

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2018

EXPLANATORY MEMORANDUM

This Act facilitates the provision and obtaining by Nigeria of international assistance in criminal matters, including the provision and obtaining of evidence and things, the making of arrangements for persons to give evidence or assist in criminal investigations, the recovery, forfeiture or confiscation of property in respect of offences, the restraining of dealings in property or the freezing of assets that may be recovered, forfeited or confiscated in respect of offences, the execution of requests for search and seizure, the location and identification of witnesses and suspects, the service of documents.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2018

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2018

A Bill

For

An Act to make provision for Mutual Assistance in Criminal Matters under an agreement or other arrangement between Nigeria and other foreign states; and for related matters.

Commencement.

ENACTED by the National Assembly of the Federal Republic of Nigeria -

PART I - OBJECT, SCOPE AND APPLICATION

1. The object of this Act is to facilitate the provision and obtaining by Nigeria of international mutual assistance in criminal matters, including - Object of this Act.
- (a) the provision and obtaining of evidence and statements from persons;
 - (b) the making of arrangements for persons to give evidence or assist in criminal investigations;
 - (c) the location and identification of witnesses and suspects;
 - (d) the provision and production of relevant documents, records, items and other materials;
 - (e) the facilitation of voluntary attendance of persons in the requesting State;
 - (f) effecting a temporary transfer of persons in custody to assist in an investigation or appear as a witness;
 - (g) the identification, tracing, freezing, restraining, recovery, forfeiture and confiscation of proceeds, property and other instrumentalities of crime;
 - (h) the return and disposal of property;
 - (i) obtaining and preserving computer data;
 - (j) the interception of postal items;
 - (k) the interception of telecommunications;
 - (l) the conversion of electronic surveillance;
 - (m) the restraint of dealings in property, or the freezing of assets, that may be recovered, forfeited or confiscated in respect of offences;
 - (n) the execution of requests for search and seizure;
 - (o) the recovery of pecuniary penalties in respect of a

serious offence or a serious offence in a foreign State;

(p) the examination of objects and premises;

(q) effecting service of documents; and

(r) any other assistance that is not contrary to the law of the requesting State.

2. (1) This Act applies to mutual legal assistance in respect of criminal matters under an agreement or other arrangements between Nigeria and a foreign State.

Application.

(2) Mutual legal assistance shall not be provided under this Act with respect to an offence in a foreign State where the offence —

(a) is not an offence under the laws of Nigeria in accordance with section 19 (1) (g) of this Act;

(b) subject to section 20 of this Act, is of a political character; or

(c) is an offence only under a military law or a law relating to military obligation.

(3) This Act does not apply to the extradition, rendition, arrest or detention of any person with a view to the extradition or rendition of that person.

3. (1) The President shall, for the purposes of this Act and by order published in the Federal Government Gazette, designate a State to be a foreign State if there is an agreement or other arrangement between Nigeria and that foreign State under which that foreign State has agreed to provide assistance in criminal matters to Nigeria.

Designation of foreign States and organisations to which this Act applies.

(2) An order under subsection (1) of this section-

(a) may provide that the provisions of this Act apply to that foreign State or organisation subject to such restrictions, limitations, exceptions, modifications, adaptations, conditions or qualifications as are specified in the order, in which case the provisions of this Part apply accordingly; and

(b) is conclusive evidence that the agreement or arrangement referred to in the order complies with this Act, and that this Act applies in the case of the foreign State referred to in the order.

(3) The President may, by a subsequent order, vary or revoke an order made under subsection (1).

1. (1) This Act does not prevent the provision of or obtaining the international assistance or co-operation in criminal matters to or from-

States and International Organisations not covered by this Act.

(a) the International Criminal Police Organisation, (in this Act referred to as "Interpol"), or any other international organisation;

(b) any other foreign State under bilateral or multilateral

arrangements; or;

(c) any foreign State, other than assistance of a kind that may be provided or obtained under this Act.

(2) Where a foreign State or organisation in respect of which an order has not been made under section 3 of this Act makes a request for mutual legal assistance in a criminal matter under this Act, the Attorney-General may, with the consent of the President —

(a) give a special direction in writing that the provisions of this Act apply to that foreign State in relation to the requested mutual assistance, subject to any restriction, limitation, exception, modification, adaptation, condition or qualification contained in the direction; or

(b) enter into an arrangement with that foreign State or organisation for mutual legal assistance in respect of a matter specified in the arrangement, where the assistance sought is in respect of an act which, when committed in Nigeria, would be a serious offence.

PART II - DESIGNATION OF CENTRAL AUTHORITY AND REQUESTS FOR ASSISTANCE

5. (1) For the purposes of this Act, the Attorney-General of the Federation is designated as the Central Authority for Nigeria and is responsible for —

Designation of
Central
Authority.

(a) making, receiving and transmitting requests for assistance;

(b) executing or arranging for the execution of the requests;

(c) certifying, authenticating, arranging for the certification and authentication of any document or other material supplied in response to a request for assistance, where necessary;

(d) taking practical measures to facilitate the expeditious execution and transmission of requests for assistance;

(e) negotiating and agreeing on terms and conditions relating to requests for assistance and ensuring compliance with the terms and conditions;

(f) transmitting the evidentiary materials gathered in response to requests for assistance;

(g) performing any other function specified under this Act; and

(h) doing other things that are necessary for the effective and efficient provision and receiving of assistance under this Act.

(2) For the purposes of this Act, the Attorney-General shall communicate directly with the designated Central Authority of any other foreign State unless Nigeria and that foreign State have agreed otherwise.

6. (1) A request for assistance under this Act shall be -

(a) dealt with according to the law of the foreign State to which the request is made; and

(b) made to the Attorney-General.

(2) A request made under subsection (1) shall -

(a) specify the purpose of the request and nature of the assistance being sought;

(b) identify the person or authority that initiated the request;

(c) include -

(i) a certification from the Central Authority of that foreign State that the request is made in respect of a criminal matter within the meaning of this Act,

(ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws,

(iii) a description of the offence to which the criminal matter relates, including its maximum penalty,

(iv) details of the procedure which that foreign State wishes Nigeria to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that foreign State pursuant to the request,

(v) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that foreign State, a statement indicating when the judicial proceedings are likely to be instituted,

(vi) a statement setting out the requests of that foreign State concerning the confidentiality of the request and the reason for the requests,

(vii) details of the period within which that foreign State requires the request to be met,

(viii) if the request involves a person travelling from Nigeria to that foreign State, details of allowances to which the person is entitled, and of the arrangements for security and accommodation for the person while he is in that foreign State pursuant to the request,

(ix) any other information required to be included in the request under any treaty or other agreement between Nigeria and that foreign State, if any, and

(x) any information that may assist in giving effect to the request or which is required under this Act or any regulation made under this Act.

(3) A request under this section-

(a) shall be in writing and in the English language, unless otherwise agreed;

(b) shall be dated and signed by the Central Authority of the foreign State making the request; and

(c) may be transmitted by electronic or other means.

(4) Where the request referred to under this section relates to the-

(a) location of a person who is suspected to be involved in or to have benefited from the commission of the serious offence in a foreign State; or

(b) tracing of property that is suspected to be connected with the serious offence in a foreign State,

the request shall state the name, identity, nationality, location and description of that person, location and description of the property, if known, and a statement setting out the basis for suspecting the matter referred to under this subsection.

(5) A request for assistance under this section shall not be refused solely on grounds of non-compliance with the provisions of subsections (2) and (4) of this section.

PART III - REQUESTS FOR ASSISTANCE BY NIGERIA

7. (1) A request on behalf of Nigeria to a foreign State for mutual legal assistance in a criminal matter under this Act shall be made by the Attorney-General.

Request to be made by the Attorney-General.

(2) The request shall be in writing, dated and signed by the Attorney-General and may be transmitted by electronic or other means.

8. (1) The Attorney-General may, if he is satisfied that there are reasonable grounds for believing that an evidence is relevant to criminal investigation commenced or proceedings instituted in Nigeria, request the Central Authority of a foreign State to arrange for the evidence to be taken in the foreign State and delivered to the Central Authority of Nigeria.

Request for taking of evidence, etc.

(2) The Attorney-General may, if he is satisfied that there are reasonable grounds for believing that a thing would be relevant to a criminal matter in Nigeria, request the Central Authority of a foreign State to -

(a) assist in obtaining, by search and seizure, if necessary, the thing in the foreign State, a photograph or copy of the thing; and

(b) arrange for the thing, photograph or copy of the thing to be sent to him.

