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TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS  
BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA  
AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA  
(RATIFICATION AND ENFORCEMENT) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Enforcement of the Treaty on Mutual Legal Assistance in Criminal Matters between the Federal Republic of Nigeria and the Republic of South Africa.
2. Short title.

SCHEDULE

*Treaty between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa on Mutual Legal Assistance in Criminal Matters*

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TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS  
BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA  
AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA  
(RATIFICATION AND ENFORCEMENT) ACT

**An Act to enable effect to be given in the Federal Republic of Nigeria to the Treaty between the Federal Republic of Nigeria and the Republic of South Africa on mutual legal assistance in criminal matters; and for related purposes.**

WHEREAS the Treaty on Mutual Legal Assistance in Criminal Matters between the Federal Republic of Nigeria and the Republic of South Africa was signed by the Vice-President of the Federal Republic of Nigeria and the Deputy President of the Republic of South Africa on the 28th day of March, 2002 at Pretoria, South Africa;

AND WHEREAS the Government of the Federal Republic of Nigeria has by a decision duly reached in accordance with her constitutional process ratified the Treaty on Mutual Legal Assistance in Criminal Matters between the Federal Republic of Nigeria and the Republic of South Africa on 30th November, 2002;

AND WHEREAS it is necessary and expedient to enact a law to enable effect to be given to the Treaty on Mutual Legal Assistance in Criminal Matters between the Federal Republic of Nigeria and the Republic of South Africa.

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## **1. Enforcement of the Treaty on Mutual Legal Assistance in Criminal Matters between the Federal Republic of Nigeria and the Republic of South Africa**

As from the commencement of this Act, the provisions of the Treaty on Mutual Legal Assistance in Criminal Matters between the Federal Republic of Nigeria and the Republic of South Africa on Mutual Legal Assistance in Criminal Matters which are set out in the Schedule to this Act shall, subject as thereunder provided, have the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

[Schedule.]

## **2. Short title**

This Act may be cited as the Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004.

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## SCHEDULE

[Section 1.]

## TREATY BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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**TREATY BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE  
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ON MUTUAL LEGAL ASSISTANCE  
IN CRIMINAL MATTERS**

The Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa:

DESIRING to improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and prevention of crime through co-operation and mutual legal assistance in criminal matters;

CONSIDERING in particular the need to fight against the illicit production of any trafficking in narcotic drugs and other controlled substances;

HAVE AGREED as follows-

**ARTICLE 1**

*Scope of Assistance*

**1.** The Contracting States shall provide mutual assistance, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution and prevention of crimes, and in proceedings related to criminal matters.

**2.** Such assistance shall include-

- (a) taking the testimony or statements of persons;
- (b) providing documents, records and articles of evidence;
- (c) serving documents;
- (d) locating and identifying persons;
- (e) transferring persons in custody for testimony or other purposes;
- (f) executing requests for searches and seizures;
- (g) tracing, identifying, restraining or immobilising criminally obtained asset;
- (h) assisting in proceedings related to forfeiture, restitution and recovery or collection offines; and
- (i) any other form of assistance not prohibited by the laws of the Requested State.

**3.** Assistance shall be provided without regard to whether the conduct which the subject of the investigation, prosecution, or proceedings in the Requesting State would constitute a crime under the laws of the Requested State.

**4.** This Treaty is intended solely for mutual legal assistance between the Contracting States. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

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## ARTICLE 2

### *Central Authorities*

- 1.** Each Contracting State shall designate a Central Authority to make and receive requests pursuant to this Treaty.
- 2.** For the Government of the Republic of South Africa, the Central Authority shall be the Director-General, Department of Justice and Constitutional Development or a person designated by the Director-General. For the Government of the Federal Republic of Nigeria, the Central Authority shall be the Attorney-General of the Federation and the Minister of Justice or a person designated by the Attorney-General of the Federation and the Minister of Justice.
- 3.** The Central Authorities shall communicate directly with one another for the purposes of this Treaty. Such communication may, in exceptional circumstances, be effected through the diplomatic channel or through the International Criminal Police Organisation (INTERPOL).

## ARTICLE 3

### *Limitations on Assistance*

- 1.** The Central Authority of the Requested State may deny assistance if-
  - (a) the request relates to a political offence;
  - (b) the request relates to an offence under military law which would not be an offence under ordinary criminal law;
  - (c) the execution of the request would prejudice the national security or any other essential interests of the Requested State; or
  - (d) the request is not made in conformity with the Treaty.
- 2.** For the purposes of paragraph 1 (a) of this Article, the following offences shall not be considered political offences-
  - (a) the murder of, or other violent crime against, a Head of State or Deputy Head of State of the Requesting or Requested State or against a member of such person's family;
  - (b) an offence for which both the Requesting or Requested State have an obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their respective competent authorities for decision as to prosecution;
  - (c) murder;
  - (d) an offence involving kidnapping, abduction, or any other form of unlawful detention, including the taking of hostages; and
  - (e) attempting or conspiring to commit, aiding, abetting, inducing, counselling or procuring commission of, or being an accessory before or after the fact to such offences.
- 3.** Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with the conditions.
- 4.** If the Central Authority of the Requested State determines the execution of a request would interfere with an ongoing criminal investigation or proceeding in that State, it may postpone execution or make execution subject to conditions determined necessary after consultation with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.

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**5.** If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the partial or total denial or postponement of assistance.

## ARTICLE 4

### *Form and Contents of Requests*

1. A request for assistance shall be in writing except that the Central Authority of the Requested State may accept a request in another form in emergency situations. In any such case, the request shall be confirmed in writing within ten (10) days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in English.
2. The request shall include the following-
  - (a) the name of the authority conducting the investigation, prosecution or proceedings to which the request relates;
  - (b) a description of the subject matter and nature of the investigation, prosecution, or proceedings, including the specific crimes which relate to the matter, the stage reached in the proceedings and any dates for further proceedings;
  - (c) a description of the evidence, information or other assistance sought; and
  - (d) a statement of the purpose for which the evidence, information or other assistance is sought.
3. To the extent necessary and possible, a request shall also include the following-
  - (a) information on the identity and location of any person from whom evidence is sought;
  - (b) information on the identity and location of a person to be served, that person's relationship to the investigation, prosecution or proceedings, and the manner in which service is to be effected;
  - (c) information on the identity and whereabouts of the person to be located;
  - (d) a precise description of the place or person to be searched and of the articles to be seized;
  - (e) description of the manner in which any testimony or statement is to be taken and recorded, including any special requirements of the law of the Requesting State as to the manner of taking evidence relevant to its admissibility in that State;
  - (f) list of questions to be asked of a witness;
  - (g) description of any particular procedure to be followed in executing the request;
  - (h) information as to the allowances and expenses to which a person asked to in the Requesting State in connection with the request will be entitled;
  - (i) court order, if any, or a certified copy thereof, which is to be enforced and a statement that such order is final; and
  - (j) any other information which may be brought to the attention of the Requested State to facilitate its execution of the request.

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## ARTICLE 5

### *Execution of Requests*

- 1.** The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.
- 2.** The Central Authority of the Requested State shall make all necessary arrangements for representation in that State on behalf of the Requesting State in any proceedings arising out of a request for assistance.
- 3.** Requests shall be executed in accordance with the laws of the Requested State, including the terms of this Treaty. However, the method of execution specified in the request shall be followed except in so far as it is prohibited by the laws of the Requested State.
- 4.** The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State concerning progress in executing the request.
- 5.** The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. Upon completion of a request the Requested State shall, unless otherwise agreed, return to the Requesting State the original request together with all information and evidence obtained indicating the place, date and time of execution.
- 6.** To the extent possible all documents and records to be furnished pursuant to a request shall be complete and in an unedited form. Upon application of the Requesting State the Requested State shall make every effort to furnish original documents and records.

## ARTICLE 6

### *Confidentiality*

- 1.** Neither a request, including its contents, nor the information and materials supplied in response thereto shall be disclosed by a Contracting State to a third State except as authorised by the other Contracting State.
- 2.** The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.
- 3.** The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. In that case, the Requesting State shall use its best efforts to comply with such terms and conditions.

## ARTICLE 7

### *Authentication or Certification*

- 1.** Any document submitted in support of a request shall be received if such a document has been certified as a true copy of the original by a magistrate, judge or any other person authorised to do so and such document has been authenticated by a statement-
  - (a) if the Requested State is the Republic of South Africa, the Attorney-General of the Federation and Minister of Justice of the Federal Republic of Nigeria; or

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- (b) if the Requested State is the Federal Republic of Nigeria, the Minister responsible for Justice and Constitutional Development of the Republic of South Africa, or a person designated by such Minister under the seal of that Minister identifying the person who has signed the document, including that person's position or title or in any other manner provided for by the laws of the Requested State.

## ARTICLE 8

### *Costs*

**1.** The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses, the costs of translation, interpretation, transcription and the allowances and expenses related with the travelling of persons pursuant to Articles 11, 13 and 14, which costs, fees, allowances and expenses shall be paid by the Requesting State.

**2.** If, during the execution of a request, it becomes apparent that fulfilment of the request will entail expenses of an extraordinary nature, the Central Authorities of the Contracting States shall consult to determine the terms and conditions under which execution may continue.

## ARTICLE 9

### *Limitations on Use*

**1.** The Requesting State shall not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceedings other than that described in the request without the prior consent of the Requested State.

**2.** Information or evidence which has been made public in the Requesting State may thereafter be used for any purpose.

## ARTICLE 10

### *Testimony or Evidence in the Requested State*

**I.** A person in the Requested State from whom testimony or evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents, records and articles of evidence.

**2.** Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.

**3.** The Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to question, directly or indirectly, the person giving the testimony or evidence.

**4.** If the person referred to in paragraph I asserts a claim of immunity, incapacity or privilege under the laws of the Requesting State, the testimony or evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.

## ARTICLE 11

### *Testimony in the Requesting State*

**I.** The Requested State, upon request that a person in that State appears and testifies in connection with an investigation, prosecution or proceedings in the Requesting State, shall invite

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that person to appear and testify in the Requesting State. The Requesting State shall indicate the extent to which the expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the response of the person.

**2.** A person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty in the Requested State by reason of any acts or convictions which preceded his departure from the Requested State.

**3.** The safe conduct provided for in paragraph 2 of this Article shall cease either fifteen (15) days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or if the person has left the Requesting State and voluntarily returned to it, whichever first occurs.

## ARTICLE 12

### *Official Records*

**1.** The Requested State shall provide the Requesting State with copies of publicly available records, including documents or information in any form, in the possession of organs of State and Government Departments and Agencies in the Requested State.

**2.** The Requested State may provide copies of any documents, records, or information which are in the possession of an organ of State or a Government Department or agency in that State, but which are not publicly available, to the same extent and under the same conditions as such copies would be available to its own law enforcement or judicial authorities. The Requested State may deny a request pursuant to this paragraph entirely or in part.

## ARTICLE 13

### *Transfer of Persons in Custody*

**1.** A Requesting State may seek the temporary transfer of persons in custody in the Requested State for purposes of assistance under this Treaty.

**2.** A person in the custody of the Requested State whose presence is needed in the Requesting State for purposes of assistance under this Treaty, shall be transferred to the Requesting State for that purpose if the person consents and if the Central Authorities or both Contracting States agree.

**3.** A person in the custody of the Requesting State whose presence in the Requested State is needed for purposes of assistance under this Treaty may be transferred to the Requested State for that purpose if the person consents and if the Central Authorities of both Contracting States agree.

**4.** For the purpose of this Article-

- (a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the sending State;
- (b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
- (c) the receiving State shall not decline on the basis of nationality to return a person transferred nor require the sending State to initiate extradition proceedings for the return of the person transferred; and

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- (d) the person transferred shall receive credit for service of the sentence imposed in the sending State for the time served while in the custody of the receiving State.

## ARTICLE 14

### *Transit of Persons in Custody*

**1.** The Requested State may authorise the transit through its territory of a person held in custody by a third State whose personal appearance has been requested by the Requesting State to give testimony or evidence or otherwise provide assistance in an investigation, prosecution or proceedings.

**2.** Where such transit is authorised, the Requested State shall have the authority and the obligation to keep the person in custody during transit in accordance with the laws of the Requested State, including the terms of this Treaty.

## ARTICLE 15

### *Identification and Location of Persons or Items*

The Requested State shall use its best efforts to ascertain the identity or location of persons or items specified in the request.

## ARTICLE 16

### *Service of Documents*

**1.** The Requested State shall use its best efforts to effect service of any document transmitted to it for the purpose of service.

**2.** A request to effect service of summons shall be made to the Requested State not less than sixty (60) days before the date on which the appearance of a person is required. In urgent cases, the Requested State may waive the time requirement.

**3.** The Requested State shall return proof of service in the manner required by the Requesting State.

## ARTICLE 17

### *Search and Seizure*

**1.** The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.

**2.** Upon request, every official of the Requested State who has custody of a seized item shall certify, the continuity of custody, the identity of the item, the integrity of its condition.

**3.** The Central Authority of the Requested State may require that the Requesting State agree to the terms and conditions deemed to be necessary to protect third party interests in the item to be transferred.

## ARTICLE 18

### *Return of Documents, Records and Articles of Evidence*

The Central Authority of the Requesting State shall, upon request, as soon as possible return to the Requested State any documents, records, or articles of evidence furnished to it in the execution of a request.

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## ARTICLE 19

### *Assistance in Forfeiture Proceedings*

**1.** The Contracting States shall assist each other to the extent permitted by their respective laws in proceedings relating to---

- (a) the restraint or immobilisation of proceeds of crimes and instrumentalities or objects used in the commission of crimes;
- (b) the confiscation or forfeiture of proceeds of crimes and instrumentalities or objects used in the commission of crimes;
- (c) the recovery or collection of fines imposed by courts as sentences in criminal proceedings; and
- (d) the compensation or restitution to victims of crime.

**2.** Such assistance shall include-

- (a) the identifying, locating and assessing the value of assets believed to be the proceeds or instrumentalities of criminal activities and to be within the Requested State;
- (b) the seizing and forfeiting of the proceeds and instrumentalities of criminal activities which are located in the Requested State;
- (c) the invoking of the procedures of the Requested State for the recognition, confirmation, and enforcement of an order for the forfeiture of the proceeds or instrumentalities of criminal activities made by a court or other competent authority in the Requesting State; and
- (d) the taking of measures to prevent any dealing in, transfer or disposal of, or the creation of any charge over assets, pending the determination of proceedings for the forfeiture of the proceeds and instrumentalities of criminal activities.

**3.** If the Central Authority of one Contracting State becomes aware of proceeds of crimes or instrumentalities or objects used in the commission of crimes that are located in the other State and may be forfeitable or otherwise subject to seizure under the laws of that State, it may so inform the Central Authority of the other State. If that other State has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. Those authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other State on the action taken.

**4.** The State that has custody over proceeds of crimes and instrumentalities or objects used in the commission of crimes shall dispose thereof in accordance with its laws. Either State may transfer all or part of such assets or property, or the proceeds of the sale thereof, to the other State, to the extent permitted under the transferring State's laws and upon such terms as it deems appropriate.

## ARTICLE 20

### *Information on Crimes, Arrests, Convictions and Deportations*

**1.** If the Central Authority of one Contracting State becomes aware of criminal activities which are or may be committed within the jurisdiction of the other State, it may so inform the Central Authority of that other State.

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**2.** The Requesting State may seek information from the Requested State regarding that State's arrest, conviction, or deportation of a national of the Requesting State when such information is needed in connection with an investigation, prosecution, or proceedings in the Requesting State.

**3.** The request shall indicate the purpose for which the information is requested and shall contain such information as is available to the Central Authority of the Requesting State as to the arrest, investigation, or other law enforcement action.

## ARTICLE 21

### *Compatibility with other Treaties*

Assistance and procedures provided by this Treaty shall not prevent or restrict either of the Contracting States from granting any assistance under other applicable international conventions, arrangements, agreements, practice or under the laws of the Contracting States.

## ARTICLE 22

### *Consultation*

The Central Authorities shall consult, at times mutually agreed to by them, to promote the most effective implementation of this Treaty. They may also agree on such practical or other measures as may be necessary to facilitate the implementation of this Treaty.

## ARTICLE 23

### *Application*

This Treaty shall apply to any assistance contemplated in Article I, whether the acts were committed before, on, or after the date upon which this Treaty enters into force. Nothing in this Treaty shall be deemed to require or authorise any action by the Requested State that is contrary to the constitution of the State.

## ARTICLE 24

### *Amendment*

This Treaty may be amended by agreement in writing between the Contracting States. Amendments shall enter into force in accordance with the procedures set forth in Article 25 of this Treaty.

## ARTICLE 25

### *Ratification. Entry into Force and Termination*

**1.** This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible.

**2.** This Treaty shall enter into force upon the exchange of instruments of ratification.

**3.** Either State may terminate this Treaty by means of a written notice to the other State through the diplomatic channel. Termination shall take effect six (6) months following the date of receipt of such notice by the other State.

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TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS  
BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA  
AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA  
(RATIFICATION AND ENFORCEMENT) ACT

**SUBSIDIARY LEGISLATION**

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*No Subsidiary Legislation*

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