

MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL, 2016

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A BILL [EXECUTIVE]

FOR

AN ACT TO MAKE PROVISION FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN NIGERIA AND OTHER FOREIGN STATES AND FOR RELATED MATTERS

[] Commencement

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

PART I - OBJECT, SCOPE AND APPLICATION

- 1 1. The object of this Act is to facilitate the provision and obtaining
- 2 by Nigeria of international mutual assistance in criminal matters, including-
- 3 (a) the provision and obtaining of evidence and statements from
- 4 persons;
- 5 (b) the making of arrangements for persons to give evidence or
- 6 assist in criminal investigations;
- 7 (c) the location and identification of witnesses and suspects;
- 8 (d) the provision and production of relevant documents, records,
- 9 items and other materials;
- 10 (e) the facilitation of voluntary attendance of persons in the
- 11 requesting State;
- 12 (f) effecting a temporary transfer of persons in custody to assist in
- 13 an investigation or appear as a witness;
- 14 (g) the identification, tracing, freezing, restraining, recovery,
- 15 forfeiture and confiscation of proceeds, property and other instrumentalities
- 16 of crime;
- 17 (h) the, return and disposal of property;
- 18 (i) obtaining and preserving computer data;
- 19 (u) the interception of postal items;
- 20 (k) the interception of telecommunications;

Object of this Act

1 (l) the conversion of electronic surveillance;
2 (m) the restraint of dealings in property, or the freezing of assets, that
3 may be recovered, forfeited or confiscated in respect of offences;
4 (n) the execution of requests for search and seizure;
5 (o) the recovery of pecuniary penalties in respect of a serious offence
6 or a serious offence in a foreign State;
7 (p) the examination of objects and premises;
8 (q) effecting service of documents; and
9 (r) any other assistance that is not contrary to the law of the requesting
10 State.

Application

11 2.-(1) This Act applies to mutual legal assistance in respect of criminal
12 matters under an agreement or other arrangements between Nigeria and a
13 foreign State.

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

16 (a) is not an offence under the laws of Nigeria in accordance with
17 section 21 (g) of this Act;

18 (b) subject to section 22 of this Act, is of a political character; or

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

21 (3) This Act shall not apply to the extradition or rendition or the arrest
22 or detention of any person with a view to the extradition or rendition of that
23 person.

Designation of
foreign States
and organisations
to which this
Act applies

24 3.-(1) The President shall, for the purposes of this Act, by order
25 published in the Federal Gazette, designate a State to be a foreign State if there
26 is an agreement or other arrangement between Nigeria and that foreign State
27 under which that foreign State has agreed to provide assistance in criminal
28 matters to Nigeria.

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

30 (a) may provide that the provisions of this Act shall apply to that

1 foreign State or organisation subject to such restrictions, limitations,
2 exceptions, modifications, adaptations, conditions or qualifications as are
3 specified in the order, in which case the provisions of this Part of this Act
4 shall apply accordingly; and

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

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

10 4. -(1) This Act shall not prevent the provision or obtaining of
11 international assistance or co-operation in criminal matters to or from -

States and
international
organisations not
covered by this
Act.

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

14 (b) any other foreign State under bilateral or multilateral
15 arrangements; or

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

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

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

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

1 PART II - DESIGNATION OF CENTRAL AUTHORITY AND REQUESTS FOR
2 ASSISTANCE

Designation of
Central Authority

3 5.-(1) For the purposes of this Act, the Attorney-General of the
4 Federation is designated as the Central Authority for Nigeria and shall be
5 responsible for-

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

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

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

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

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

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

17 (g) performing any other functions specified in this Act; and

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

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

Content and
form of request
for assistance

23 6. -(1) A request for assistance under this Act shall be-

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

26 (b) made to the Attorney-General.

27 (2) A request made under subsection (1) of this section shall-

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

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

1 (c) include-

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

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

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

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

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

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

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

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

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

28 (x) any information that may assist in giving effect to the request or
29 which is required under the provisions of this Act or any regulations made
30 pursuant to this Act.

1 (3) A request under this section-

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

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

6 (c) may be transmitted by electronic or other means -

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

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

10 (b) tracing of property that is suspected to be connected with the
11 serious offence in a foreign State, the request shall state the name, identity,
12 nationality, location or description of that person, or the location and
13 description of the property, if known, and a statement setting out the basis for
14 suspecting the matter referred to in paragraph (a) or (b) of this subsection.

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

18 Part III - Requests For Assistance By Nigeria

Request to be
made by the
Attorney-General

19 7.-(1) A request on behalf of Nigeria to a foreign State for mutual legal
20 assistance in a criminal matter under this Act shall be made by the Attorney-
21 General.

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

Request for
taking of evidence,
etc

24 8.-(1) The Attorney-General may, if he is satisfied that there are
25 reasonable grounds for believing that an evidence will be relevant to criminal
26 investigation commenced or proceedings instituted in Nigeria, request the
27 Central Authority of a foreign State to arrange for the evidence to be taken in
28 the foreign State and delivered to the Central Authority of Nigeria,

29 (2) The Attorney-General may, if he is satisfied that there are
30 reasonable grounds for believing that a thing would be relevant to a criminal

1 matter in Nigeria, request the Central Authority of a foreign State to-

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

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

6 (3) An evidence or a thing, or photograph or copy of a thing,
7 received by the Attorney-General pursuant to a request made under
8 subsection (1) or (2) of this section may, subject to the provisions of the
9 Evidence Act and the Criminal Procedure Act or Criminal Procedure Code,
10 as the case may be, be admitted as evidence at any criminal proceedings to
11 which the request relates.

12 (4) In assessing the weight, if any, to be attached to an evidence
13 received by the Attorney-General pursuant to a request made under
14 subsection (1) of this section which has been admitted as evidence in any
15 criminal proceedings to which the request relates, a court shall, have regard
16 to whether-

17 (a) it was possible to challenge the evidence taken; and

18 (b) the law of the foreign State concerned allowed the parties to the
19 criminal proceedings to be legally represented when the evidence was being
20 taken.

21 9. -(1) The Attorney-General may request the Central Authority of
22 a foreign State to assist in arranging for the attendance in Nigeria of a person
23 in that foreign State for the purpose of giving any evidence or assistance, if
24 he is satisfied that-

Request for
attendance in
Nigeria of a
person

25 (a) there are reasonable grounds to believe that the person is
26 capable of giving the evidence or assistance relevant to a criminal matter
27 involving a serious offence; and

28 (b) the person consents to travel to Nigeria for the purpose of
29 giving - the evidence or assistance.

30 (2) The Attorney-General may, for the purposes of subsection (1)

1 of this section, make arrangements with the Central Authority of that foreign
2 State for the purpose of the attendance of that person in Nigeria, his return to the
3 foreign State and other relevant matters.

Penalty not to be
imposed for
refusal to consent

4 **10.** Where, pursuant to section 9 of this Act, the Attorney-General
5 requests the assistance of the Central Authority of a foreign State in arranging
6 the attendance in Nigeria of a person, the person shall not, by reason only of his
7 refusal or failure to consent to 'attend as requested,' be subjected to any penalty
8 or liability or be otherwise prejudiced in law.

Immunities and
privileges

9 **11.**-(1) A person who is in Nigeria pursuant to a request made under
10 section 9 of this Act shall not be-

11 (a) detained, prosecuted or punished in Nigeria for an offence that is
12 alleged to have been committed, or that was committed, before his departure
13 from the foreign State pursuant to the request;

14 (b) subjected to any civil suit in respect of an act or omission that is
15 alleged to have occurred, or that had occurred, before his departure from the
16 foreign State pursuant to the request; or

17 (c) required to give evidence or assistance in relation to a criminal
18 matter in Nigeria other than the criminal matter to which the request relates.

19 (2) Subsection (1) of this section shall cease to apply if the person-

20 (a) has left Nigeria; or

21 (b) has had the opportunity of leaving Nigeria but has remained in
22 Nigeria otherwise than for the purpose-

23 (i) to which the request relates, or

24 (ii) of giving evidence or assistance in a criminal matter in Nigeria
25 certified by the Attorney-General in writing to be a criminal matter in which it
26 is desirable that the person gives evidence or assistance.

27 (3) A certificate issued by the Attorney-General under subsection
28 (2)(b)(ii) of this section has effect from the day specified in the certificate,
29 which may be a day before the day on which the certificate is given.

1 12. Where a person is in Nigeria pursuant to a request made under
2 section 9 of this Act and that person has made a statement in relation to the
3 criminal matter to which the request relates or in relation to a criminal matter
4 certified by the Attorney-General under section 11 (2)(b)(ii) of this Act, that
5 statement-

Limitation on use
of statement

6 (a) shall not be admitted or otherwise used in any prosecution of the
7 person for an offence against the laws of Nigeria, other than for the offence
8 of perjury or contempt of court in relation to the giving of that evidence,
9 unless the Central Authority of the foreign State concerned consents to it
10 being so used; and

11 (b) may be admitted or used against the person in any criminal
12 proceedings in Nigeria-

13 (i) for the purpose of impeaching his credibility, or

14 (ii) as evidence of any fact stated in that statement of which direct
15 oral evidence by him would be admissible, if, in giving the evidence, he
16 makes a statement inconsistent with that statement.

17 13.-(1) The Attorney-General may, if he is satisfied that there are
18 reasonable grounds for believing that some or all of the property concerned,
19 in criminal proceedings in Nigeria is located in a foreign State, request the
20 Central Authority of that foreign State to make arrangements-

Request for
enforcement of
forfeiture order

21 (a) for the enforcement and satisfaction of a forfeiture order; or

22 (b) where a forfeiture order may be made in criminal proceedings
23 which have been or are to be instituted in Nigeria, to restrain dealing in any
24 property against which the order may be enforced or which may be available
25 to satisfy the order.

26 (2) A certificate purporting to be issued by or on behalf of the
27 Central Authority of a foreign State stating-

28 (a) that property has been recovered in the foreign State pursuant to
29 a request under subsection (1) of this section;

30 (b) the value of the property; or

1 (c) the date on which the property was recovered, shall, in any judicial
2 proceedings, be admissible as evidence of the matter so stated.

Assistance in
locating or
identifying
persons

3 **14.** Where the Attorney-General is satisfied that there are reasonable
4 grounds for believing that there is, in a foreign State, a person who:

5 (a) is or may be concerned in or affected by; or

6 (b) could give evidence or assistance relevant to, any criminal matter
7 in Nigeria, the Attorney-General may request the Central Authority of that
8 foreign State to assist in locating, or, if the person's identity is unknown, in
9 identifying and locating that person.

Assistance in
service of processes

10 **15.** Without prejudice to the Sheriffs and Civil Processes Act or any
11 law in Nigeria dealing with the service of processes, the Attorney-General may
12 request the Central Authority of a foreign State to assist, in effecting service of
13 any process where the Attorney-General is satisfied that for the purposes of or
14 in connection with any criminal matter in Nigeria, it is necessary or desirable to
15 serve that process on a person or an authority in that foreign State.

16 **PART IV - REQUEST FOR ASSISTANCE TO NIGERIA**

Request to be
made to the
Attorney-General

17 **16.** A request by a foreign State to Nigeria for assistance in a criminal
18 matter under this Act shall be made to the Attorney-General.

Response to
requests from
foreign States

19 **17.-(1)** Where the Attorney-General is satisfied that the request from a
20 foreign State relates to a criminal matter, he shall receive the request and may
21 accede to it, by directing in writing the relevant person, body or competent
22 authority to execute the request.

23 (2) Where the Attorney-General directs the execution of the request,
24 the relevant person, body or competent authority shall expeditiously-

25 (a) give effect to the request and collate any evidentiary material in
26 response to the request;

27 (b) prepare a report in connection with the execution; and

28 (c) forward the report and the evidentiary material to the Attorney-
29 General.

30 (3) The relevant person, body or competent authority shall, where

1 necessary, certify or authenticate or arrange for the certification or
2 authentication of any documents or other materials supplied in response to a
3 request for assistance.

4 (4) The Attorney-General shall without delay, after the execution
5 of each request, forward the outcome in the form of a report to that foreign
6 State and authorise the transmission of any evidentiary material to the
7 foreign State.

8 **18.**-(1) The expenses incurred for providing assistance shall be
9 borne by the person, body or competent authority executing the request.

Expenses incurred
for providing
assistance

10 (2) A foreign State shall be responsible for-

11 (a) travel and incidental expenses of-

12 (i) a witness or expert required to travel to the foreign State,

13 (ii) an accompanying official of a witness under sub-paragraph (i)
14 of this paragraph;

15 (b) the fees of an expert;

16 (c) the costs of translation required by the foreign State;

17 (d) the costs related to evidence gathering through the use of
18 technology, including evidence by video;

19 (e) costs related to interception by the use of service providers; the
20 costs related to storage of communications and the preservation of
21 communications or computer data; and

22 (g) such other costs as the Attorney-General and the Central
23 Authority of the foreign State may agree on.

24 (3) Where the Attorney-General considers that the expenses
25 required in order to comply with the request of a foreign State are of an
26 extraordinary nature, he shall consult with the Central Authority of that
27 foreign State,

28 (4) The Attorney-General shall, in consultation with the Central
29 Authority of the foreign State, come to an agreement as to the terms and
30 conditions under which compliance with a request may continue in view of

1 the extraordinary expenses,

2 (5) Where the Attorney-General and the Central Authority of the
3 foreign State fail to reach an agreement, he may refuse assistance under section
4 19 of this Act.

Refusal of
assistance

5 19.-(1) The Attorney-General shall refuse in whole or in part a request
6 by a foreign State for mutual legal assistance under this Act, if he has
7 reasonable grounds to believe that-

8 (a) the provision of the assistance would prejudice the sovereignty,
9 security, public order or other essential public interest of Nigeria;

10 (b) the Central Authority of the foreign State has, in respect of that
11 request, failed to comply with the terms of any treaty or other agreement
12 between Nigeria and that foreign State;

13 (c) subject to section 20 of this Act, the request relates to the
14 investigation, prosecution or punishment of a person for an offence that is, or is
15 by reason of the circumstances in which it is alleged to have been committed or
16 was committed, an offence of a political character;

17 (d) the request relates to the investigation, prosecution or punishment
18 of a person in respect of an act or omission that, if it had occurred in Nigeria,
19 would have constituted a military offence under the laws of Nigeria and does
20 not constitute an offence under the criminal law of Nigeria;

21 (e) there are substantial grounds for believing that the request was
22 made for the purpose of investigating, prosecuting, punishing or otherwise
23 prejudice to a person on account of the person's race, religion, sex, ethnic
24 origin, nationality or political opinions;

25 (f) the request relates to the investigation, prosecution or punishment
26 of a person for an offence in a case where the person has-

27 (i) been convicted, acquitted or pardoned by a competent court or
28 other authority in that foreign State, or

29 (ii) undergone the punishment provided, by the law of that foreign
30 State, in respect of that offence or of another offence constituted by the same

1 whether that person is within or outside Nigeria;

2 (e) if, in the opinion of the Attorney-General, the provision of the
3 assistance would impose an excessive burden on the resources of Nigeria;

4 (d) where a State is not a foreign State under this Act and its Central
5 Authority fails to give an undertaking to the Attorney-General that it will,
6 subject to its laws, comply with a future request by Nigeria to that State for
7 assistance in criminal matters; or

8 (e) for any other reason specified in this Act.

9 (4) Without prejudice to paragraph (3)(c) of this subsection, if there is
10 a request for assistance by a foreign State and the Attorney-General is of the
11 opinion that the expenses involved-

12 (a) in complying with the request; or

13 (b) in continuing to effect the assistance requested for, is of an
14 extraordinary or substantial nature, he shall consult with the Central Authority
15 of the foreign State on the conditions under which the request is to be effected
16 or under which the Attorney-General is to cease to give effect to it, as the case
17 may be.

Exceptions to
political offences

18 **20.**-(1) For the purposes of section 19 (1)(c) of this Act, the following
19 offences are not considered to be offences of a political character:

20 (a) an offence against the life or person of a 'Head of State or a
21 member of the immediate family of a Head of State;

22 (b) an offence against the life or person of a Head of Government, or
23 of a Minister of a Government;

24 (c) an offence established under any multilateral international treaty
25 to which Nigeria and the foreign State are parties and which is declared in the
26 multilateral treaty concerned not to be regarded as an offence of a political
27 character for the purposes of mutual assistance in criminal matters; and

28 (d) any attempt, abetment or conspiracy to commit any of the offences
29 referred to in paragraphs (a) to (c) of this subsection.

30 (2) The Attorney-General may restrict the application of any of the

1 act or omission as the first-mentioned offence;

2 (g) the request relates to the investigation, prosecution or
3 punishment of a person in respect of an act or omission that, if it had
4 occurred in Nigeria, would not have constituted an offence against the laws
5 of Nigeria;

6 (h) the facts constituting the offence to which, the request relates,
7 does not indicate serious offence;

8 (i) the thing requested for is of insufficient importance to the
9 investigation or could reasonably be obtained by other means;

10 (j) the Central Authority fails to undertake that the thing requested
11 for will not be used for a matter other than the criminal matter in respect of
12 which the request was made;

13 (k) in the case of a request for assistance under sections 21, 22, 23,
14 24 and 25 or sections 35, 36, 37 and 38 of this Act, the Central Authority fails
15 to undertake to return to the Attorney-General, on his request, anything
16 obtained pursuant to the request on completion of the criminal matter in
17 respect of which the request was made;

18 (l) the provision of the assistance could prejudice a criminal matter
19 in Nigeria; or

20 (m) the provision of the assistance would require steps to be taken
21 that would be contrary to any written law of Nigeria,

22 (2) Where the failure to give an undertaking by the Central
23 Authority is with the consent of the Attorney-General, subsection (1)(j) of
24 this section will not apply,

25 (3) A request by a foreign State for assistance under this Part may
26 be refused by the Attorney-General-

27 (a) in accordance with the terms of any treaty or other agreement
28 between Nigeria and that foreign State;

29 (b) if, in the opinion of the Attorney-General, the provision of the
30 assistance would, or would likely, prejudice the safety of any person,

1 whether that person is within or outside Nigeria;

2 (e) if, in the opinion of the Attorney-General, the provision of the
3 assistance would impose an excessive burden on the resources of Nigeria;

4 (d) where a State is not a foreign State under this Act and its Central
5 Authority fails to give an undertaking to the Attorney-General that it will,
6 subject to its laws, comply with a future request by Nigeria to that State for
7 assistance in criminal matters; or

8 (e) for any other reason specified in this Act.

9 (4) Without prejudice to paragraph (3)(c) of this subsection, if there is
10 a request for assistance by a foreign State and the Attorney-General is of the
11 opinion that the expenses involved-

12 (a) in complying with the request; or

13 (b) in continuing to effect the assistance requested for, is of an
14 extraordinary or substantial nature, he shall consult with the Central Authority
15 of the foreign State on the conditions under which the request is to be effected
16 or under which the Attorney-General is to cease to give effect to it, as the case
17 may be.

Exceptions to
political offences

18 **20.**-(1) For the purposes of section 19 (1)(c) of this Act, the following
19 offences are not considered to be offences of a political character:

20 (a) an offence against the life or person of a 'Head of State or a
21 member of the immediate family of a Head of State;

22 (b) an offence against the life or person of a Head of Government, or
23 of a Minister of a Government;

24 (c) an offence established under any multilateral international treaty
25 to which Nigeria and the foreign State are parties and which is declared in the
26 multilateral treaty concerned not to be regarded as an offence of a political
27 character for the purposes of mutual assistance in criminal matters; and

28 (d) any attempt, abetment or conspiracy to commit any of the offences
29 referred to in paragraphs (a) to (c) of this subsection.

30 (2) The Attorney-General may restrict the application of any of the

1 provisions of subsection (1) of this section to a request from a foreign State
2 that has made similar provision in its laws.

3 21.-(1) Where a request is made by the Central Authority of a
4 foreign State that evidence be taken in Nigeria for the purpose of any
5 criminal proceedings pending it}; a court in that foreign State, the Attorney-
6 General may, subject to such conditions as he may specify, request the
7 taking of the evidence.

Request for
evidence gathering
for criminal
proceedings

8 (2) A request by a foreign State for assistance to obtain evidence in
9 Nigeria shall specify, as the circumstances permit-

10 (a) the documents, records or property to be inspected, preserved,
11 photographed, copied or transmitted by the samples of property to be taken,
12 examined or transmitted; and

13 (b) the site to be viewed or photographed.

14 (3) Subject to any other enactment, where the Attorney-General
15 approves a request of a foreign State to obtain evidence in Nigeria, regarding
16 an offence over which that foreign State has jurisdiction, he or a person
17 authorised by him, shall apply ex-parte to the Judge of a High Court in the
18 area in which the evidence sought is located for an order for the gathering of
19 the evidence regarding the offence.

20 (4) The Judge to whom an application is made shall-

21 (a) take the evidence on oath of each witness appearing before him
22 to give evidence in relation to the criminal matter as if the witness were
23 giving evidence on a charge against a person for an offence against the laws
24 of Nigeria;

25 (b) cause the evidence to be reduced into writing and certify that
26 the evidence was taken by him; and

27 (c) cause the evidence so certified to be forwarded to the Attorney-
28 General.

29 (5) The proceedings may be conducted in the presence or absence
30 of the person to whom the criminal proceedings in the foreign State relates

1 or of his legal representative, if any.

2 (6) The Judge conducting proceedings under subsection (4) of this
3 section shall allow the following persons to have legal representation at the
4 proceedings-

5 (a) the person to whom the proceedings in the foreign State relates;

6 (b) any other person giving evidence or producing any material or
7 thing at the proceedings; and

8 (c) the Central Authority of the foreign State.

9 (7) The certificate referred to in subsection (4)(c) of this section shall
10 state whether the person whom the criminal proceedings in the foreign State
11 relates or his legal representative, if any, was present at the proceedings.

12 (8) The laws for the time being in force with respect to the compelling
13 of persons to attend before a Judge of a High Court, and to give evidence,
14 answer questions and produce materials or things shall, where applicable,
15 apply for the purposes of this section as if it were a hearing of a charge against a
16 person for an offence against the laws of Nigeria.

17 (9) Notwithstanding subsection (8) of this section, a person:

18 (a) to whom the criminal proceedings in the foreign State relates, is
19 for the purposes of this section, competent but not compellable, to give
20 evidence; and

21 (b) who is required under this section to give evidence for the
22 purposes of any criminal proceedings in a foreign State shall not be required to
23 answer any question that the person could not be compelled to answer in those
24 proceedings in that foreign State.

25 (10) A duly certified foreign law immunity certificate is admissible in
26 proceedings under this section as prima facie evidence of the matters stated in
27 the certificate.

28 (11) Evidence taken under this section shall not be admissible in
29 evidence or otherwise used for the purposes of any judicial proceedings,
30 disciplinary proceedings or other proceedings in Nigeria, except in a

1 prosecution of the person who gave the evidence, for the offence of perjury
2 or contempt of court in respect of that evidence.

3 (12) Notwithstanding subsection (9) of this section, evidence taken
4 under this section may be used for impeaching the credibility of the person
5 who gave the evidence in any judicial proceedings in accordance with the
6 provisions of the Evidence Act.

7 (13) The Judge shall issue an order for the gathering of evidence
8 where he is satisfied that-

9 (a) an offence has been or may have been committed in
10 contravention of the laws of the foreign State; and

11 (b) evidence relating to the commission of the offence may be-

12 (i) obtained from a building, receptacle or place in Nigeria, or

13 (ii) given by a person believed to be in Nigeria.

14 (14) An order for the gathering of evidence made under subsection
15 (13) of this section-

16 (a) shall provide for the manner in which the evidence is to be
17 obtained in accordance with the laws of Nigeria in order to give effect to the
18 request made by the foreign State;

19 (b) may include terms and conditions that the Judge considers
20 necessary, including those relating to the interests of the person named in the
21 order and of third parties;

22 (c) authorize the person named in the order to-

23 (i) attend court to give evidence on oath or otherwise until excused;

24 (ii) make a record from data or make a copy of a record or thing in
25 the person's possession, including any document or its copy,

26 (iii) produce to the court or to the person designated by the court, a
27 record or thing in the person's possession, including any document or its
28 copy, and

29 (iv) provide where appropriate, an affidavit or certificate that

1 pursuant to the request, is to accompany the copy, record or thing so produced.

2 (15) The Judge who makes an order under subsection (13) of this
3 section or another Judge of the same Court may vary its terms and conditions.

Refusal to give
evidence, etc.
by person named
in an order for the
gathering of
evidence

4 **22.**-(1) A person named in an order for the gathering of evidence
5 under section 21 (13) of this Act may refuse to answer a question or to produce
6 a document or thing where the refusal is based on-

7 (a) a law in force in Nigeria;

8 (b) a privilege recognized by a law in force in the foreign State that
9 made the request; or,

10 (c) a law in force in that foreign State that will in the jurisdiction
11 render the answering of that question or the production of that document or
12 thing by that person an offence,

13 (2) Where a person refuses to answer a question or to produce a
14 document or thing pursuant to subsection (1)(a) of this section, the Judge who
15 made the order for the gathering of evidence shall determine whether the
16 reasons for the refusal are well founded in accordance with the law in force in
17 Nigeria.

18 (3) Where a Judge determines that the reasons adduced under
19 subsection (2) of this section have no legal basis, the Judge shall order the
20 person to answer the question or to produce the document or thing,

21 (4) Where the person refuses to answer a question or to produce a
22 document or thing, pursuant to subsection (1)(b) or (c) of this section, that
23 person shall forward to the Judge, within seven days, a detailed statement in
24 writing of the reasons for the refusal to answer the question or to produce the
25 document or thing.

Report on refusal
to give evidence
or produce a thing

26 **23.**-(1) The Judge shall as soon as practicable, after receipt of the
27 detailed statement under section 22(4) of this Act, forward a report to the
28 Attorney-General on the refusal, accompanied with a-

29 (a) transcript of each examination held during the evidence-gathering
30 proceedings;

1 territory over which the foreign State has jurisdiction, the Attorney-General
2 may apply ex-parte to a Court for an order to take the evidence of the person
3 in camera.

4 (3) A request for an order for the gathering of evidence by means of
5 technology may include hearing by (a) video link;

6 (b) telephone or video conference; or

7 (c) any other means of technology designated by the Attorney-
8 General.

9 (4) The Court to which an application is made may, subject to the
10 Rules of Court, make the order where-

11 (a) there are reasonable grounds to believe that an offence has been
12 or may have been committed in contravention of the law of the foreign State;

13 (b) the use of the technology to gather evidence is not contrary to
14 any enactment;

15 (c) the required technical means are available to carry out the
16 hearing; and

17 (d) the witness or expert concerned has agreed to the hearing by
18 video conference or other technical means.

19 (5) Without limiting the provisions of section 6(3) of this Act, a
20 request for evidence gathering by means of technology shall specify-

21 (a) reasons why it is not practicable for a witness or expert to attend
22 a hearing in person;

23 (b) the means of technology that will be used to gather evidence;

24 (c) the name of the Judge and the persons who will be conducting
25 the hearing;

26 (d) an indication that the witness or expert is willing to take part in
27 the hearing by the indicated means of technology; and

28 (e) measures for the protection of the person to be heard.

29 An order for the gathering of evidence by the use of technology shall
30 summon or make

1 arrangements for the person to-

2 (a) attend at a time and place determined by the Judge in Chambers to
3 give evidence on oath or otherwise by means of technology and remain in
4 attendance until excused by the authorities of the foreign State;

5 (b) answer a question put to the person by the authorities of the foreign
6 State or by a person authorised by those authorities in accordance with the law
7 applicable to that foreign State; or

8 (c) produce at the time and place determined by the Judge in
9 Chambers a thing, including a document or its copy, in order to show it to the
10 authorities of the foreign State by means of the technology,

11 (7) The Court shall -

12 (a) notify the witness or expert;

13 (b) ensure the identification of the witness or expert;

14 (c) verify that the witness or expert agrees to the hearing by the
15 indicated technology; and

16 (d) ensure that the person to be heard is assisted by an interpreter if
17 necessary prior to the hearing.

18 (8) Evidence that relates to an offence under subsection (4) of this
19 section may be given by a person believed to be in Nigeria.

20 (9) The foreign State shall bear the cost of the use of the technology,
21 including -

22 (a) the servicing of the technology;

23 (b) the remuneration of interpreters provided by the Court;

24 (c) the allowances for witnesses and experts and traveling expenses
25 incurred as a result of the hearing, unless there is a waiver in part or whole by
26 the Attorney-General.

27 (10) An order made under subsection (4) of this section may include
28 terms or conditions that the Judge considers necessary, including those relating
29 to the protection of the interests of the person named in it and of third parties.

30 (11) The Court may vary the terms and conditions of the order.

1 (12) Where a person gives evidence by means of technology, the -

2 (a) evidence shall be given as though the witness were physically
3 before the court or tribunal outside Nigeria for the purpose of the laws
4 relating to evidence and procedure except that the evidence given shall not
5 disclose confidential, privileged or protected information; and

6 (b) Criminal Code Act or Penal Code Act or any other enactment
7 relating to perjury, shall apply to evidence given by the person as if the
8 person were a witness before a court in Nigeria.

9 (13) At the conclusion of the hearing, the Court shall ensure that
10 there is a record that indicates-

11 (a) the date and place of hearing.

12 (b) the identity of the person heard;

13 (c) the identity and function of each person who participated in the
14 hearing; and

15 (d) any oaths or affirmations taken, and furnish the foreign State
16 with the record through the Attorney-General.

17 (14) A witness or expert who has agreed to be heard and refuses to -

18 (a) attend at the time and place determined by the Judge under
19 subsection (6) of this section; or

20 (b) answer a question or produce a document or a thing as ordered
21 by the Judge, commits contempt of court and is liable on conviction to a fine
22 not exceeding two hundred thousand Naira or imprisonment for a term not
23 exceeding three months, or to both.

24 27.-(1) Where a request is made by the Central Authority of a
25 foreign State that any particular thing or description of a thing in Nigeria be
26 produced for the purpose of any criminal matter in that foreign State, the
27 Attorney-General or a person duly authorised by him may apply to the court
28 for an order under subsection (3) of this section.

29 (2) An application for an order under subsection (3) of this section
30 in relation to a thing in the possession of a financial institution shall be made

1 only to the Federal High Court, in this Act referred to as "the Court".

2 (3) Where, on the application referred to under subsection (1) of this
3 section, the Court is satisfied that the conditions referred to in subsection (4) of
4 this section are fulfilled, it may make an order that the person who appears to
5 the Court to be in possession of the thing to which the application relates shall
6 produce the thing to an authorised officer for him to take away; or give an
7 authorised officer access to the thing, within seven days of the date of the order
8 or such other period as the Court may consider appropriate.

9 (4) The conditions referred to in subsection (3) of this section are that
10 reasonable grounds exist for-

11 (a) suspecting that a specified person has committed or benefited
12 from a serious offence in a foreign State;

13 (b) believing that the thing to which the application relates-

14 (i) is likely to be of substantial value, whether by itself or together
15 with another thing, to the criminal matter in respect of which the application
16 was made, and

17 (ii) does not consist of or include items subject to legal privilege; and

18 (c) the Court is satisfied that it is not contrary to the public interest or
19 to any written law for the thing to be produced or access to it to be given.

20 (5) The proceedings referred to in subsection (3) of this section may
21 be conducted in the presence or absence of the person to whom the criminal
22 proceedings in the foreign State relates or of his legal representative, if any.

23 (6) A person who is required by an order under this section to produce
24 or make available any article for the purposes of any criminal proceedings in a
25 foreign State shall not be required to produce an article that the person could
26 not be compelled to produce in the proceedings in that foreign State.

27 (7) A duly certified foreign law immunity certificate is admissible in
28 proceedings under this section as prima facie evidence of the matters stated in
29 the certificate.

1 28.-(1) Where a Court orders a person under section 27 of this Act
2 to give an authorised officer access to a thing on any premises, the Court
3 may, on the same or subsequent application of an authorised officer order
4 any person who appears to it to be entitled to grant entry to the premises to
5 allow an authorised officer to enter the premises to obtain access to the thing.

Supplementary
provisions regarding
production order

6 (2) Where any material to which an order under section 27 of this
7 Act relates, consists of information contained in or accessible by means of
8 any data equipment, an order -

9 (a) under section 27 (3)(a) of this Act shall have effect as an order to
10 produce the material in a form which can be taken away and which is visible,
11 legible and comprehensible; and

12 (b) under section 27 (3)(b) of this Act shall have effect as an order
13 to give access to the material in a form which is visible, legible and
14 comprehensible.

15 (3) A person is not excused from producing or making available a
16 thing by an order under section 27 of this Act on the ground that the
17 production or making available of the thing -

18 (a) might tend to incriminate the person or make the person liable
19 to a penalty; or

20 (b) will be in breach of an obligation, whether imposed by law or
21 otherwise.

22 (4) An order under section 27 of this Act shall -

23 (a) not confer any right to the production of, or of access to, items
24 subject to legal privilege; and have effect notwithstanding any obligations as
25 to secrecy or other restrictions on the disclosure of information imposed by
26 law or otherwise.

27 (5) An authorised officer may photograph or make copies of a thing
28 produced or to which access is granted pursuant to an order made under
29 section 27 of this Act.

30 (6) Where an authorised officer takes possession of a thing under

1 an order made under section 27 of this Act or takes any photograph or makes
2 any copy of the thing pursuant to subsection (5) of this section, he shall inform
3 the Attorney-General and shall, unless the Attorney-General otherwise directs,
4 immediately send the article or the photograph or copy of the article to the
5 Central Authority of the foreign State concerned.

6 (7) In this section, "data equipment" means any equipment which -

7 (a) automatically processes, records or stores information;

8 (b) can be used to cause information to be automatically recorded,
9 stored or otherwise processed on other equipment, wherever situated;

10 (c) can be used to retrieve information whether the information is
11 recorded or stored in the equipment itself or in other equipment, wherever
12 situated; or

13 (d) can be used to carry out any combination of the functions specified
14 in paragraphs (a) to (c) of this subsection ..

Immunities in
compliance of
production order

15 **29.**-(1) A civil or criminal action, other than a criminal action for an
16 offence under section 30 of this Act, shall not lie against a person for -

17 (a) producing or giving access to a thing if he had produced or given
18 access to the thing in good faith in compliance with an order made against him
19 under section 27 of this Act; or

20 (b) doing or omitting to do any act if he had done or omitted to do the
21 act in good faith and as a result of complying with the order.

22 (2) A person who complies with an order made under section 27 of this
23 Act shall not be treated as being in breach of any restriction on the disclosure of
24 information or thing imposed by law, contract or rules of professional conduct.

Failure to comply
with production
order

25 **30.** A person who:

26 (a) without reasonable excuse contravenes or fails to comply with an
27 order: made under section 27 of this Act; or

28 (b) in purported compliance with the order, produces or makes
29 available to an authorised officer any material known to the person to be false
30 or misleading in a material particular without-

1 (i) indicating to the authorised officer that the material is false or
2 misleading and the part of the material that is false or misleading, or

3 (ii) providing correct information to the authorised officer if the
4 person is in possession of, or can reasonably acquire the correct information,
5 commits an offence and is liable on conviction to a fine not exceeding five
6 hundred thousand Naira or imprisonment for a term not exceeding one year
7 or to both.

8 **31.-(1)** The Central Authority of a foreign State may request the
9 Attorney-General to assist in arranging the attendance in that foreign State
10 of a person in Nigeria for the purpose of giving evidence or assistance in
11 relation to a criminal matter in that foreign State.

Request for
attendance of
person in foreign
State

12 (2) The Attorney-General may assist in making arrangements for
13 the travel of the person to the foreign State pursuant to a request referred to in
14 subsection (1) of this section, if the Attorney-General is satisfied that -

15 (a) the request relates to a criminal matter in that foreign State
16 involving a serious offence in a foreign State;

17 (b) there are reasonable grounds to believe that the person
18 concerned is capable of giving evidence or assistance relevant to the
19 criminal matter; or

20 (c) the person concerned has freely consented to attend as
21 requested; and

22 (d) the Central Authority of the foreign State has given adequate
23 undertakings in respect of the matters referred to in subsection (3) of this
24 section.

25 (3) The matters in relation to which undertakings are to be given by
26 the Central Authority of a foreign State are -

27 (a) that the person shall not be-

28 (i) detained, prosecuted or punished for an offence against the law
29 of the foreign State that is alleged to have been committed, or that was
30 committed, before the person's departure from Nigeria,

1 (ii) subjected to any civil suit in respect of an act or omission of the
2 person that is alleged to have occurred, or that had occurred, before the person's
3 departure from Nigeria, or

4 (iii) required to give evidence or assistance in relation to a criminal
5 matter in that foreign State other than the criminal matter to which the request
6 relates, unless the person has left the foreign State or has had the opportunity of
7 leaving the foreign State but remained in the foreign State otherwise than for
8 the purpose of giving evidence or assistance in relation to the criminal matter to
9 which the request relates;

10 (b) any evidence given by the person in the criminal proceedings to
11 which the request relates, if any, will be inadmissible or otherwise disqualified
12 from use in the prosecution of the person for an offence against the law of that
13 foreign State, other than for the offence of perjury or contempt of court in
14 relation to the giving of that evidence;

15 (c) that the person will be returned to Nigeria in accordance with
16 arrangements agreed to by the Attorney-General; and

17 (d) such other matters as the Attorney-General thinks appropriate,

18 (4) Where, pursuant to this section, the Central Authority of a foreign
19 State requests the assistance of the Attorney-General in arranging the
20 attendance of any person in the foreign State, the person to whom the request
21 relates shall not be subjected to any penalty or liability or otherwise prejudiced
22 in law by reason only of that person's refusal or failure to consent to attend as
23 requested.

Request for
attendance of
prisoner or person
under detention

24 **32.-(1)** Where a request by the Central Authority of a foreign State
25 under section 31 of this Act relates to -

26 (a) a prisoner within the meaning given to it in the Prison Act; or

27 (b) a person under detention in a prescribed institution, the Attorney-
28 General may assist in the matters specified in subsection (2) of this section.

29 (2) The Attorney-General may, for the purposes of subsection (1) of
30 this section, assist in arranging the transfer of the prisoner or person into the

1 custody, of an officer of the foreign State for the purpose of transporting the
2 person from Nigeria to that foreign State and, after that to be -

3 (a) detained in that foreign State under the custody of such
4 authority as may be lawful in that foreign State; and

5 (b) produced, from time to time under custody before the Central
6 Authority or a court in that foreign State before which he is required to
7 attend as a witness.

8 (3) Immediately on the attendance of a prisoner or person being
9 dispensed with by the Central Authority or court in the foreign State, he
10 shall-

11 (a) be transported, in the custody of an officer of that foreign State,
12 to Nigeria and returned - into the custody of a Nigerian officer having lawful
13 authority to take him into custody; and

14 (b) after that, continue to undergo the imprisonment or detention
15 which he was undergoing before the transfer of his custody under subsection
16 (1) of this section.

17 (4) The period during which a person was under foreign custody
18 under this section shall count towards the period of his imprisonment or
19 detention in Nigeria.

20 (5) A transfer under subsection (1) of this section shall not be
21 effected unless the Central Authority of the foreign State gives an
22 undertaking to -

23 (a) bear and be responsible for all the expenses of the transfer of
24 custody;

25 (b) keep the person under lawful custody throughout the transfer of
26 his custody; and

27 (c) return him into custody in Nigeria immediately after his
28 attendance before the Central Authority or court in that foreign State.

29 **33.**-(1) A person who, being in custody in a foreign State, consents
30 to give evidence or assistance in relation to a criminal matter in another

Custody of person
in transit

1 foreign State may be transported through Nigeria, in the custody of another
2 person, to that other foreign State, if the foreign State in which the person is in
3 custody gives to the Attorney-General prior notice of the transportation.

4 (2) The person being transported through Nigeria in custody may, be
5 kept in the custody of such authorised officer as the Attorney-General directs in
6 writing until his transportation is continued; where an aircraft, vessel or train
7 by which the person is being transported lands, calls or stops in Nigeria,

8 (3) Where-

9 (a) a person is being held in custody pursuant to a direction under
10 subsection (2) of this section; and

11 (b) the person's transportation is not, in the opinion of the Attorney-
12 General, continued within a reasonable time, the Attorney-General may direct
13 that the person be transported in custody to the foreign State from which the
14 person was first transported, and such direction shall be sufficient authority for
15 that person's removal from Nigeria by such means as the Attorney-General
16 may direct.

17 (4) The costs and expenses incurred by Nigeria in respect of
18 subsections (2) and (3) of this section shall be reimbursed by the foreign State
19 from which the person was first transported.

20 **34.**-(1) A person who whilst being kept in custody pursuant to a
21 direction under section 33 (2) of this Act, escapes from the custody commits an
22 offence and is liable on conviction to a fine not exceeding two million Naira or
23 imprisonment for a term not exceeding two years, or to both.

24 (2) An authorised officer may, without warrant, re-arrest a person kept
25 in custody if he has reasonable grounds to believe that the person has escaped
26 from custody under subsection (1) of this section.

27 (3) A person who has been re-arrested under this section shall be
28 returned to custody in accordance with the provisions of this Act.

29 **35.**-(1) The Central Authority of a foreign State may request the
30 Attorney-General to assist in the-

Escape from
custody while in
transit

Request for
enforcement of
foreign forfeiture
order

1 (a) enforcement and satisfaction of a foreign forfeiture order made
2 in any judicial proceedings instituted in that foreign State against property
3 that is reasonably believed to be located in Nigeria; or

4 (b) restraining of dealing in any property that is reasonably
5 believed to be located in Nigeria and against which the order may be
6 enforced or which may be available to satisfy the order; where a foreign
7 forfeiture order may be made in judicial proceedings which have been or are
8 to be instituted in that foreign State.

9 (2) On receipt of a request referred to in subsection (1) of this
10 section, the Attorney-General may-

11 (a) in the case of subsection (1)(a) of this section, act or authorise
12 the taking of action under section 36 of this Act, the regulations made
13 pursuant to this Act; or

14 (b) in the case of subsection (1)(b) of this section, act or authorise
15 the taking of action under the regulations made pursuant to this Act, in which
16 case section 36 and the regulations made pursuant to this Act shall apply
17 accordingly.

18 36.-(1) The Attorney-General or a person authorised by him may
19 apply to the Court for the registration of a foreign forfeiture order.

Registration of
foreign forfeiture
order

20 (2) The Court may, on an application referred to in subsection (1) of
21 this section register the foreign forfeiture order if it is satisfied -

22 (a) that the order is in force and not subject to further appeal in the
23 foreign State;

24 (b) where a person affected by the order did not appear in the
25 proceedings in the foreign State, that the person had received notice of the
26 proceedings in sufficient time to enable him to defend the proceedings; and

27 (c) that enforcing the order in Nigeria would not be contrary to the
28 interests of justice.

29 (3) For the purposes of subsection (2) of this section, the Court shall

1 take into consideration a certificate referred to in section 38 of this Act if
2 tendered.

3 (4) The Court shall revoke the registration of a foreign forfeiture order
4 if it appears to the Court that the order has been satisfied by payment of the
5 amount due under it or by the person against whom it was made serving
6 imprisonment in default of payment or by other means.

7 (5) Where an amount of money, if any, payable or remaining to be
8 paid under a foreign forfeiture order registered in the Court under this section is
9 expressed in a currency other than that of Nigeria, the amount shall, for the
10 purpose of any action taken in relation to that order, be converted into the
11 currency of Nigeria on the basis of the Central Bank of Nigeria exchange rate
12 prevailing on the date of registration of the order.

13 (6) For the purposes of subsection (5) of this section, a certificate
14 issued by the Central Bank of Nigeria stating the exchange rate prevailing on a
15 specified date shall be admissible in any judicial proceedings as evidence of the
16 facts so stated.

17 (7) In this section, "appeal" includes -

18 (a) any proceedings by way of discharging or setting aside a
19 judgment; and

20 (b) an application for a new trial or a stay of execution.

21 37.-(1) For the purposes of sections 35 and 36 of this Act and the
22 regulations made pursuant to this Act-

23 (a) an order made or a judgment given by a court of a foreign State
24 purporting to bear the seal of that court or to be signed by any person in his
25 capacity as a Judge, Magistrate or an officer of the court, is deemed, without
26 further proof, to have been duly sealed or to have been signed by that person, as
27 the case may be; and

28 (b) a document, duly authenticated, that purports to be a copy of any
29 order made or judgment given by a court of a foreign State is deemed without
30 further proof to be a true copy.

1 (2) A document is duly authenticated for the purpose of subsection
2 (1)(b) of this section if it purports to be certified by a person in his capacity as
3 a Judge, Magistrate or officer of the court in question or by or on behalf of
4 the Central Authority of that foreign State.

5 38. -(1) For the purposes of sections 35 and 36 of this Act and the
6 regulations made pursuant to this Act, a certificate purporting to be issued by
7 or on behalf of the Central Authority of a foreign State stating that -

Evidence in
relation to
proceedings and
orders in foreign
State

8 (a) judicial proceedings have been instituted and have not been
9 concluded, or that judicial proceedings are to be instituted, in that foreign
10 State;

11 (b) a foreign forfeiture order is in force and is not subject to appeal;

12 (c) all or a certain amount of the sum payable under a foreign
13 forfeiture order remains unpaid in that foreign State, or that other property
14 recoverable under a foreign forfeiture order remains unrecovered in that
15 foreign State;

16 (d) a person has been notified of any judicial proceedings in
17 accordance with the laws of that foreign State; or

18 (e) an order, however described, made by a court of that foreign
19 State for the purpose of-

20 (i) recovering, forfeiting or confiscating payments or other awards
21 received in connection with a serious offence against the law of that foreign
22 State, or the value of the payments or awards,

23 (ii) recovering, forfeiting or confiscating property derived or
24 realized, directly or indirectly, from payments or other awards received in
25 connection with the serious offence in a foreign State or the value of the
26 property, or

27 (iii) forfeiting or destroying, or forfeiting or otherwise disposing
28 of, any drug or other substance in respect of which an offence against the
29 corresponding drug law of that foreign State has been committed, or which
30 was used in connection with the commission of the offence, shall, in any

1 proceedings in a court, be received in evidence without further proof.

2 (2) In any proceedings in a court, a statement contained in a duly
3 authenticated document, which purports to -

4 (a) have been received in evidence or to be a copy of a document so
5 received; or

6 (b) set out or summarize evidence given in proceedings in a court in a
7 foreign State, shall be admissible as evidence of any fact stated in the
8 document.

9 (3) A document is duly authenticated for the purposes of subsection
10 (2) of this section if it purports to be certified by any person in his capacity as a
11 Judge, Magistrate or officer of the court in the foreign State, or by or on behalf
12 of a Central Authority of that foreign State.

13 (4) Nothing in this section shall prejudice the admissibility of any
14 evidence, whether contained in any document or otherwise, which is
15 admissible apart from this section.

16 39.-(1) Subject to this Act, where the Attorney-General receives a
17 request from a foreign State for assistance in respect of a coercive investigative
18 measure he may grant the request, if he is satisfied that the foreign State has
19 jurisdiction over the criminal matter for which the request is sought.

20 (2) The Attorney-General may, in granting a request under subsection
21 (1) of this section, require the -

22 (a) conduct of a search;

23 (b) carrying out of a seizure;

24 (c) use of a device or investigative technique or procedure; and

25 (d) performance of any other coercive act in Nigeria.

26 40.-(1) The Attorney-General may, on the request of the Central
27 Authority of a foreign State, assist to search for and seize property in Nigeria.

28 (2) The request shall specify the -

29 (a) property to be searched for and seized; and

30 (b) information required to obtain the requisite warrant and facilitate

Request for
coercive
investigative
measures

Request for
search and seizure

1 the execution of the request.

2 (3) The Attorney-General shall, at the conclusion of the search and
3 seizure under a warrant issued under section 41 of this Act, certify and
4 forward to the foreign State a report that contains information on the -

5 (a) outcome of the search;

6 (b) place and circumstances of seizure;

7 (c) location of the thing or computer data seized; and

8 (d) person or authority responsible for the safe custody of the thing
9 or computer data seized.

10 41.-(1) Where the Attorney-General, on receipt of a request
11 referred to in section 40 (1) of this Act, is satisfied that-

Issue of search
warrant

12 (a) the request relates to a criminal matter in that foreign State in
13 respect of a serious offence in a foreign State; and

14 (b) there are reasonable grounds for believing that the property to
15 which the request relates is relevant to the criminal matter and is located in
16 Nigeria, the Attorney-General, or an authorised officer directed by him, may
17 apply to the Court for a warrant in respect of premises specified by him.

18 (2) Where the Judge receives an application under subsection (1) of
19 this section and is satisfied by evidence on oath that there are reasonable
20 grounds to believe that-

21 (a) an offence over which the foreign State has jurisdiction has
22 been or may have been committed;

23 (b) evidence of commission of the offence, may be found in a
24 building, receptacle, vessel or place in Nigeria;

25 (c) the thing does not consist of or include items subject to legal
26 privilege;

27 (d) it is not contrary to the public interest for the warrant to be
28 issued; and

29 (e) it would not, in the circumstances, be appropriate to grant an
30 order for the gathering of evidence under section 21 of this Act, he may issue

1 a search warrant under his hand authorising a police officer or person named in
2 the warrant to execute it.

3 (3) In issuing a warrant under this section, the Judge:

4 (a) may subject the execution of the warrant to such conditions as he
5 considers fit; and

6 (b) shall specify a time and place for a hearing to consider the
7 execution of the warrant and the report of the police or authorized person who
8 executed the warrant.

Additional powers
of person
executing search
warrant

9 **42.-(1)** Where an authorised officer has entered a premises in the
10 execution of a warrant issued under section 41 of this Act, he may seize and
11 retain a thing that is specified in the warrant, other than items subject to legal
12 privileges.

13 (2) An authorised officer may photograph or make a copy of a thing
14 seized under subsection (1) of this section.

15 (3) Where an authorised officer seizes a thing or takes a photograph or
16 makes a copy of a thing under a warrant, he shall inform the Attorney-General
17 and shall, unless the Attorney-General otherwise directs, immediately forward
18 the thing or the photograph or copy of the thing to the Central Authority of the
19 foreign State concerned.

20 (4) A thing seized under this Part of this Act shall not be forward to the
21 foreign State unless the Attorney-General is satisfied that the foreign State has
22 agreed to comply with the terms and conditions relating to the forwarding of
23 the thing outside Nigeria.

24 (5) A person who hinders or obstructs an authorised officer in the
25 execution of a warrant issued under this section commits an offence and is
26 liable on conviction to a fine not exceeding five hundred thousand Naira or
27 imprisonment for a term not exceeding one year or to both.

Immunities in
respect of
authorised officer
executing search
warrant

28 **43.-(1)** Civil or criminal action shall not lie against a person for-

29 (a) producing or giving access to a thing if he had produced or given
30 access to the thing in good faith in compliance with a warrant issued under

1 section 41 of this Act; or

2 (b) doing or omitting to do an act if he had done or omitted to do the
3 act in good faith and as a result of complying with the warrant.

4 (2) A person who complies with a warrant issued under section 41
5 of this Act shall not be treated as being in breach of any restriction on the
6 disclosure of any information or thing imposed by law, contract or rules of
7 professional conduct.

8 **44.**-(1) The Central Authority of a foreign State may request the
9 Attorney-General to assist in locating, or identifying in Nigeria, a person
10 who is believed to be in Nigeria.

Assistance in
locating or
identifying a
person in Nigeria

11 (2) On receipt of a request made under subsection (1) of this
12 section, the Attorney-General may authorise assistance in accordance with
13 this section if he is satisfied that-

14 (a) the request relates to a criminal matter in the foreign State; and

15 (b) there are reasonable grounds for believing that the person to
16 whom the request relates:

17 (i) is or might be concerned in, or could give or provide evidence or
18 assistance relevant to the criminal matter; and

19 (ii) is in Nigeria.

20 (3) Where, in relation to a request made under subsection (1) of this
21 section, the Attorney-General authorises assistance in accordance with this
22 section, he shall forward the request to the appropriate authority in Nigeria.

23 (4) The appropriate authority referred to in subsection (3) of this
24 section shall, to the best of its ability, locate or identify and locate, as the case
25 may be, the person to whom the request relates, and shall inform the
26 Attorney-General of the outcome of the actions taken.

27 (5) On receipt of information under subsection (4) of this section,
28 the Attorney-General shall inform the Central Authority of the foreign State.

29 **45.**-(1) The Central Authority of a foreign State may request the

Assistance in
service of
process in Nigeria

1 Attorney-General to assist in effecting the service of process on a person in
2 Nigeria.

3 (2) On receipt of a request made under subsection (1) of this section,
4 the Attorney-General may authorise the service of the process in accordance
5 with this section if he is satisfied that-

6 (a) the request relates to a criminal matter in that foreign State;

7 (b) there are reasonable grounds for believing that the person to be
8 served is in Nigeria;

9 (c) the foreign State has furnished sufficient details of the
10 consequences of a failure to comply with the process; and

11 (d) where the request relates to the service of a summons to appear as a
12 witness in that foreign State, that the foreign State has given an undertaking
13 that the person will not be subjected to any penalty or liability or otherwise
14 prejudiced in law by reason only of that person's refusal or failure to accept or
15 comply with the summons, notwithstanding anything to the contrary in the
16 summons.

17 (3) Where service is authorised under subsection (2) of this section,
18 the Attorney-General may, at the request of a foreign State, arrange for the
19 service in Nigeria of a process relating to a criminal matter in the foreign State.

20 (4) Without limiting the manner in which the service of a process in a
21 foreign State may be proved in Nigeria, service of the process may be proved
22 by the affidavit of the person who served the process.

23 **46.** The person who is to appear as a witness pursuant to section 32
24 (2)(b) of this Act shall not be subjected to any penalty or liability or otherwise
25 prejudiced in law by reason only of that person's refusal or failure to accept or
26 comply with the summons, notwithstanding anything to the contrary in the
27 summons.

1 PART V - INTERCEPTION OF TELECOMMUNICATIONS AND POSTAL ITEMS,
2 AND SURVEILLANCE, INCLUDING COVERT ELECTRONIC SURVEILLANCE

3 47.-(1) Except in the case of a request under section 58 of this Act, a
4 request for assistance, under this Part may only be made if it appears to the
5 foreign State that there are grounds to suspect that the information obtained
6 pursuant to this Part will contain information relevant to the commission of a
7 criminal offence in the foreign State,

Request for
information

8 (2) A request for assistance under sections 48, 51 and 82 of this Act
9 may only be made where-

10 (a) the criminal matter arising in the foreign State is of a serious
11 nature; and

12 (b) there are grounds to suspect that the information obtained
13 pursuant to this Part will contain information relevant to the commission of a
14 criminal offence in Nigeria,

15 (3) The duration, detailed conditions and the monitoring and
16 preserving of the product of the investigative activities undertaken pursuant
17 to sections, 48, 51 and 82 of this Act shall, be agreed between Nigeria and the
18 foreign State, if permissible under the laws of Nigeria,

19 (4) Without prejudice to the general grounds of refusal specified in
20 section 19 of this Act, the Attorney-General may refuse a request for
21 assistance under this Part and may not inform the foreign State of the reasons
22 for the refusal.

23 48.-(1) A foreign State may request assistance to effect or facilitate
24 the interception of telecommunications in Nigeria which may consist of
25 assistance to-

Interception of
telecommunications

26 (a) intercept telecommunications electronically or through other
27 technology;

28 (b) record and subsequently transmit information gathered through
29 the interception; and

30 (c) provide stored communications,

1 (2) In addition to any other requirement of this Act, a request for
2 assistance to intercept telecommunications in Nigeria shall include-

3 (a) the type of telecommunications sought to be intercepted;

4 (b) sufficient information to identify the telecommunications sought
5 to be intercepted;

6 (c) details of the location of the telecommunication sought to be
7 intercepted;

8 (d) if possible, the provision of sufficient technological data, in
9 particular the relevant network connection number, telecommunications
10 address or service identifier, to ensure that the request can be executed;

11 (e) details of any provision of law under which an interception order
12 or warrant for the interception of telecommunications is required in the foreign
13 State and any provision of law which ensures respect for the rights of those
14 whose telecommunications are intercepted;

15 (f) a copy of any related order or warrant obtained, if any;

16 (g) the form of assistance to be provided by Nigeria, being-

17 (i) the interception and immediate transmission to the foreign State of
18 telecommunications, or

19 (ii) the interception, recording and subsequent transmission to the
20 foreign State of telecommunications; the desired duration of the interception;
21 details of the criminal offence under investigation; the relevance of the
22 evidence sought; confirmation of an interception order or warrant issued in
23 connection with a criminal investigation in the foreign State; and

24 (h) the path of the relevant telecommunication.

25 (3) Notwithstanding any preference expressed by the foreign State
26 under subsection (2)(g) of this section, Nigeria may comply with a request for
27 assistance under this section by either means.

28 **49.-(1)** Where the request for interception involves the interception of
29 telecommunication services that are operated through a gateway in Nigeria, the
30 Attorney-General shall cause the appropriate authority to ensure that the

1 systems of telecommunications are made directly accessible for the lawful
2 interception through the intermediary of a designated communications
3 service provider in Nigeria.

4 (2) Subject to the provisions of subsection (1) of this section, a
5 foreign State, in conjunction with the competent authority concerned, may,
6 for the purpose of criminal investigation and in accordance with its law, be
7 allowed to carry out the interception through the designated service provider
8 if the subject of the interception is present in Nigeria.

9 50. Where the request for the interception of telecommunications
10 is in respect of the expeditious preservation of communication data, pending
11 the submission of a request for the production of the data, the request shall be
12 accompanied with-

Interception of
telecommunications
to preserve
communication
data

- 13 (a) the identification of the authority that seeks to preserve the data;
14 (b) a brief description of the conduct under investigation;
15 (c) a description of the data to be preserved and its connection with
16 the investigation or proceeding to which the request relates and which
17 indicates whether the communication data to be preserved includes-
- 18 (i) subscriber information,
19 (ii) traffic data, or
20 (iii) any other information that comprises communication data;
21 (d) available information to identify the person who has custody of
22 the stored communication data or the location of the computer system;
23 (e) stated reasons for the necessity of the preservation; and
24 (g) an indication of the manner and time within which the foreign
25 State intends to submit a substantive request for mutual legal assistance for
26 the production of the required communication data.

27 51. Where the request for interception of communication is for the
28 purpose of providing stored data, the request shall be accompanied with-

Interception of
communications
to provide stored
data

- 29 (a) the name of the authority with access to the relevant data;
30 (b) the location at which the data is held;

- 1 (c) the intended purpose for the data;
2 (d) sufficient information to identify the data;
3 (e) details of the data of the relevant interception;
4 (f) the recipient of the data;
5 (g) the intended duration for the use of the data; and
6 (h) the terms for the use and disclosure of the data to third parties.

Interception of
communication
for gathering,
recording and
transmitting
information

7 **52.** Where the request for the interception of communication is in
8 respect of information to be gathered, recorded and transmitted, the request
9 shall be accompanied with-

- 10 (a) the name of the authority with access to the relevant information
11 and the location at which it is held;
12 (b) sufficient information to identify the relevant communication;
13 (c) details of the date of the relevant interception; and
14 (d) other information that may be necessary for the identification and
15 disclosure of the relevant material.

Interception of
postal items

16 **53.-(1)** The Central Authority of a foreign State may request the
17 Attorney-General to assist in the interception of a postal item during the course
18 of its carriage by a postal service and in the subsequent transmission to the
19 foreign State of the item or, where appropriate, a copy or record of the postal
20 item.

21 (2) The Attorney-General may grant a request under subsection (1) of
22 this section if he is satisfied that-

- 23 (a) the foreign State has jurisdiction over the criminal matter for
24 which the request is sought;
25 (b) there are grounds to suspect that the information obtained
26 pursuant to the interception will be relevant to the commission of a criminal
27 offence in the foreign State; and
28 (c) the criminal matter arising in the foreign State is of a serious
29 nature.

30 (3) Investigative techniques and other procedure used for the purpose

1 of dealing with a request under this section shall be in accordance with the
2 laws of Nigeria and the duration and the detailed conditions of the
3 techniques and procedure used shall be agreed between the Central
4 Authority of the foreign State and the Attorney-General.

5 (4) The Attorney-General shall, if he approves the request,
6 authorise the appropriate authority to intercept the item.

7 (5) The appropriate authority in Nigeria shall make a report to the
8 Attorney-General-

9 (a) on how the subsequent transmission of the item was effected
10 after the interception of the item; and

11 (b) where interception of the item was not effected, the reasons for
12 the inability to effect the interception.

13 (6) The Attorney-General shall on receipt of the report referred to
14 under subsection (5) of this section transmit to the Central Authority of the
15 foreign State-

16 (a) a certificate of the effected interception; or

17 (b) a report containing reason for the inability to effect the
18 interception.

19 (7) Without prejudice to the general grounds of refusal set out in
20 section 19 of this Act, the Attorney-General may refuse a request for
21 assistance under this section and need not inform the foreign State of the
22 reasons for the refusal.

23 **54.**-(1) A request for the preservation of computer data under this
24 Part may be made by the Central Authority or other competent authority of a
25 foreign State.

Preservation of
computer data

26 (2) A request may be made pursuant to subsection (1) of this section
27 where it appears to the Central Authority or competent authority that there
28 are grounds to suspect that the preserved computer data may contain
29 information relevant to criminal activities in the foreign State.

30 (3) In addition to the information required by section 6 of this Act, a

1 request for the preservation of computer data shall include-

2 (a) the identity of the agency or authority making the request;

3 (b) a brief description of the conduct under investigation;

4 (c) the identity of the individual whose computer data is to be
5 preserved, or that person's telecommunications address;

6 (d) a statement that the foreign State intends to submit a request under
7 this Act to obtain the computer data within the period specified in subsection
8 (4) of this section; and

9 (e) a description of the computer data to be preserved and its relevance
10 to the investigation or prosecution.

11 (4) The preservation of computer data pursuant to a request made
12 under this section shall be for a period of one hundred and twenty days.

13 (5) Notwithstanding the general grounds for refusal contained in
14 section 19 of this Act, a request for the preservation of computer data under this
15 section may be refused only to the extent that it appears to the Attorney-General
16 that compliance would be contrary to the laws of Nigeria or will prejudice its
17 security, international relations or other essential public interests.

18 (6) Where the Attorney-General considers that the preservation of
19 computer data pursuant to a request made under this section shall-

20 (a) not ensure the future availability of the computer data;

21 (b) threaten the confidentiality of or otherwise prejudice, the
22 investigation in the foreign State, he shall promptly inform the foreign State,
23 which shall then determine whether the request should nevertheless be
24 executed.

25 (7) Where the Central Authority of a foreign State submits a request
26 for assistance to obtain the preserved computer data to the Attorney-General
27 before the expiry of the period stated in subsection (4) of this section, the data
28 shall continue to be preserved pending the determination of that request and
29 where the request is granted, until the data is obtained pursuant to the request
30 for assistance.

1 55.-(1) Where the Attorney-General approves a request of a
2 foreign State to intercept telecommunication in Nigeria relating to an
3 offence, he shall apply ex-parte to the Court or through his officers for an
4 order to intercept telecommunications

Order for
interception of
telecommunications

5 (2) Notwithstanding subsection (1) of this section, the Inspector-
6 General of Police, may with the prior written consent of the Attorney -
7 General, direct a senior police officer to apply ex-parte to the Court for an
8 order under this section, for the purpose of assisting the law enforcement
9 agency of a foreign State to obtain evidence relating to the commission of an
10 offence.

11 (3) The Court to which an application is made may make an order
12 to-

13 (a) require a telecommunications service provider to intercept and
14 retain a specified communication, or communication of a specified
15 description, received or transmitted by that telecommunications service
16 provider;

17 (b) authorise a senior police officer or other competent person to
18 intercept or listen to a conversation provided by a telecommunications
19 service provider; or

20 (c) authorise a police officer or other competent person to enter a
21 premises and to install on the premises a device for the interception and
22 retention of specified telecommunications or telecommunications of a
23 specified description and to remove and retain the device, where there is
24 suspicion of the commission of an offence or the whereabouts of a person
25 suspected by the police officer to have committed the offence is contained in
26 that telecommunication or telecommunications of that description.

27 (4) The Court may, in an order under subsection (3) of this section,
28 authorise a competent authority to facilitate access to the systems of
29 telecommunication services required to be intercepted to execute a request.

Order for
preservation of
communications
data

1 **56.**-(1) Where the Attorney-General approves a request of a foreign
2 State for the preservation of communication data, section 55 of this Act shall
3 apply, with the necessary modification, for the purpose of an order to preserve
4 the communication data.

5 (2) An order made under this section shall be for a period of one
6 hundred and twenty days, to enable the foreign State submit a substantive
7 request to obtain the preserved communication data.

8 (3) Where an order is made under section 55 (2) of this Act for
9 purposes of the preservation of communication data, the relevant data shall be
10 preserved-

11 (a) pending a determination of the request; or

12 (b) until the communication data is obtained after the approval of the
13 request.

14 (4) Where the Attorney-General is of the opinion that an order made
15 under section 55 (2) of this Act for purposes of the preservation of
16 communication data-

17 (a) does not warrant the future availability of the required
18 communication data;

19 (b) may threaten the confidentiality of or adversely affect the
20 investigation of the foreign State; or

21 (c) the request concerns an offence which the foreign State considers a
22 political offence or an offence connected with a political offence, he shall, in
23 writing, promptly inform the foreign State.

24 (5) The foreign State, on receipt of information forwarded to it by the
25 Attorney-General under this section, shall determine whether to execute the
26 request or not.

Admissibility of
evidence contained
in intercepted
telecommunications

27 **57.** Notwithstanding the Evidence Act, information contained in a
28 communication which is-

29 (a) the link between the property and the offence for which the request
30 is made;

1 (b) where applicable, a certified copy of any constraint or
2 confiscation order, or of any other relevant court order, made in the foreign
3 State;

4 (c) details of any third party interests in the property and any
5 notification provided to the third party by the requesting State;

6 (d) a certificate in respect of the property; and

7 (e) any other relevant statement.

8 (3) The Central Authority of a foreign State shall issue the
9 certificate under subsection (2) of this section to confirm that-

10 (a) there are reasonable grounds to believe that the whole or part of
11 the property is located in Nigeria;

12 (b) criminal proceedings have been instituted in the foreign State
13 for an offence connected to the property; and

14 (c) criminal investigations are in progress in the foreign State for a
15 serious offence connected to the relevant property.

16 (4) Where the Attorney-General receives a request from the
17 Central Authority of a foreign State under subsection (1) of this section, he
18 may direct the competent authority to apply ex-parte to the Court for an
19 order in relation to the request.

20 (5) A certificate issued by a foreign State under subsection (3) of
21 this section is prima facie evidence of the facts stated in it without
22 verification of the signature or official character of the person who signed
23 the request.

24 (6) In addition to the grounds of refusal specified under section 19
25 of this Act, the Attorney-General may refuse a request under subsection (1)
26 of this section if he does not receive compelling and timely evidence or the
27 connection with proceeds of crime is of nominal value.

28 (7) The Attorney-General may-

29 (a) direct the imposition of provisional measures on confiscated
30 property in accordance with the request of a foreign State but shall notify the

1 foreign State before lifting any provisional measure to enable the foreign State
2 give reasons if it requires the measures to be continued; and

3 (b) take measures to preserve property, if there are reasonable grounds
4 to believe that the property will ultimately be subject to an order of confiscation
5 on the basis of an arrest of a person in a foreign State or a criminal charge
6 related to the acquisition of the property.

7 (8) For the purposes of subsection (4) of this section-

8 "an order in relation to the proceeds of crime" means:

9 (a) an order restraining dealings with the property in respect of which
10 there is reasonable ground to believe that it has been derived or obtained,
11 directly or indirectly from, or used in, or in connection with, the commission of
12 a serious offence;

13 (b) an order to confiscate property derived or obtained directly or
14 indirectly from, or used in, or in connection with, the commission of a serious
15 offence; or

16 (c) an order to impose a pecuniary penalty calculated by reference to
17 the value of the property derived or obtained directly or indirectly from, or used
18 in, or in connection with, the commission of a serious offence.

19 **60.**-(1) Where the Attorney-General receives a request from the
20 Central Authority of a foreign State for the enforcement of a restraint or
21 confiscation order, he may if satisfied that-

22 (a) the order is final and not subject to review or appeal;

23 (b) the order is in force in the foreign State concerned; or

24 (c) the person against whom the order was made, has been convicted
25 of a serious offence within the jurisdiction of the foreign State, lodge a certified
26 copy of the restraint or confiscation order with the Registrar of the Court for
27 that purpose.

28 (2) The Registrar with whom a certified copy of the restraint or
29 confiscation order is lodged shall, in the prescribed manner, register the order
30 in respect of the property specified in the order.

1 (3) The Registrar who registers a certified copy of the restraint or
2 confiscation order shall give written notice of its registration at the Court to
3 the particular person against whom the order has been made.

4 (4) Where a person against whom the restraint or confiscation
5 order has been made is not present in Nigeria, the person shall be informed,
6 in the manner prescribed by rules of court, of the registration of the
7 particular order.

8 (5) A restraint or confiscation order registered in accordance with
9 subsection (2) of this section, has the same effect as a restraint or
10 confiscation order made by the Court at which it was registered and may be
11 enforced as a judgment of the Court.

12 61. Where a court in Nigeria is unable, for justifiable reason, to
13 enforce an order in accordance with the request by the Central Authority of a
14 foreign State under section 60 of this Act, the Central Authority may
15 subsequently request the making of a similar order that is available under the
16 laws of Nigeria.

Enforcement of
alternative court
orders in Nigeria

17 62. -(1) Where an amendment is made to a foreign restraint or
18 confiscation order in the foreign State or after its registration in Nigeria, a
19 copy of that amendment shall be registered in the same manner as the
20 original order was registered.

Amendment to
foreign restraint
and confiscation
orders

21 (2) The amendment to a restraint or confiscation order is of no
22 effect until it is registered in the manner specified under subsection (1) of
23 this section.

24 63. The Court shall on application set aside the registration of a
25 foreign restraint or confiscation Order, if it is satisfied that the-

Setting aside of
registration of
foreign restraint
and confiscation
orders

26 (a) Order was registered contrary to a provision of this Act, or

27 (b) sentence or order in support of which the restraint or
28 confiscation order was made, has been satisfied in full or has ceased to have
29 effect.

Interested parties
and restraint and
confiscation orders

1 **64.**-(1) The Court may, in an action relating to a restraint or
2 confiscation order pursuant to section 60 of this Act, require notice to be given
3 to a person who appears to have an interest in the property and that the person
4 shall be added as a respondent to the application.

5 (2) If the Court is satisfied that the person added as a respondent to the
6 application, has-

7 (a) an interest in the property which is the subject of the application;
8 and

9 (b) exercised reasonable care to ensure that the property is not from
10 the proceeds of a serious offence, the Court shall order that the interest of that
11 person shall not be affected by the order and the order shall also declare the
12 nature and extent of the interest of that person.

13 (3) The Court may also under this section of this Act make an order for
14 payment of damages or costs in relation to the registration of the restraint or
15 confiscation order.

Electronic
communication
of restraint and
confiscation order

16 **65.**-(1) A foreign restraint or confiscation order or an amendment to
17 either of them may be received by means of electronic communication and
18 registered by the Court, subject to subsection (3) of this section.

19 (2) An electronic copy of an order under subsection (1) of this section
20 shall have the same effect as a duly authenticated copy of the order or its
21 amendment.

22 (3) Registration of an order under subsection (1) of this section shall
23 cease to have effect thirty days from the date of registration, unless an
24 authenticated copy of the original order is registered.

Application of
enactments
relating to money
laundering,
terrorism and
other related
crimes

25 **66.** Where a foreign restraint or confiscation order is registered in
26 accordance with section 60 (2) of this Act, the provisions of any enactment
27 relating to the laundering of money, a terrorist act and proceeds of other related
28 crimes shall still apply to the registered order,

Reciprocal sharing
of confiscated
property

29 **67.**-(1) The Attorney-General may enter into an administrative
30 arrangement with the Central Authority of a foreign State for the reciprocal

1 share - out with that foreign State of the whole or a part of the property that is
2 realized in the foreign State or Nigeria following the execution of a request
3 on the direction of the Attorney-General-

4 (a) for the confiscation of property located in the foreign State, or

5 (b) for the enforcement of a foreign restraint or confiscation order.

6 (2) Subject to any other enactment, the share out of confiscated
7 property under this Act, shall vest in Nigeria free from any right, interest or
8 encumbrance of a person, except a right, interest or encumbrance which-

9 (a) is held by a purchaser in good faith for valuable consideration
10 without notice, or

11 (b) is not otherwise void under any provision of this Act.

12 (3) Where Nigeria disputes the claim of a person who holds an
13 encumbrance to which the property is subject, the Attorney-General shall
14 apply to the Court to determine the issue,

15 (4) The vesting of property in Nigeria shall take effect without a
16 transfer, conveyance, deed or other instrument and the property shall be
17 registered by the authority empowered to do so in the prescribed manner.

18 **68.-(1)** Subject to this Act, the laws of Nigeria shall apply to the
19 determination of-

Disposal or
release of property

20 (a) disposal of property confiscated or obtained as a result of the
21 enforcement of a fine, and

22 (b) the circumstances for the release of property which is the
23 subject of a restraint or confiscation order under this Act.

24 (2) Subject to section 67 of this Act, the proceeds of crime obtained
25 through a court order under section 59 (4) of this Act or the equivalent of
26 those proceeds may be-

27 (a) return to Nigeria;

28 (b) returned to the legitimate owner; or

29 (c) shared with the foreign State concerned in accordance with the
30 proportion that Nigeria, in consultation with the foreign State, considers

1 the Attorney-General to the person who had possession of the exhibit when the
2 Loan Order was made.

Burden of proof

3 71. The burden of proving that an exhibit forwarded to the Central
4 Authority of a foreign State pursuant to a Loan Order made under section 70 (1)
5 of this Act, and returned to Nigeria-

6 (a) is not in the same condition as it was when the Loan Order was
7 made; or

8 (b) was tampered with after the Loan Order was made, is on the party
9 who makes that allegation and, in the absence of proof to the contrary, the
10 exhibit shall be considered to have been in the continuous possession of the
11 Court that made the loan order.

Request to produce
judicial or official
records

12 72.-(1) Where the Attorney-General approves the request by the
13 Central Authority of a foreign State in relation to the production of a judicial or
14 official record, he shall, after giving reasonable notice to the person or
15 authority concerned, apply to the Court for an order to execute the request.

16 (2) The application shall-

17 (a) specify the type and description of judicial or official record
18 required;

19 (b) state the reasons for the request;

20 (c) designate a person or authority to be responsible for and have
21 custody of the record; and

22 (d) specify the period of time within which the document shall be
23 returned.

24 (3) For the purpose of this section and section 73 of this Act-

25 (a) "judicial record" means a judgment, an order or a decision of a
26 court and any other document held by judicial authorities; and

27 (b) "official record" means a document held by a Ministry,
28 department or agency of the Government or by a prosecution authority.

Court order to
produce judicial
or official records

29 73.-(1) Where the Court to which an application is made under section
30 72 (1) of this Act is satisfied that the Central Authority of the foreign State has-

1 (a) requested a judicial or an official record to be sent to it for a
2 fixed period; and

3 (b) agreed to comply with the terms and conditions that the court
4 proposes to include in the order, the Court may, after having considered the
5 representations, if any, of the persons to whom notice of the application was
6 given under section 72 (1) of this Act, make the relevant order and cause the
7 Registrar of the Court to notify the Central Authority of the foreign State
8 through the Attorney-General.

9 (2) The order shall-

10 (a) specify the type and description of the judicial or official
11 record;

12 (b) order the person or authority in possession of the judicial or
13 official record to deliver it to the person or authority designated in the order;

14 (c) specify the period of time within which the judicial or official
15 record shall be returned; and

16 (d) indicate any conditions for the safe custody of the judicial or
17 official record.

18 (3) The Attorney-General shall, as soon as practicable after
19 notification, request the appropriate person, body or authority to make
20 available copies of the judicial or official records which are-

21 (a) publicly available; or

22 (b) not publicly available, subject to the conditions that apply to
23 their provision under the laws of Nigeria.

24 **74.-**(1) Where compliance with a request under this Act involves
25 the transmission of material to a foreign State, the Attorney-General may-

26 (a) transmit the documents, records, items or other materials
27 subject to the terms and conditions prescribed in paragraph (c) of this
28 subsection;

29 (b) postpone the transmission of the material if it is required for
30 proceedings in Nigeria; or

Transmission and
return of documents,
records, items or
other material to
and from Nigeria

1 (c) require the foreign State to agree to terms and conditions
2 necessary to protect the interest of any third party in respect of the material
3 designated for transmission and may refuse to transmit the material pending
4 the agreement.

5 (2) Where the Attorney-General postpones the transmission of
6 material, he shall provide the Central Authority of the foreign State with a
7 certified copy of the relevant document or record pending the transmission of
8 the original.

9 (3) Where the Attorney-General requires the foreign State to agree to
10 terms and conditions under subsection (1)(c) of this section, he may refuse to
11 effect the transmission pending the required agreement.

12 (4) Where any document, record or property is transmitted to a
13 foreign State in compliance with a request under this Act, it shall be returned to
14 Nigeria when it is no longer required in connection with the criminal matter
15 specified in the request unless the Attorney-General has indicated that its return
16 is no longer necessary.

17 (5) The Attorney-General shall authenticate any material that is to be
18 transmitted to a foreign State.

19 (6) For the purposes of this section, "material" includes a document,
20 record, item, article or thing.

21 PART VIII - ADMISSIBILITY IN NIGERIA OF EVIDENCE OBTAINED

22 OUTSIDE NIGERIA

23 -(1) Notwithstanding the provisions of the Evidence Act-

24 (a) a record or a copy of a record; or

25 (b) an affidavit, a certificate or other statement pertaining to the
26 record made by a person: who has custody or knowledge of the record, which is
27 forwarded to the Attorney-General by the Central Authority of a foreign State
28 in accordance with a request of Nigeria, is admissible in evidence in a
29 proceeding in Nigeria irrespective of the fact that a statement contained in the

1 record, copy, affidavit, certificate or other statement is hearsay or a
2 statement of opinion.

3 (2) To determine the probative value of a record or a copy of the
4 record admitted in evidence under this Act, the Judge may-

5 (a) examine the record or a copy of the record; and

6 (b) receive evidence orally or by affidavit, including evidence as to
7 the circumstances in which the information contained in the record or copy
8 of the record was written, recorded, stored or reproduced, and draw a
9 reasonable inference from the form or content of the record or copy of the
10 record.

11 (3) Notwithstanding the provisions of the Evidence Act-

12 (a) an item or article; and

13 (b) an affidavit, certificate or other statement pertaining to the item
14 or article made by a person in a foreign State as to the identity and possession
15 of the item or article from the time it was obtained until it was forwarded to
16 the Attorney-General by the Central Authority of the foreign State in
17 accordance with a request by Nigeria, is admissible in evidence in a
18 proceeding in Nigeria notwithstanding that the affidavit, certificate or other
19 statement pertaining to the item or article contains hearsay or a statement of
20 opinion.

21 76. An affidavit, certificate, deposition, record of evidence or other
22 statement in section 75 of this Act shall, in the absence of evidence to the
23 contrary, be proof of statements contained in the document, if it is-

Authentication of
documents

24 (a) purported to be signed or certified by a Judge or Magistrate, or
25 to bear the stamp or seal of a Minister, government department or other
26 competent authority; or

27 (b) verified by the oath of a witness or of a public officer of the
28 foreign State from which the document or material emanates.

29 77. Unless otherwise determined by the Court, a record, copy of
30 record, an item, article, affidavit, certificate or other statement under

Requirements of
notification for the
admissibility of
foreign documents
and items

1 sections 78 and 79 of this Act shall not be received in evidence in proceedings
2 before the Court unless-

3 (a) the party who intends to produce it has given to the party against
4 whom it is intended to be produced seven working days notice of that intention
5 accompanied with a copy of the record, affidavit, certificate or other statement;
6 and

7 (b) in the case of an item or article, the party who intends to produce it,
8 has made it available for inspection by the party against whom it is intended to
9 be produced during the subsequent five working days following a request by
10 him that it be made available.

Proof of service
abroad

11 **78.** The service of a document in a foreign State may be proved by the
12 affidavit of the person who served it.

Confidentiality
and limitation
on use of
information and
evidence

13 **79.**-(1) Subject to subsection (2) of this section, a document
14 forwarded to the Attorney-General by a foreign State in accordance with a
15 request by Nigeria is privileged and a person shall not disclose to an
16 unauthorized person the-

17 (a) document or its purpose; or

18 (b) whole or part of the contents of the document, except in
19 compliance with the conditions for which it was forwarded and for the purpose
20 of giving evidence.

21 (2) A person in possession of a document is not required, except as
22 provided under this Act, to-

23 (a) give evidence relating to information that is contained in the
24 document; or

25 (b) produce the document.

26 (3) Except as otherwise required by this Act in respect of the
27 execution of a request by a foreign State for mutual legal assistance, a person
28 shall not disclose the-

29 (a) fact that the request has been received; or

30 (b) content of the request.

1 (4) A person shall not use an item or article obtained from a foreign
2 State following a request made by the Attorney-General under this Act, for
3 purposes of an investigation or a proceeding other than the investigation or
4 proceeding disclosed in the request, unless the Attorney- General, after
5 consultation with the foreign State, consents to the use.

6 (5) A person who contravenes the provisions of this section
7 commits an offence and is liable on conviction to a fine of not more than one
8 million Naira or imprisonment for a term of not more than two years, or to
9 both.

10 PART IX - SPECIAL PROVISIONS ON COOPERATION

11 80.-(1) The Attorney-General may disclose to the Central
12 Authority of a foreign State information in possession of a competent
13 authority in Nigeria if the disclosure-

Special
cooperation with
a foreign State

14 (a) is likely to assist in carrying out any investigation, prosecution
15 or judicial proceedings in the foreign State;

16 (b) may lead to a request for assistance by the foreign State; or

17 (c) may lead to the tracing, freezing or confiscation of proceeds of crime.

18 (2) Where the information is disclosed, the Attorney-General may
19 impose conditions on the use of the information and the person who receives
20 the information shall comply with the conditions.

21 81.-(1) In order to give effect to a request for assistance under this
22 Act, the Attorney-General shall, with the consent of the President, enter into
23 an administrative arrangement with the Central Authority of a foreign State
24 for assistance in the conduct of investigations into a crime by an authorised
25 officer within Nigeria under a covert or false identity, or through covert
26 electronic surveillance.

Covert
investigation

27 (2) The arrangement referred to in subsection (1) of this section
28 shall have regard to the laws and procedures used in Nigeria and shall-

29 (a) indicate the duration of the covert investigation or surveillance;

30 (b) provide in detail the conditions of the covert investigation;

1 (c) provide for the monitoring and preservation of the product of
2 covert investigation; and

3 (d) indicate the designation of the officers concerned.

4 (3) The Attorney-General and the Central Authority of the foreign
5 State shall ensure that-

6 (a) the covert investigation is conducted and supervised under the
7 strictest confidentiality; and

8 (b) security is provided for the officers acting under the covert or false
9 identity.

10 (4) Without limiting subsection (1) of this section, a request made
11 under the arrangement entered into under that subsection may include the use
12 of a tracking device.

Joint
investigation

13 **82.**-(1) The Attorney-General may establish a joint investigation team
14 with the Central Authority of a foreign State for a fixed period to carry out
15 criminal investigations within and outside Nigeria, in order to give effect to a
16 request for assistance under this Act.

17 (2) A joint investigation team shall consist of such members and for
18 such purposes as may be specified in the agreement, including where-

19 (a) investigations into a serious offence are complicated and
20 demanding, and have a link with a foreign-State; or

21 (b) the conduct of investigations into a serious offence by a foreign
22 State necessitate the coordinated and concerted action of the competent
23 authorities of Nigeria.

24 (3) A joint investigation team established in Nigeria shall operate
25 under the following general conditions-

26 (a) there shall be a team leader who shall be a representative of the
27 competent authority authorised to participate in the criminal investigation, and
28 act in accordance with the laws of Nigeria;

29 (b) the members of the team shall operate in accordance under the
30 leadership of the team, and take into account the conditions set out by their own

1 authorities; and

2 (c) the team shall carry out investigative measures which have been
3 approved by the Attorney-General.

4 (4) The Central Authority of a foreign State in which a joint
5 investigation team is established or the Attorney-General, if the team is
6 established in Nigeria, is responsible for making the necessary
7 organisational arrangements for the operations of the team.

8 (5) Where a joint investigation team requires assistance from a
9 foreign State, the Attorney-General may make the relevant request on
10 behalf of the team in accordance with the relevant agreement.

11 **83.**-(1) The Attorney-General and the Central Authority of a
12 foreign State shall consult at the request of the Attorney-General or Central
13 Authority of the foreign State in respect of a matter under this Act.

Consultation with
foreign States

14 (2) Where criminal proceedings are likely to be initiated or are
15 pending in Nigeria and in a foreign State against the same person in respect
16 of the same conduct, the Attorney-General and the Central Authority of that
17 foreign State shall consider the appropriate venue for the proceedings to take
18 place in the interests of the proper administration of justice.

19 (3) In considering the appropriate venue, the Attorney-General and
20 the Central Authority of the foreign State shall take into account-

21 (a) the location of the accused person;

22 (b) the location, protection of other interests of witnesses and third
23 parties;

24 (c) the interests of any victims;

25 (d) the location of documents, exhibits and other relevant
26 materials;

27 (e) the sanctions available in case of conviction;

28 (d) the ability to address sensitive or confidential information or
29 material;

30 (g) possible delays;

- 1 (h) possible problems in respect of obtaining evidence;
2 (i) resources and cost;
3 (j) confiscation and proceeds of crime; and
4 (k) any other matter of public interest and national security.

Voluntary
assistance

5 **84.**-(1) Where the Attorney-General is of the opinion that assistance
6 may be offered to a foreign State for the purpose of a criminal investigation
7 without a request from the foreign State, the Attorney-General shall notify the
8 Central Authority of that foreign State, stating the reasons, for the intended
9 purpose of the assistance.

10 (2) The notification to offer assistance shall-

- 11 (a) indicate the authority responsible for the assistance;
12 (b) specify the criminal conduct under investigation; and
13 (c) specify the expected duration of the assistance.

14 (3) The notification shall also require the foreign State to-

- 15 (a) confirm or decline the offer of assistance; or
16 (b) enter into an administrative arrangement for the purpose of the
17 assistance, within ninety days after the receipt of the notice.

18 PART X - MISCELLANEOUS

Delegation of
power by the
Attorney-General

19 **85.**-(1) The Attorney-General may delegate his powers under this Act
20 to any authorised person or competent authority.

21 (2) A delegation under this section shall not preclude the Attorney-
22 General himself from exercising at any time any of the powers so delegated.

Regulations

23 **86.**-(1) The Attorney-General may make such regulations as are
24 necessary or expedient to give full effect to or for carrying out the provisions of
25 this Act.

26 (2) Regulations made under subsection (1) of this section may
27 provide for the-

- 28 (a) making, receiving and refusal of requests;
29 (b) form, content and conditions for grant of requests;
30 (c) confidentiality of requests;

- 1 (d) transfer of detained persons to Nigeria;
- 2 (e) gathering of evidence and investigative measures;
- 3 (f) interception of telecommunication in Nigeria and the
- 4 preservation of communication data;
- 5 (g) interception of items in the course of carriage by a postal
- 6 service;
- 7 (h) seizure and confiscation of the proceeds of crime; doing
- 8 (i) disposal, release and sharing of confiscated property;
- 9 prescription
- 10 (j) transfer of criminal proceedings from Nigeria to a foreign State;
- 11 and
- 12 (k) taking of any other action necessary or expedient for the
- 13 effective implementation of this Act.

14 **87.**-(1) The Mutual Assistance in Criminal Matters within the

15 Commonwealth (Enactment and Enforcement) Act, 2004 is repealed,

Repeal and
transitional
provisions

16 (2) Without prejudice to section 6 of the Interpretation Act, the

17 repeal of the Act specified in subsection (1) of this section, shall not affect

18 anything done under or pursuant to the Act.

19 (3) An agreement or arrangement in existence under the repealed

20 enactment before the commencement of this Act shall continue to have

21 effect subject to such modifications as may be necessary to give effect to this

22 Act.

23 (4) Any subsidiary legislation in force at the commencement of this

24 Act shall continue to have effect with such modifications as are necessary to

25 give effect to the provisions of this Act.

26 **88.**-(1) In this Act, unless the context otherwise require-

Interpretation

27 "agreement" means a treaty, convention or other international agreement

28 that is in force, to which Nigeria is a party and contains a provision relating

29 to mutual assistance in criminal matters;

30 "ancillary criminal matter" means the-

- 1 (a) restraining of dealing with, or the seizure, forfeiture or
2 confiscation of property in connection with a serious offence or a serious
3 offence in a foreign State, as the case may be; or
- 4 (b) obtaining, enforcement or satisfaction of a forfeiture order or a
5 foreign forfeiture order, as the case may be;
- 6 "appeal" includes proceedings by way of discharging or setting aside of a
7 judgment, and an application for stay of execution;
- 8 "article" includes material;
- 9 "assistance" means mutual assistance in criminal matters under this Act;
- 10 "authorised person" means any officer of the Office of the Attorney - General or
11 officer of a competent authority or law enforcement officer;
- 12 "Attorney-General" means the Attorney-General of the Federation and
13 Minister of Justice;
- 14 "Central Authority" means, in the case of-
- 15 (a) Nigeria, the Attorney-General as designated under section 5 of this
16 Act; and
- 17 (b) a foreign State, a person or authority designated under the laws of
18 that foreign State, to be responsible for the transmission, receipt and handling
19 of requests for assistance under this Act;
- 20 "communications" includes telecommunications and the transmission of an
21 item through the public postal service;
- 22 "communications data" means-
- 23 (a) traffic data;
- 24 (b) subscriber information; and
- 25 (c) information that is not traffic data or subscriber information held
26 or obtained by a service provider of a postal service or a telecommunications
27 service which relates to the provision of that service;
- 28 "competent authority" means-
- 29 (a) a department or agency of Government authorized by the
30 Attorney-General;

- 1 (b) an organization, agency or body of a foreign State authorized by
2 the Central Authority of the foreign State, to handle, submit or receive
3 mutual assistance request under this Act;
- 4 "computer data" means any representation of facts, information or concepts
5 in a form suitable for processing in a computer system, and includes a
6 programme suitable to cause a computer system to perform a function;
- 7 "computer system" means a device or a group of inter-connected or related
8 devices, including the internet, one or more of which, pursuant to a
9 programme, performs automatic processing of data;
- 10 "confiscation or forfeiture order" means an order issued by a court to deprive
11 a convicted person of-
- 12 (a) the proceeds of unlawful activity;
- 13 (b) property that represents the proceeds of unlawful activity;
- 14 (c) an instrumentality of unlawful activity; or
- 15 (d) a sum of money that represents his benefits from unlawful
16 activity;
- 17 "content data" means the substance of a communication, or the message or
18 information that is being conveyed by a telecommunication, whether or not
19 an interpretation, a process, mechanism or device needs to be applied or
20 used to make the meaning of the communication, or the message or
21 information intelligible;
- 22 "Court" means the Federal High Court, except where otherwise indicated;
- 23 "covert electronic surveillance" means covert surveillance carried out by or
24 with an electronic surveillance device which transmits, records or otherwise
25 captures audio product, visual images or location or position information,
26 but does not include covert surveillance using a device designed primarily
27 for the interception of telecommunications;
- 28 "covert surveillance" means surveillance carried out in a manner that is
29 calculated to ensure that the subject of the surveillance is not aware that the
30 surveillance is or may be taking place;

1 "criminal activity" means an act engaged in by a person which constitutes an
2 offence-

3 (a) in Nigeria;

4 (b) by reason of a foreign classification of crime under an
5 international agreement which is binding on Nigeria; or

6 (c) in a foreign State with which Nigeria has a mutual legal assistance
7 agreement or other arrangement;

8 "criminal investigation" means an investigation into an offence;

9 "criminal matter" means proceedings or investigations relating to-

10 (a) the restraint or freezing of property that may be confiscated or
11 forfeited by a Court, or that may be needed to satisfy a pecuniary penalty
12 imposed in respect of an offence;

13 (b) the confiscation or forfeiture of property by a Court in respect of
14 an offence; and

15 (c) the imposition or recovery of a pecuniary penalty in respect of an
16 offence;

17 "criminal proceedings", in relation to an offence, means-

18 (a) a trial of a person for the offence; or

19 (b) any proceeding to determine whether any person should be tried
20 for an offence;

21 "data" means representation in any form of information or concept;

22 "dealing", in relation to any property, includes-

23 (a) receiving or acquiring the property;

24 (b) concealing or disguising the property, whether by concealing or
25 disguising its nature, source, location, disposition, movement or ownership or
26 any rights with respect to it or otherwise;

27 (c) disposing of or converting the property;

28 (d) bringing the property into or removing the property from Nigeria;

29 (e) using the property to borrow money, or as security, whether by
30 way of a charge, mortgage or pledge or otherwise; or

1 (f) where a debt is owed to the person holding the property, making
2 a payment to any person in reduction of the amount of the debt;

3 "document" means-

4 (a) a record of information, including anything-

5 (i) on which there are writings, marks, figures, symbols and
6 perforations for interpretation, and

7 (ii) from which sounds, images or writings can be produced with or
8 without the aid of anything else, or

9 (b) a map, plan, drawing, photograph or similar thing;

10 "dual criminality" means conduct which would constitute an offence under
11 the laws of Nigeria and of a foreign State;

12 "embezzled public funds" means public funds which are dishonestly or
13 fraudulently withheld for the purpose of conversion by one or more
14 individuals to whom such funds have been entrusted, to be held or used for
15 other purposes;.

16 "laundered embezzled public funds" means the embezzled public funds
17 which are laundered in order to conceal their true source or origin;

18 "essential public interests" includes sovereignty, security, national interests,
19 public order and an excessive burden on the resources of Nigeria;

20 "foreign law immunity certificate" means a certificate given, or a
21 declaration made, by a foreign State or under the law of a foreign State,
22 certifying or declaring that, under the law of that State, persons generally or
23 a specified person could or could not, either generally or in specified
24 proceedings and either generally or in specified circumstances, be required
25 to-

26 (a) answer a specified question; or

27 (b) produce a specified thing;

28 "foreign organisation" includes an international criminal tribunal and an
29 international organization;

30 "foreign State" includes each Commonwealth member State being a State or

- 1 political sub- division of a State, a province, a colony, dependency, possession,
2 protectorate, condominium, trust territory or a territory which fall under the
3 jurisdiction of that State, that is a party to an agreement with Nigeria and a State
4 and foreign organisation designated under section 3(1) of this Act.
- 5 "gateway" means a hardware or software set up that translates between two
6 dissimilar protocols to enable the passage of data;
- 7 "High Court" means the High Court of a State or Federal Capital Territory;
- 8 "in writing" includes e-mail, facsimile or other agreed form of electronic
9 transmission with approved levels of security and authentication in place;
- 10 "instrumentalities of crime" means any property-
- 11 (a) used in, or in connection with, the commission of an offence;
- 12 (b) intended to be used in, or in connection with, the commission of an
13 offence or unlawful activity, irrespective of where the property is located or the
14 offence is committed;
- 15 "items subject to legal privilege" means-
- 16 (a) communication between a legal practitioner and his client or any
17 person representing his client made in connection with the giving of legal
18 advice to the client;
- 19 (b) communication between a legal practitioner and his client or any
20 person representing his client, or between the legal practitioner or his client or
21 the person representing his client and any other person, made in connection
22 with, or in contemplation of, judicial proceedings and for the purposes of those
23 proceedings; and
- 24 (c) items enclosed with or referred to in the communication
25 mentioned in sub - paragraphs (a) and (b) of this definition and made-
- 26 (i) in connection with the giving of legal advice, or
27 (ii) in connection with or in contemplation of judicial proceedings and
28 for the purposes of such proceedings, when they are in the possession of a
29 person who is entitled to possession of them, but excluding, in any case, any

1 communications or thing held with the intention of furthering a criminal
2 purpose;

3 "intercept material" means any document, record or recording obtained by a
4 State as a result of the interception of telecommunications conducted
5 pursuant to the laws of that State, except where the interception was
6 authorised for the purposes of complying with a request under section 48 of
7 this Act;

8 "interception of telecommunications" means the listening to, recording,
9 opening, acquiring, seizing, interrupting, suppressing, stopping, disrupting,
10 copying, destroying or viewing of communication conveyed by means of
11 telecommunications either-

12 (a) between its point of origin and its point of destination while it is
13 in transit; or

14 (b) contemporaneously with the communication's transmission at
15 the point of origin or its reception at the point of destination, and includes the
16 content, data and any available transmission data;

17 "Loan Order" means an order made by a court under section 70 (1) of this
18 Act;

19 "material" includes any book, document or other record in any form, and any
20 container or article relating to it;

21 "military offence" means an offence within the meaning of the Armed
22 Forces Act, 2004;

23 "offence", means an offence under the laws of Nigeria and includes an
24 offence within the meaning of the relevant agreement;

25 "police officer" means an officer in the Nigeria Police Force;

26 "postal item" means any letter, package or other item which is being or will
27 be carried by a postal service;

28 "postal service" means a service, whether public or private, which-

29 (a) consists of the collection, sorting, conveyance, distribution and
30 delivery of postal items; and

- 1 (b) is offered or provided for the purpose of making available or
2 facilitating a means of transmission from place to place of postal items;
- 3 "premises" includes the whole of or part of a structure, building, aircraft or
4 vessel;
- 5 "preservation of computer data" means the protection of computer data which
6 already exists in a stored form from modification or deletion, or from anything
7 that would cause its current quality or condition to change or deteriorate, but
8 excludes communications data that is stored on a highly transitory basis as an
9 integral function of the technology used in its transmission and which already
10 exists in a stored form;
- 11 "proceedings" means a procedure conducted by or under the supervision of a
12 Judge or Magistrate or judicial officer, in relation to an alleged or proven
13 offence or property derived from that offence, and includes an inquiry,
14 investigation, preliminary or final determination of facts;
- 15 "proceeds of crime" includes any property, benefit or advantage that is wholly
16 or partly obtained, derived or realised directly or indirectly through the
17 commission of a criminal act or omission;
- 18 "property" means assets of every kind, whether corporeal or incorporeal,
19 movable or immovable, tangible or intangible, and includes legal documents or
20 instruments evidencing title to, or interest in, the assets;
- 21 "record" means a material or thing on which data is recorded and which is
22 capable of being read or understood by a person, computer system or other
23 device;
- 24 "request" means a request for mutual legal assistance under this Act;
- 25 "serious offence" includes-
- 26 (a) participation in an organised criminal group, terrorism and
27 terrorist financing, money laundering, human trafficking, smuggling of
28 persons, rape, defilement, illicit trafficking in stolen and other goods, bribery
29 and corruption, serious fraud, counterfeiting and piracy of products;
- 30 (b) murder, grievous bodily harm and armed robbery;

- 1 (c) any other offence against the laws of Nigeria where:
2 (i) the maximum penalty for the offence is death, or
3 (ii) the minimum term of imprisonment is not less than one year;
4 and
5 (d) any attempt, abetment or conspiracy to commit any of the
6 offences referred to in paragraph (a) or (b) of this definition;
7 "serious offence in a foreign State" means any offence classified as a serious
8 offence under the laws of a foreign State;
9 "service provider" means-
10 (a) public or private body licensed to provide its customers the
11 ability to communicate by means of a computer system; or
12 (b) a body licensed to process or store communications data on
13 behalf of a communication service provider or customer of that service,
14 which is authorised by the Attorney-General to intercept
15 telecommunications in accordance with this Act;
16 "share-out" means the proportionate sharing of confiscated property;
17 "stored communication" means the content data which is no longer in the
18 course of transmission and which has been stored in a form allowing
19 retrieval;
20 "subscriber information" means any information held by a postal or
21 telecommunications service provider relating to the name, address,
22 telephone number, e-mail address, Internet Protocol address or any similar
23 identifier associated with a subscriber to any postal or telecommunications
24 service;
25 "surveillance" includes-
26 (a) monitoring, observing or listening to persons, their movements,
27 conversations or other activities or communications;
28 (b) recording anything monitored, observed or listened to in the
29 course of the surveillance; and
30 (c) activities in paragraphs (a) and (b) of this definition with the

1 assistance of a surveillance device;

2 "telecommunication" means the emission, transmission or reception of signs,
3 signals, writing, images, sounds or intelligence of any nature by any wire,
4 cable, radio, optical or other electromagnetic system, or by any similar
5 technical system;

6 "telecommunication service" means a communication provided to a person for
7 the transmission and receipt of telecommunications, which enables
8 communications to be transmitted or received over a telecommunications
9 system operated by a service provider;

10 "telecommunications system" means a system which exists for the purpose of
11 transmitting and receiving telecommunications;

12 "thing" includes material, items, articles, objects, matters, substances, entities,
13 mechanisms, devices or machines;

14 "traffic data" means any information-

15 (a) that is attached or associated with communication by means of
16 which the communication has been, is being or may be transmitted or received;
17 and

18 (b) which can be established by any person using any postal or
19 telecommunication service;

20 "transmission data" means data that-

21 (a) relates to the telecommunication functions of dialing, routing,
22 addressing or signaling;

23 (b) is transmitted to identify, activate or configure a device, including
24 a computer program, in order to establish or maintain access to a
25 telecommunication service for the purpose of enabling a communication, or is
26 generated during the creation, transmission or reception of a communication
27 and identifies or purports to identify the type, direction, date, time, duration,
28 size, origin, destination or termination of the communication; and

29 (c) does not reveal the substance, meaning or purpose of the
30 communication.

- 1 (2) For the purposes of this Act-
- 2 (a) a criminal matter arises in a foreign State if the Central
3 Authority of that foreign State certifies that criminal or forfeiture
4 proceedings have been instituted in a court exercising jurisdiction in that
5 State or that there is reasonable cause to believe that an offence has been
6 committed in respect of which such proceedings could be so instituted;
- 7 (b) a reference to a foreign State includes a reference to:
- 8 (i) a territory of that foreign State, and
9 (ii) a ship or aircraft of, or registered in, that foreign State; and
- 10 (c) a reference to the law of a foreign State includes a reference to the law in
11 force in any part of that foreign State.
- 12 (3) For the purposes of this Act, judicial proceedings that are
13 criminal proceedings are-
- 14 (a) instituted in a foreign State when a person is produced and
15 charged in court with a serious offence in a foreign State;
- 16 (b) concluded on the occurrence of any of the following events,
17 the-
- 18 (i) discontinuance of the proceedings,
19 (ii) acquittal of the defendant,
20 (iii) quashing of the defendant's conviction for the offence,
21 (iv) grant of a pardon in respect of the defendant's conviction for
22 the offence,
- 23 (v) court sentencing or otherwise dealing with the defendant in
24 respect of his conviction for the offence without having made a foreign
25 Forfeiture order,
- 26 (vi) satisfaction of a foreign forfeiture order made in the
27 proceedings, whether by payment of the amount due under the order, by the
28 defendant serving imprisonment in default, by the recovery of all property
29 liable to be recovered or otherwise.

Short title

1 89. This Act may be cited as the Mutual Assistance in Criminal
2 Matters Act, 2016.

EXPLANATORY MEMORANDUM

*(This Memorandum does not form part of this Act but is
intended to explain its purport)*

This Act seeks to facilitate 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 and other matters connected therewith.