon as practicable after the execution of the warrant, give to the person searched, or to the owner or occupier of the land or premises searched, or leave in a prominent position on such land or at such premises, as the case requires, a notice setting out—

(a) the name and rank of the police officer; and

(b) the name of the magistrate who issued the warrant and the day on which it was issued; and

(c) a description of anything seized and removed in accordance with the warrant.

(12) A police officer acting in accordance with a warrant issued in terms of subsection (3) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person in terms of the warrant.

(13) A person shall not be searched under a warrant issued in terms of subsection (3) except by a person of the same sex and the search shall be conducted with strict regard to decency.

(14) Nothing in this section shall be taken to authorize a police officer, in executing a warrant issued in terms of subsection (3), to carry out a search by way of an examination of a body cavity of a person.

(15) Where a police officer is authorized under a warrant issued in terms of subsection (3) to search a person, the police officer may also search—

- (a) the clothing that is being worn by the person; and
- (b) any property in or apparently in, the person's immediate control.

PART IV

ARRANGEMENTS FOR PERSONS TO GIVE EVIDENCE OR ASSIST IN INVESTIGATIONS

14 Requests for removal of certain persons to Zimbabwe

(1) Where—

- (a) proceedings relating to a criminal matter have commenced in Zimbabwe; and
- (b) the Attorney-General is of the opinion that a person who is in a foreign country to which this Act applies—
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving evidence relevant to the proceedings; and
 - (iii) has given his consent to being removed to Zimbabwe for the purpose of giving evidence in the proceedings;

the Attorney-General may request the appropriate authority of the foreign country to authorize the attendance of the person at the proceedings relating to or in connection with the criminal matter.

(2) Where—

- (a) an investigation relating to a criminal matter has commenced in Zimbabwe; and
- (b) the Attorney-General is of the opinion that a person who is in a foreign country to which this Act applies—
 - (i) is a foreign prisoner; and
 - (ii) is capable of giving assistance in relation to the investigation; and
 - (iii) has given his consent for being removed to Zimbabwe for the purpose of giving assistance in relation to the investigation;

the Attorney-General may request the appropriate authority of the foreign country to authorize the removal of the person to Zimbabwe for the purpose of giving assistance in relation to the investigation.

(3) Where the Attorney-General makes a request in terms of subsection (1) or (2), he may make arrangements with an appropriate authority of the foreign country for—

- (a) the removal of the person to Zimbabwe; and
- (b) the custody of the person while in Zimbabwe; and (c) the return of the person to the foreign country; and (d) any other relevant matter.

15 Arrangements between Attorney-General and Minister in relation to custody of certain persons

(1) The Attorney-General may make arrangements with the Minister in relation to the keeping in custody of persons who are in Zimbabwe pursuant to requests under section *fourteen*.

(2) The Attorney-General may arrange with the Minister for the variation or revocation of arrangements made in terms of subsection (1).

16 Custody of certain persons

Where—

- (a) a person is to be brought to Zimbabwe from a foreign country pursuant to a request in terms of section *fourteen*; and
- (b) the foreign country requests that the person be kept in custody while he is in Zimbabwe; the person shall, while he is in Zimbabwe or travelling to or from Zimbabwe pursuant to the request, be kept in such custody as the Attorney-General may direct in writing.

17 Immunities

(1) Where a person is in Zimbabwe—

- (a) pursuant to a request in terms of section *fourteen*; or
- (b) to give evidence in proceedings or to give assistance in relation to an investigation pursuant to a request made by or on behalf of the Attorney-General, not being a request in terms of section *fourteen*, for assistance in a criminal matter; the person, subject to subsection (2), shall not be detained, prosecuted or punished in Zimbabwe for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign country pursuant to the request, or be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred before the person's departure from the foreign country pursuant to the request, or be required to give evidence in any proceedings in Zimbabwe other than the proceedings to which the request relates.

(2) Subsection (1) shall cease to apply to a person— (a) once the person has left Zimbabwe; or

(b) where the person has had the opportunity to leave Zimbabwe but has remained in Zimbabwe otherwise than for—

- (i) the purpose to which the request related; or
- (ii) the purpose of giving evidence in proceedings in Zimbabwe certified by the Attorney-General, in writing, to be proceedings in which it is desirable that the person give evidence; or
- (iii) the purpose of giving assistance in relation to an investigation in Zimbabwe certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(3) A certificate given by the Attorney-General for the purposes of subparagraph (ii) or (iii) of paragraph (b) of subsection (2) shall have effect from the day specified in the certificate.

18 Status of person prosecuted for offence committed after departure from foreign country

(1) Where a person has come to Zimbabwe pursuant to a request to a foreign country in terms of section *fourteen*, the person shall be taken, for the purposes of this Act to be in Zimbabwe pursuant to the request during any period which the person remains in Zimbabwe for the purpose of being tried for a Zimbabwean criminal offence that the person is alleged to have committed after the person's arrival in Zimbabwe from the foreign country.

(2) Without limiting the generality of subsection (1), the person shall be kept in such custody as the Attorney-General directs in terms of section *sixteen*.

19 Limitation on use of evidence by certain persons Where—

(a) a person is in Zimbabwe—

- (i) pursuant to a request in terms of section *fourteen*,
- (ii) to give evidence in proceedings, or to give assistance in relation to an investigation pursuant to a request made by or on behalf of the Attorney-General, not being a request in terms of section *fourteen*, for assistance in criminal matters; and

(b) the person has given evidence in the proceedings to which the request related or in proceedings certified by the Attorney-General in terms of subparagraph (ii) of paragraph (b) of subsection (2) of section *seventeen* in relation to that person; that evidence shall not be admitted or otherwise used in any prosecution of the person for an offence against the law of Zimbabwe, other than the offence of perjury in relation to the giving of that evidence.

20 Conditions of imprisonment

The provisions of the Prisons Act [*Chapter 7:11*] relating to—

- (a) the conditions of imprisonment of persons convicted of offences; and
- (b) the treatment of any such persons during imprisonment; and
- (c) the transfer of any such persons from prison to prison; shall apply, *mutatis mutandis*, in relation to a person who is in Zimbabwe pursuant to a request in terms of section *fourteen* and who has been committed to a prison in accordance with a direction of the Attorney-General in terms of this Act.

21 Release of certain persons upon request by foreign country Where—

- (a) a person is being held in custody in accordance with a direction of the Attorney-General in terms of section *sixteen*; and
- (b) the foreign country from which the person has been brought requests the release of the person from custody; the Attorney-General shall direct that the person be released from custody.

22 Escaping

(1) Any person who escapes from lawful custody while in Zimbabwe pursuant to a request in terms of section *fourteen* shall be guilty of an offence and shall be liable to imprisonment for a period not exceeding two years.

(2) Sections 99 and 100 of the Prisons Act [*Chapter 7:11*] shall apply, *mutatis mutandis*, as if a reference in those sections to custody in respect of any offence against the law of Zimbabwe were a reference to custody while in Zimbabwe pursuant to a request in terms of section *fourteen*.

23 Arrest of person who has escaped from custody

(1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person—

(a) has been brought to Zimbabwe pursuant to a request in terms of section *fourteen*; and (b) has escaped from lawful custody while in Zimbabwe pursuant to the request.

(2) A person who has been arrested in terms of subsection (1) shall be returned to custody.

24 Requests for giving of evidence at hearings in foreign countries

(1) Where—

- (a) proceedings relating to a criminal matter have commenced in a foreign country; and
- (b) the appropriate authority of the foreign country requests the attendance at a hearing in connection with the proceedings of a prisoner who is in Zimbabwe; and

- (c) there are reasonable grounds to believe that the prisoner is capable of giving evidence relevant to the proceedings; and
- (d) the Attorney-General is satisfied that—
 - (i) the prisoner has consented to giving evidence in the foreign country:

Provided that, where the statutory instrument under section *three* that applies the provisions of this Act to the foreign country provides that attendance in response to such a request shall be compulsory, the prisoner's consent need not be obtained; and

[Proviso inserted by section 5 of Act 12 of 1997]

- (ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may, after consultation with the Minister, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give evidence at the proceedings and shall make arrangements for the travelling of the prisoner to the foreign country in the custody of a police or prison officer designated by the Attorney-General for the purpose.

(2) Where—

- (a) proceedings relating to a criminal matter have commenced in a foreign country; and
- (b) the appropriate authority of the foreign country requests the attendance at the proceedings of a person in Zimbabwe who is not a prisoner; and
- (c) there are reasonable grounds to believe that the person is capable of giving evidence relevant to the proceedings; and
- (d) the Attorney-General is satisfied that—
 - (i) the person has consented to giving evidence in the foreign country:

Provided that, where the statutory instrument under section *three* that applies the provisions of this Act to the foreign country provides that attendance in response to such a request shall be compulsory, the person's consent need not be obtained; and

[Proviso inserted by section 5 of Act 12 of 1997]

- (ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may make arrangements for the travelling of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purposes of a request that a person give evidence in the foreign country shall be— (a) that the person shall not—

- (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Zimbabwe; or
- (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that occurred, before the person's departure from Zimbabwe; or
- (iii) be required to give evidence in any proceedings in the foreign country other than the proceedings to which the request relates;

unless the person has left the foreign country or has had the opportunity to leave the foreign country but has remained in that country otherwise than for the purposes of giving evidence in the proceedings to which the request relates; and

- (b) that any evidence given by the person in the proceedings to which the request relates shall be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against a law of the foreign country other than the offence of perjury in relation to the giving of that evidence; and
- (c) that the person shall be returned to Zimbabwe in accordance with arrangements agreed by the Attorney-General; and
- (d) in a case where the person is being held in custody in Zimbabwe and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country—
 - (i) the making of appropriate arrangements for that purpose; and
 - (ii) that the person will not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the law of Zimbabwe; and
 - (iii) if the person is released in the foreign country in terms of subparagraph (ii), that the person's accommodation and other expenses pending the completion of the proceedings to which the request relates shall be paid for by the foreign country; and (e) such other matters as the Attorney-General thinks appropriate.

[Subsection as inserted by section 5 of Act 12 of 1997]

(4) Where a person has been notified that the Attorney-General has made or is about to make arrangements in terms of subsection (1) or (2) for him to travel to a foreign country for the purpose of giving evidence, and the

person has not consented to give evidence there, he may appeal to the High Court against the Attorney-General's decision, and the High Court may make such order in the matter as it thinks just.

[Subsection as inserted by section 5 of Act 12 of 1997]

(5) An appeal in terms of subsection (4) shall be made within the time and in the manner prescribed in rules of court.

25 Requests for assistance in relation to investigations in foreign countries

(1) Where—

- (a) an investigation relating to a criminal matter has commenced in a foreign country; and
- (b) the appropriate authority of the foreign country requests the removal of a prisoner who is in Zimbabwe to the foreign country for the purpose of giving assistance in relation to the investigation; and
- (c) there are reasonable grounds to believe that the prisoner is capable of giving assistance in relation to the investigation; and
- (d) the Attorney-General is satisfied that—
 - (i) the prisoner has consented to being removed to the foreign country for the purpose of giving assistance in relation to the investigation:

Provided that, where the statutory instrument under section *three* that applies the provisions of this Act to the foreign country provides that attendance in response to such a request shall be compulsory, the person's consent need not be obtained; and

[Proviso inserted by section 5 of Act 12 of 1997]

- (ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may, after consultation with the Minister, direct that the prisoner be released from prison for the purpose of travelling to the foreign country to give assistance in relation to the investigation and shall make arrangements for the travelling of the prisoner to the foreign country in the custody of a police or prison officer designated by the Attorney-General for the purpose.

(2) Where—

- (a) an investigation relating to a criminal matter has commenced in a foreign country; and
- (b) the appropriate authority of the foreign country requests that a person in Zimbabwe who is not a prisoner, travel to the foreign country to give assistance in relation to the investigation; and
- (c) there are reasonable grounds to believe that the person is capable of giving assistance in relation to the investigation; and
- (d) the Attorney-General is satisfied that—
 - (i) the person has consented to travel to the foreign country for the purpose of giving assistance in relation to the investigation:

Provided that, where the statutory instrument under section *three* that applies the provisions of this Act to the foreign country provides that attendance in response to such a request shall be compulsory, the person's consent need not be obtained; and

[Proviso inserted by section 5 of Act 12 of 1997]

- (ii) the foreign country has given adequate undertakings in respect of the matters referred to in subsection (3);

the Attorney-General may make arrangements for the travelling of the person to the foreign country.

(3) The matters in relation to which undertakings are to be given by a foreign country for the purposes of a request that a person be removed to, or travel to, the foreign country for the purpose of giving assistance in relation to an investigation shall be—

- (a) that the person shall not—
 - (i) be detained, prosecuted or punished for any offence against the law of the foreign country that is alleged to have been committed, or that was committed, before the person's departure from Zimbabwe; or
 - (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred before the person's departure from Zimbabwe; or
 - (iii) be required to give evidence in any proceedings in the foreign country; unless the person has left the foreign country or has had the opportunity to leave the foreign country but has remained in that country otherwise than for the purpose of giving assistance in relation to the investigation to which the request relates; and
- (b) that the person shall be returned to Zimbabwe in accordance with arrangements agreed by the Attorney-General; and
- (c) in a case where the person is being held in custody in Zimbabwe and the Attorney-General requests the foreign country to make arrangements for the keeping of the person in custody while the person is in the foreign country—
 - (i) the making of appropriate arrangements for that purpose; and

- (ii) that the person shall not be released from custody in the foreign country unless the Attorney-General notifies an appropriate authority of the foreign country that the person is entitled to be released from custody under the law of Zimbabwe; and
- (iii) if the person is released in the foreign country in terms of subparagraph (ii), that the person's accommodation and other expenses pending the completion of the investigation to which the request relates shall be paid for by the foreign country; and (d) such other matters as the Attorney-General thinks appropriate.

(4) Where a person has been notified that the Attorney-General has made or is about to make arrangements in terms of subsection (1) or (2) for him to travel to a foreign country for the purpose of giving assistance, and the person has not consented to give assistance there, he may appeal to the High Court against the Attorney-General's decision, and the High Court may make such order in the matter as it thinks just.

[Subsection inserted by section 5 of Act 12 of 1997]

(5) An appeal in terms of subsection (4) shall be made within the time and in the manner prescribed in rules of court.

[Subsection inserted by section 5 of Act 12 of 1997]

26 Effect of removal to foreign country on prisoner's term of imprisonment

Where a prisoner who is serving a term of imprisonment for an offence against the law of Zimbabwe is released from prison pursuant to a request by the appropriate authority of the foreign country under section *twentyfour* or *twenty-five*, the prisoner shall, while in custody in connection with the request, including custody outside Zimbabwe, be deemed to be continuing to serve that term of imprisonment.

PART V

CUSTODY OF PERSONS IN TRANSIT

27 Transit

(1) Where—

- (a) a person is to be transported in custody from a foreign country through Zimbabwe to another foreign country for the purposes of giving evidence in proceedings or giving assistance in relation to an investigation relating to a criminal matter in the other foreign country; and
- (b) at least one of those foreign countries is a foreign country to which this Act applies; the person may be transported through Zimbabwe in the custody of another person and, if an aircraft, vehicle or train by which the person is being transported lands or calls at a place in Zimbabwe, shall be kept in such custody as the Attorney-General, after consultation with the Minister, directs in writing until his transportation is continued.

(2) Where a person is being held in custody pursuant to a direction in terms of subsection (1) and the person's transportation is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct that the person be transported in custody to the foreign country from which the person was first transported.

28 Escaping

(1) Any person who, being a person being kept in custody pursuant to a direction under subsection (1) of section *twenty-seven*, escapes from such custody, shall be guilty of an offence and shall be liable to imprisonment for a period not exceeding two years.

(2) Sections 99 and 100 of the Prisons Act [*Chapter 7:12*] shall apply, *mutatis mutandis*, as if a reference in those sections to custody in respect of any offence against the law of Zimbabwe were a reference to custody pursuant to a direction in terms of subsection (1) of section *twenty-seven*.

29 Arrest of person in transit

(1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person was being held in custody pursuant to a direction under subsection (1) of section *twentyseven* and has escaped from such custody.

(2) A person who has been arrested in terms of subsection (1) shall be returned to custody.

PART VI

PROCEEDS OF CRIME

30 Request for enforcement of orders

The Attorney-General may request an appropriate authority of a foreign country to which this Act applies to make arrangements for the enforcement of—

- (a) a forfeiture order made in Zimbabwe against property that is believed to be located in that country; or
- (b) a pecuniary penalty order made in Zimbabwe where some or all the property available to satisfy the order is believed to be located in that country; or
- (c) an interdict made in Zimbabwe against property that is believed to be located in that country; if the order is in respect of a specified offence.

31 Request for issue of orders in foreign countries

Where criminal proceedings or criminal investigations have commenced in Zimbabwe in relation to a specified offence, the Attorney-General may request an appropriate authority of a foreign country to which this Act applies to direct the issue of a warrant, order or other instrument similar in nature to any of the following warrants and orders under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] in respect of the specified offence—

- (a) a search warrant for tainted property;
- (b) an interdict;
- (c) a production order in respect of a property-tracking document; (d) a search warrant in respect of a property-tracking document; or (e) a monitoring order.

32 Registration of orders

(1) Where—

- (a) an appropriate authority of a foreign country requests the Attorney-General to make arrangements for the enforcement of—
 - (i) a foreign forfeiture order made in respect of a foreign specified offence against property that is believed to be located in Zimbabwe; or
 - (ii) a foreign pecuniary penalty order made in respect of a foreign specified offence where some or all of the property available to satisfy the order is believed to be located in Zimbabwe; and (b) the Attorney-General is satisfied that—
 - (i) a person has been convicted of the offence; and
 - (ii) the conviction and the order are not subject to appeal in the foreign country;

the Attorney-General may, on application, obtain the registration of the order with the High Court.

(2) Where an appropriate authority of a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign interdict issued in respect of a foreign specified offence against property that is believed to be located in Zimbabwe, the Attorney-General may, on application, obtain the registration of the order with the High Court.

(3) If, on an application in terms of subsection (1) or (2), the High Court is satisfied from the documents filed on record, or from any other evidence, that the foreign forfeiture order, the foreign pecuniary penalty order or the foreign interdict, as the case may be—

- (a) was properly made against the person concerned; and
- (b) the person concerned was given an adequate opportunity to make representations in regard to the registration of any such order; the High Court may register the order.

(4) If the High Court is not satisfied as provided in subsection (3), it may adjourn the proceedings or make such other order as will enable the person concerned to make representations in regard to the registration of the order.

(5) The High Court may regard any evidence adduced in a foreign court as conclusive of any matter or fact stated in the documents.

(6) A foreign forfeiture order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a forfeiture order made by a court under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] at the time of registration.

(7) A foreign pecuniary penalty order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a pecuniary penalty order made by a court under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] at the time of registration and requiring the payment to Zimbabwe of the amount payable under the order.

(8) A foreign interdict registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were an interdict made by a court under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] at the time of registration.

(9) Where any order is registered with the High Court in terms of this section, any amendments made to the order, whether before or after registration, may be registered in the same way as the order and amendments shall not, for the purposes of this Act and the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] have effect until they are registered.

(10) A copy of the appropriate order or amendment sealed or authenticated by the court or other authority making that order or amendment or a copy of that order or amendment duly authenticated in accordance with subsection (2) of section *thirty-nine*, shall be filed with the High Court on registration of the order or amendment.

(11) A sealed or authenticated copy of an order or amendment shall be regarded for the purposes of this Act as the same as the sealed or authenticated original copy but registration effected by means of a copy shall cease to have effect at the end of twenty-one days unless the sealed or authenticated original copy has been subsequently registered.

(12) The Attorney-General may apply to the High Court for the cancellation of any registration made in terms of this section.

(13) Without limiting the generality of subsection (12), the Attorney-General may apply for a cancellation in terms of that subsection if he is satisfied that—

- (a) the order has ceased to have effect in the foreign country in which it was made; or
- (b) cancellation of the order is appropriate having regard to the arrangements entered into between Zimbabwe and the foreign country in relation to the enforcement of orders of the kind.

(14) Where an application is made to the High Court for cancellation of a registration in terms of subsection (12), the High Court shall cancel the registration accordingly.

33 Requests for search and seizure warrants in respect of tainted property

(1) Where—

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign specified offence; and
- (b) there are reasonable grounds for believing that tainted property in relation to the offence is located in Zimbabwe; and
- (c) the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of a search warrant under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] in relation to the tainted property; the Attorney-General may, in writing, authorize a police officer to apply to a magistrate of a specified province for the search warrant requested by the appropriate authority of the foreign country.

(2) The province shall be the province in which the tainted property, or some or all of the tainted property, is believed to be located.

34 Requests for interim interdicts Where—

- (a) criminal proceedings have commenced in a foreign country in respect of a foreign specified offence; and
- (b) there are reasonable grounds for believing that tainted property that may be made, or is about to be made, the subject of an interdict is located in Zimbabwe; and
- (c) the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of an interdict under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] against the property; the Attorney-General may authorize an application to the High Court for the issue of the interdict requested by the appropriate authority of the foreign country.

35 Requests for information gathering orders

(1) In this section—

“ancillary offence”, in relation to an offence referred to in subparagraph (i) or (ii) of paragraph (a) of subsection (3), means—

- (a) a conspiracy to commit, or aiding, abetting, counselling or procuring the commission of, such offence;
- (b) an offence of receiving or assisting another person to escape punishment for, or disposing of the proceeds of, such offence; or
- (c) an attempt to commit such offence.

(2) Where—

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign specified offence; and
- (b) a property-tracking document in relation to the offence is reasonably believed to be located in Zimbabwe; and the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of a production order or a search warrant under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] the Attorney-General may, in writing, authorize a police officer to apply to a judge of the High Court for the order requested by the foreign country.

(3) Where—

- (a) criminal proceedings or criminal investigations have commenced in a foreign country in respect of a foreign specified offence that is— (i) a serious narcotics offence; or
- (ii) a money-laundering offence in respect of proceeds of a serious narcotics offence; or
- (iii) an ancillary offence to an offence referred to in subparagraph (i) or (ii); and
- (b) information about transactions conducted through an account with a financial institution in Zimbabwe is reasonably believed to be relevant to the proceedings or investigations; and
- (c) the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of a

monitoring order under the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] directing the financial institution to give information to the Commissioner of Police about transactions conducted through the account; the Attorney-General may, in writing, authorize a police officer to apply to a judge of the High Court for the order requested by the foreign country.

PART VII

GENERAL

36 Service of documents

(1) Where the appropriate authority of a foreign country requests the Attorney-General to arrange for the service in Zimbabwe of process relating to a criminal matter in the foreign country, the Attorney-General may arrange for the service of the process.

(2) Without limiting the manner in which the service of a document in a foreign country may be proved in Zimbabwe, service of such document may be proved by the affidavit of the person who served the document.

37 Evidence

A certificate by the Attorney-General stating that—

- (a) Zimbabwe or a specified foreign country is a party to a specified treaty; or
- (b) a specified treaty entered into force for Zimbabwe or a specified foreign country on a specified day; or
- (c) on a day specified in the certificate, a specified treaty remained in force for Zimbabwe or a specified country; shall, for the purposes of any proceedings under this Act, be *prima facie* evidence of the matters stated in the certificate.

38 Authentication of document

(1) In proceedings under this Act, or proceedings under or pursuant to the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*] arising directly or indirectly from a request made under this Act, any document that is duly authenticated in terms of subsection (2) shall be admissible in evidence.

(2) A document shall be regarded as duly authenticated for the purpose of subsection (1) if it purports to be—

- (a) signed or certified by a judge, magistrate or officer in or of a foreign country; and
- (b) authenticated by the oath of a witness or an officer of the Government of the foreign country or sealed with an official public seal of the foreign country or of a Minister.

(3) Nothing in this section shall be construed as preventing the proof of any matter, or the admission in evidence of any document, in accordance with any other law of Zimbabwe.

39 Regulations

(1) The Minister may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the practice and procedure in relation to the performance by magistrates of functions under this Act, including—
 - (i) the summoning of witnesses;
 - (ii) the production of documents;
 - (iii) the taking of evidence on oath;
 - (iv) the immunity of persons and legal practitioners appearing before magistrates and of witnesses; and
- (b) the forms of any orders, process or certificates made issued or given in terms of this Act; and
- (b1) notifying persons that their attendance at proceedings in a foreign country has been requested in terms of section *twenty-four* or *twenty-five* and, where such attendance is compulsory in terms of this Act, ensuring their attendance in compliance with such request.

[Paragraph inserted by section 5 of Act 12 of 1997]

- (c) generally, the facilitating of communication between Zimbabwe and foreign countries for the purposes of this Act; and
- (d) penalties, not exceeding a fine of level four, for any contravention of any regulations.

[Paragraph amended by section 4 of Act 22 of 2001]