

REPUBLIC OF ZAMBIA

THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT

CHAPTER 98 OF THE LAWS OF ZAMBIA

**CHAPTER 98 THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
ACT**

THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT

ARRANGEMENT OF SECTIONS

PART I PRELIMINARYPART I

PRELIMINARY

Section

1. Short title
2. Interpretation
3. Inconsistency of Acts
4. Limitations with respect to application
5. Application
6. Publication of treaties
7. Administrative arrangements
8. Assistance may be provided subject to conditions
9. Requests by Zambia
10. Requests by foreign state
11. Refusal of assistance

PART II FOREIGN INVESTIGATIONS OR OTHER PROCEEDINGS IN RESPECT
OFOFFENDERSPART II

FOREIGN INVESTIGATIONS OR OTHER PROCEEDINGS IN RESPECT OF OFFENDERS

The Laws of Zambia

12. Fines
13. Search and seizure
14. Issue and contents of search warrant
15. Execution of search warrant
16. Report on execution of warrant
17. Hearing on execution of warrant
18. Terms and conditions of sending abroad record or thing seized
19. Evidence for use abroad
20. Evidence gathering order
21. Report to magistrate on evidence gathering order
22. Sending abroad evidence and order
23. Compliance with terms and conditions of order to send abroad
24. Contempt of court
25. Arrest warrant for person for non-compliance with evidence gathering order
26. Transfer of detained
27. Making of transfer order
28. Absence deemed imprisonment
29. Variation of transfer order
30. Copy of order to jailer
31. Exception for young persons
32. Lending exhibits under a loan order
33. Making of loan order
34. Variation of loan order
35. Copy of loan order to custodian
36. Presumption of continuity
37. Appeal on question of law

PART III ADMISSIBILITY IN ZAMBIA OF EVIDENCE OBTAINED ABROADPART III

ADMISSIBILITY IN ZAMBIA OF EVIDENCE OBTAINED ABROAD

38. Foreign records
39. Foreign things
40. Status of certificate
41. Service abroad
42. Special authorisation
43. Detention of transferred person and paramountcy of order
44. Immunities
45. Determination of the validity of refusals
46. Privilege for foreign records
47. Regulations

CHAPTER 98

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

*Act No.
19 of 1993.*

An Act to provide for the implementation of treaties for mutual legal assistance in criminal matters and to provide for matters connected with or incidental to the foregoing.

[30th April, 1993

PART I PRELIMINARYPART I

PRELIMINARY

1. This Act may be cited as the Mutual Legal Assistance in Criminal Matters Act. Short title

2. In this Act unless the context otherwise requires- Interpretation
 - "competent authority" means the Attorney General;

 - "data" means representations, in any form, of information or concepts;

 - "foreign state" means a state that is a party to a treaty;

 - "offence" means an offence within the meaning of the relevant treaty;

The Laws of Zambia

"record" means any material on which data is recorded or marked and which is capable of being read or understood by a person or a computer system or other device;

"request" means a request for assistance presented under a treaty;

"treaty" means a treaty, convention or other international agreement that is in force and to which Zambia is a party, the primary purpose of which is to provide for mutual legal assistance in criminal matters.

3. In the event of any inconsistency between this Act and any other Act of Parliament, other than the provisions of an Act prohibiting the disclosure of information or prohibiting its disclosure except under certain conditions, this Act shall prevail to the extent of the inconsistency. Inconsistency of Acts

4. (1) Nothing in this Act or a treaty shall be construed so as to abrogate or derogate from an agreement, arrangement or practice respecting co-operation between a Zambian competent authority and a foreign or international authority, or organisation. Limitations with respect to application

(2) Nothing in this Act authorises the extradition, or the arrest or detention with a view to extradition, of any person.

5. (1) This Act shall apply to a foreign state specified in an order made by the Minister under this Act. Application

(2) Where a bilateral treaty comes into force or ceases to be in force, the Minister may, by order, specify the name of the foreign state that is a party to the treaty and the date that the treaty came into force or ceased to be in force, as the case may be.

(3) The Minister may, by order, specify-

- (a) the names of the foreign states that are parties to a multilateral treaty to which Zambia accedes and the date of the accession;
- (b) the name of a foreign state that accedes to a multilateral treaty to which Zambia is a party and the date of the accession;
- (c) the name of a foreign state that ceases to be a party to a multilateral treaty to which Zambia is a party and the relevant date; and
- (d) the names of all of the foreign states that are parties to a multilateral treaty to which Zambia has ceased to be a party and the relevant dates.

The Laws of Zambia

6. The Minister shall cause every treaty to be published in the *Gazette* within sixty days of its coming into force or after Zambia accedes to the treaty and a treaty once published shall be judicially noticed.

Publication of treaties

7. (1) Where there is no treaty between Zambia and another state, the Minister responsible for Home affairs may, with the agreement of the Minister, enter into an administrative arrangement with that other state providing for legal assistance with respect to an investigation specified therein relating to an act that, if committed in Zambia, would be an indictable offence.

Administrative arrangements

(2) Where a treaty expressly states that legal assistance may be provided with respect to acts that do not constitute an offence within the meaning of the treaty, the Minister responsible for home affairs may, in exceptional circumstances and with the agreement of the Minister, enter into an administrative arrangement with the foreign state concerned, providing for legal assistance with respect to an investigation specified therein relating to an act that, if committed in Zambia, would be a contravention of an Act of Parliament.

(3) An administrative arrangement entered into under subsection (1) or (2) may be implemented by the Minister, under this Act, in the same manner as a treaty.

(4) An administrative arrangement entered into under subsection (1) or (2) shall have force from the period, not exceeding six months, and with respect to the type of legal assistance that is specified therein.

(5) Sections *five* and *six* do not apply in respect of an administrative arrangement entered into under subsection (1) or (2).

(6) In any legal or other proceeding, an administrative arrangement entered into under subsection (1) or (2) and purporting to be signed by the Minister responsible for home affairs or by a person designated by him is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and proof that it is what it purports to be.

8. Assistance under this Act may be provided to a foreign state subject to such conditions as the Attorney-General may determine.

Assistance may be provided subject to conditions

9. A request by Zambia for international assistance in a criminal matter may be made by the Attorney-General.

Request by Zambia

10. (1) A request by a foreign state for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General, in writing, to receive requests by foreign states under this Act.

Request by foreign state

(2) A request under subsection (1) shall be accompanied by-

- (a) the name of the authority concerned with the criminal matter to which the request relates;
- (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
- (c) a description of the purpose of the request and the nature of the assistance being sought;
- (d) details of the procedure that the foreign state wishes to be followed by Zambia in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign state pursuant to the request;
- (e) statement setting out the wishes of the foreign state concerning the confidentiality of the request and the reasons for those wishes;
- (f) details of the period within which the foreign state wishes the request be complied with;
- (g) if the request involves a person travelling from Zambia to the foreign state, details of allowances to which the person shall be entitled, and of the arrangements for accommodation for the person, while the person is in the foreign state pursuant to the request;
- (h) any other information required to be included with the request under a treaty or other arrangement between Zambia and the foreign state; and
- (j) any other information that may assist in giving effect to the request;

But failure to comply with this subsection shall not be a ground for refusing the request.

(3) Where a request by a foreign state is made to a person authorised under subsection (1), the request shall be taken, for the purpose of this Act, to have been made to the Attorney-General.

(4) Where a request is made to the Attorney-General by a foreign state the Attorney-General shall deal with the request in accordance with the treaty and this Act.

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

The Laws of Zambia

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
- (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions;
- (d) the request relates to the prosecution or punishment of a person in respect of an act or omission that if it had occurred in Zambia would have constituted an offence under the military law of Zambia but not also under circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (e) the granting of the request would prejudice the sovereignty, security or the national interest of Zambia;
- (f) the request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent tribunal or authority in the foreign state, or has undergone the punishment provided for by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or
- (g) the foreign state is not a state to which this Act applies.

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

- (a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zambia would not have constituted an offence against Zambian law;
- (b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign state and a similar act or omission occurring outside Zambia in similar circumstances would not have constituted an offence against Zambian law;
- (c) the request relates to the prosecution or punishment of a person in respect of an act or omission where, if it had occurred in Zambia at the same time and had constituted an offence against Zambian law, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

- (d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Zambia;
- (e) the provision of the assistance would, or would be likely to, prejudice the safety of any person, whether in or outside Zambia; or
- (f) the provision of the assistance would impose an excessive burden on the resources of Zambia.

PART II FOREIGN INVESTIGATIONS OR OTHER PROCEEDINGS IN RESPECT OF OFFENCESPART II

FOREIGN INVESTIGATIONS OR OTHER PROCEEDINGS IN RESPECT OF OFFENCES

12. (1) Where the Attorney-General approves a request of a foreign state to enforce the payment of a fine imposed by a court of criminal jurisdiction of the foreign state, the High Court shall have jurisdiction to enforce the payment of the fine. Fines

(2) The fine shall be recoverable in civil proceedings instituted by the foreign state as if the fine had been imposed by the High Court.

(3) No proceedings under subsection (2) shall be more than five years after the fine was imposed.

13. (1) The Criminal Procedure Code shall apply, with the necessary modifications, in respect of a search or a seizure under this Act, except where that Act is inconsistent with this Act. Search and seizure
Cap. 88

(2) Where the Attorney-General approves a request of a foreign state to have a search or a seizure carried out in Zambia regarding an offence with respect to which the foreign state has jurisdiction, the Attorney-General shall authorise a police officer in writing, to apply *ex parte* for a search warrant to a magistrate.

14. (1) A magistrate to whom an application is made under section *thirteen* may issue a search warrant authorising a police officer named therein to execute it, where the magistrate is satisfied by statements under oath that there are reasonable grounds to believe that- Issue and contents of
search warrant

- (a) an offence has been committed with respect to which the foreign state has jurisdiction;

The Laws of Zambia

- (b) evidence of the commission of the offence, or information, that may reveal the whereabouts of a person who is suspected of having committed the offence, will be found in a building, receptacle or place in Zambia; and
- (c) it would not, in the circumstances, be appropriate to make an order under section *twenty*.

(2) A magistrate who issues a search warrant under subsection (1) may subject the execution of the warrant to any conditions that the magistrate considers desirable, including conditions relating to the time or manner of its execution.

(3) A magistrate who issues a search warrant under subsection (1) shall fix a time and place for a hearing to consider the execution of the warrant as well as the report of the police officer concerning its execution.

(4) A search warrant issued under subsection (1) may be in a form prescribed under the Criminal Procedure Code, varied to suit the case, and shall- Cap. 88

- (a) set out the time and place for the hearing referred to in subsection (3);
- (b) state that, at the hearing to consider its execution, an order shall be sought for the sending to the foreign state of the records or things seized in execution of the warrant; and
- (c) state that every person from whom a record or thing is seized in execution of the warrant and any person who claims to have an interest in a record or thing so seized has the right to make representations at the hearing before any order is made concerning the record or thing.

15. (1) A police officer who executes a search warrant issued under section *fourteen* shall, before entering the place or premises to be searched, or as soon as practicable, give a copy of the warrant to any person who is present and appears to be in charge of the place or premises. Execution of search warrant

(2) A police officer who, in any unoccupied place or premises, executes a search warrant issued under section *fourteen* shall, on entering the place or premises, or as soon as practicable, cause a copy of the warrant to be affixed in a prominent place within the place or premises.

16. (1) A police officer who executes a warrant issued under section *fourteen* shall, at least five days before the time of the hearing to consider its execution, file with the magistrate who issued the warrant a written report concerning the execution of the warrant and a general description of the records or things seized. Report on execution of warrant

(2) After filing the report, the police officer shall send a copy to the Attorney-General.

17. (1) The magistrate who issued the warrant or any other magistrate may, at the hearing to consider the execution of a warrant issued under section *fourteen*, after having considered any representations by the Attorney-General, the person from whom a record or thing was seized in execution of the warrant and any other person who claims to have an interest in the record or thing so seized-

Hearing on execution of warrant

- (a) where the magistrate is not satisfied that the warrant was executed according to its terms and conditions or where the magistrate is satisfied that an order should not be made under paragraph (b), order that a record or thing seized in execution of the warrant be returned to-
 - (i) the person from whom it was seized, if possession of it by that person is lawful; or
 - (ii) the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or
- (b) in any other case, order that a record or thing seized in execution of the warrant be sent to the foreign state who requested for the search and seizure and may include in the order such terms and conditions as the magistrate considers desirable, including terms and conditions-
 - (i) necessary to give effect to the request;
 - (ii) with respect to the preservation and return to Zambia of any record or thing seized; and
 - (iii) with respect to the protection of the interests of third parties.

(2) At the hearing referred to in subsection (1), the magistrate may require that a record or thing seized in execution of the warrant be brought before him.

18. No record or thing seized that has been ordered under section *seventeen* to be sent to the foreign state which requested for the search and seizure shall be so sent until the Attorney-General is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

Terms and conditions of sending abroad record or thing seized

19. Where the Attorney-General approves a request of a foreign state to obtain, by means of an order of a magistrate, evidence regarding an offence with respect to which the foreign state has jurisdiction, the Attorney-General shall apply *ex parte* for an order for the gathering of evidence regarding the offence.

Evidence for use abroad

20. (1) A magistrate to whom an application is made under section *fourteen* may make an order for gathering of evidence, where he is satisfied that there are reasonable grounds to believe that-

Evidence gathering order

The Laws of Zambia

- (a) an offence has been committed with respect to which the foreign state has jurisdiction; and
- (b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in Zambia.

(2) An order made under subsection (1) shall provide for the manner in which the evidence is to be obtained in order to give effect to the request made by the foreign state and the magistrate may-

- (a) order the examination, on oath or otherwise, of a person named in the order, order the person to attend at the place fixed by the person designated under paragraph (c) for the examination and to remain in attendance until he is excused by the person so designated, order the person so named, where appropriate, to make a copy of a record or to make a record from data and to bring the copy or record with him and order the person so named to bring with him any record or thing in his possession or control, so as to produce them to the person before whom the examination takes place;
- (b) order a person named in the order to make a copy of a record or to make a record from data and to produce the copy or record to the person designated under paragraph (c), order the person to produce any record or thing in his possession or control to the person so designated and provide, where appropriate, for any affidavit or certificate that, pursuant to the request, is to accompany any copy, record or thing so produced; and
- (c) designate a person before whom the examination referred to in paragraph (a) is to take place or to whom the copies, records, things, affidavits and certificates mentioned in paragraph (b) are to be produced.

(3) An order made under subsection (1) may include any terms or conditions that the magistrate considers desirable, including those relating to the protection of the interests of the person named in the order and of third parties.

(4) The magistrate who made the order under subsection (1), or another magistrate of the same court, may vary its terms and conditions.

(5) A person named in an order made under subsection (1) may refuse to answer any question or to produce certain records or things to the person designated under paragraph (c) of subsection (2) if-

- (a) the refusal is based on a law in force in Zambia;

The Laws of Zambia

- (b) to require the person to answer the questions or to produce the records or things would constitute a breach of a privilege recognised by a law in force in the foreign state that presented the request; or
- (c) to answer the questions or to produce the records or things would constitute the commission, by the person, of an offence against a law in force in the foreign state that presented the request.

(6) Where a person refuses to answer a question or to produce a record or thing, the person designated under paragraph (c) of subsection (2) shall continue the examination and ask any other question or request the production of any other record or thing mentioned in the order.

(7) A person named in an order made under subsection (1) who, pursuant to subsection (5), refuses to answer any question or to produce certain records or things shall, within seven days, give to the person designated under paragraph (c) of subsection (2) a detailed statement in writing of all the reasons on which the person bases the refusal, to answer each question or, to produce each record or thing.

(8) A person named in an order made under subsection (1) shall be entitled to be paid the travel and living expenses to which the person would be entitled if the person were required to attend as a witness before the magistrate who made the order.

21. (1) A person designated under paragraph (c) of subsection (2) of section *twenty* shall make a report to the magistrate who made the order or another magistrate of the same court accompanied by-

Report to magistrate
on evidence gathering
order

- (a) a transcript of every examination held under the order;
- (b) a general description of every record or thing produced to the person under the order, and if the magistrate so requires, a record or the thing itself; and
- (c) a copy of every statement given under subsection (7) of section *twenty* of the reasons for a refusal to answer any question or to produce any record or thing.

(2) The person designated under paragraph (c) of subsection (2) of section *twenty* shall send a copy of the report to the Attorney-General after it is made.

(3) A magistrate to whom a report is made shall-

- (a) determine whether the reasons contained in any statement given under subsection (7) of section *twenty* that purport to be based on a law in force in Zambia are well-founded; and

- (b) where the magistrate determines that they are, that determination shall be mentioned in an order that the magistrate may make under section *twenty-two*.

(4) Where a magistrate determines that the reasons contained in any statement given under subsection (7) of section *twenty* are not based on a law in force in Zambia, the magistrate shall order that the person named in the order made under subsection (1) of section *twenty* answer the questions or produce the records or things.

(5) A copy of every statement given under subsection (7) of section *twenty* that contains reasons that purport to be based on a law in force in the foreign state shall be appended to any order that the magistrate may make under section *twenty-two*.

22. (1) A magistrate to whom a report is made under subsection (1) of section *twenty-one* may order that there be sent to the foreign state the report and any record or thing produced, as well as a copy of the order accompanied by a copy of any statement given under subsection (7) of section *twenty* that contains reasons that purport to be based on a law in force in the foreign state as well as any determination of the magistrate made under subsection (4) of section *twenty-one* that the reasons contained in a statement given under subsection (7) of section *twenty* are well founded.

Sending abroad
evidence and order

(2) An order made under subsection (1) may include any terms or conditions that the magistrate considers desirable, after having considered any representations of the Attorney-General, the person who produced any record or thing to the person designated under paragraph (c) of subsection (2) of section *twenty* and any person who claims to have an interest in any record or thing so produced, including terms and conditions-

- (a) necessary to give effect to the request;
- (b) with respect to the preservation and return to Zambia of any record or thing so produced; and
- (c) with respect to the protection of interests of third parties.

(3) The execution of an order made under subsection (1) of section *twenty* that was not completely executed because of a refusal, by reason of a law in force in the foreign state, to answer any questions or to produce certain records or things to the person designated under paragraph (c) of subsection (2) of section *twenty* may be continued where a person designated by the foreign state or a court of the foreign state determines that the reasons are not well-founded and the foreign state so advises the Attorney-General.

(4) No person named in an order made under subsection (1) of section *twenty* whose reasons for refusing to answer a question or to produce a record or thing are determined, in accordance with subsection (3), not to be well-founded shall during the continued execution of the order, refuse to answer that question or to produce that record or thing to the person designated under paragraph (c) of subsection (2) of section *twenty*, except with the permission of the magistrate who made the order under subsection (1) or another magistrate of the same court.

23. No record or thing that has been ordered under section *twenty-two* to be sent to a foreign state requesting the evidence shall be so sent until the Attorney-General is satisfied that the foreign state has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.

Compliance with terms and conditions of order to send abroad

24. A person named in an order made under subsection (1) of section *twenty* shall commit a contempt of court if the person refuses to answer a question or to produce a record or thing to the person designated under paragraph (c) of subsection (2) of section *twenty*-

Contempt of Court

- (a) without giving the detailed statement required by subsection (7) of section *twenty*; or
- (b) where the person was already asked the same question or requested to produce the same record or thing and all of the reasons on which the person based the earlier refusal were determined not to be well-founded by-
 - (i) a magistrate, if the reasons were based on a law in force in Zambia; or
 - (ii) a person designated by the foreign state or by a court of the foreign state, if the reasons were based on a law in force in the foreign state.

25. (1) The magistrate who made the order under subsection (1) of section *twenty* or another magistrate of the same court may issue a warrant for the arrest of the person named in the order where the magistrate is satisfied on an information being made before him in writing and under oath, that-

Arrest warrant for person for non-compliance with evidence gathering

- (a) the person did not attend or remain in attendance as required by the order or is about to abscond;
- (b) the order was personally served on the person; and
- (c) the person is likely to give material evidence.

(2) A police officer who arrests a person in execution of a warrant issued under subsection (1) shall bring the person or cause the person to be brought before the magistrate who issued the warrant or another magistrate of the same court who may, to ensure compliance with the order made under subsection (1) of section *twenty*, order that the person be detained in custody or released on recognizance, with or without sureties.

(3) A person who is arrested in execution of a warrant issued under subsection (1) is entitled to receive, on request, a copy of the information on which the warrant was issued.

26. (1) Where the Attorney-General approves a request of a foreign state to have a detained person who is serving a term of imprisonment in Zambia transferred to the foreign state, the Attorney-General shall apply for a transfer order to a magistrate of the province in which the person is detained.

Transfer of detained persons

(2) An application made under subsection (1) shall-

- (a) state the name of the detained person;
- (b) state the place of confinement of the detained person;
- (c) designate a person or class of persons into whose custody the detained person is sought to be delivered;
- (d) state the place to which the detained person is sought to be transferred; and
- (e) state the reasons why the detained person is sought to be transferred; and
- (f) specify a period of time at or before the expiration of which the detained person is to be returned.

27. (1) Where the magistrate to whom an application is made under subsection (2) of section *twenty-six* is satisfied, having considered, among other things, any documents filed or information given in support of the application, that the detained person consents to the transfer and that the foreign state has requested the transfer for a fixed period, he may make a transfer order.

Making of transfer order

(2) A magistrate to whom an application is made under subsection (2) of section *twenty-six* may order that the detained person be brought before him so that he may be examined with respect to the transfer.

(3) A transfer order made under subsection (1) shall-

The Laws of Zambia

- (a) set out the name of the detained person and his place of confinement;
- (b) order the person who has custody of the detained person to deliver him into the custody of a person who is designated in the order or who is a member of a class of persons so designated;
- (c) order the person designated under paragraph (b) to take the detained person to the foreign state and on the return of the detained person to Zambia to return him to the place of confinement where he was when the order was made;
- (d) state the reasons for the transfer; and
- (e) fix the period of time at or before the expiration of which the detained person shall be returned.

(4) A transfer order made under subsection (1) may include any terms or conditions that the magistrate making it considers desirable, including those relating to the protection of the interests of the detained person.

28. For the purposes of the Prisons Act a detained person who is not in the place of confinement from which he was delivered pursuant to a transfer order shall be deemed to be in that place of confinement and to have applied himself industriously to the program of the place of confinement, as long as he remains in custody pursuant to the transfer order and is of good behaviour.

Absence deemed imprisonment
Cap. 97

29. A magistrate who made a transfer order or another magistrate of the same court, may vary its terms and conditions.

Variation of transfer order

30. A copy of a transfer order made under subsection (1) of section *twenty-seven* and of an order varying it made under section *twenty-nine* shall be delivered by the Attorney-General to the person in whose custody the detained person was when the transfer order was made.

Copy of order to jailer

31. Sections *twenty-six* to *thirty* shall not apply in respect of a person who, at the time the request mentioned in subsection (1) of section *twenty-six* is presented, is a young person within the meaning of the Juveniles Act.

Exception for young persons
Cap. 53

32. (1) Where the Attorney-General approves the request of a foreign state to have an exhibit that was admitted in evidence in a proceeding in respect of an offence in a court in Zambia lent to the foreign state, the Attorney-General shall, after having given reasonable notice to the parties to the proceeding, apply for a loan order to the court which has possession of the exhibit.

Lending exhibits under a loan order

(2) An application made under subsection (1) shall-

- (a) contain a description of the exhibit requested to be lent;
- (b) designate a person or class of persons to whom the exhibit is sought to be given;
- (c) state the reasons for the request, as well as contain a description of any tests that are sought to be performed on the exhibit and a statement of the place where the tests will be performed;
- (d) state the place to which the exhibit is sought to be removed; and
- (e) specify a period of time at or before the expiration of which the exhibit is to be returned.

33. (1) Where the court to which an application is made under subsection (2) of section *thirty-two* is satisfied that the foreign state has requested the loan for a fixed period and has agreed to comply with the terms and conditions that the court proposes to include in any loan order, the court may, after having considered any representations of the persons to whom notice of the application was given in accordance with subsection (2) of section *thirty-two* make a loan order. Making of loan order

(2) A loan order made under subsection (1) shall-

- (a) contain a description of the exhibit;
- (b) order the person who has possession of the exhibit to give it to a person designated in the order or who is a member of a class of persons so designated;
- (c) contain a description of any tests thereby authorised to be performed on the exhibit, as well as a statement of the place where the tests shall be performed;
- (d) fix the place or places to which the exhibit may be removed; and
- (e) fix the period of time at or before the expiration of which the exhibit shall be returned.

(3) A loan order under subsection (1) may include any terms or conditions that the court making it considers desirable, including those relating to the preservation of the exhibit.

- 34.** A court that made a loan order may vary its terms and conditions. Variation of loan order
- 35.** A copy of a loan order and of an order varying it shall be delivered by the Attorney-General to the person who had possession of the exhibit when the loan order was made. Copy of loan order to custodian
- 36.** The burden of proving that an exhibit, lent to a foreign state pursuant to a loan order made under subsection (1) of section *thirty-three* and returned to Zambia, is not in the same condition as it was when the loan order was made or that it was tampered with after the loan order was made shall be on the party who makes that allegation and in the absence of that proof, the exhibit shall be deemed to have been continuously in the possession of the court which made the loan order. Presumption of continuity
- 37.** An appeal shall lie, on a question of law alone, to the High Court or Supreme Court, as the case may be, within the meaning of the Criminal Procedure Code, from any order or decision of a magistrate of the High Court, as the case may be, made under this Act, if an application for leave to appeal is made to a judge of the appropriate court within fifteen days after the order or decision. Appeal on question of law
Cap. 88

PART III ADMISSIBILITY IN ZAMBIA OF EVIDENCE OBTAINED ABROADPART III

ADMISSIBILITY IN ZAMBIA OF EVIDENCE OBTAINED ABROAD

- 38.** (1) A record or a copy and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record sent to the Attorney-General by a foreign state in accordance with a Zambian request, shall not be inadmissible in evidence in a proceeding with respect to which the court has jurisdiction by reason only that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion. Foreign records
- (2) For the purpose of determining the probative value of a record or copy admitted in evidence under this Act the trier of fact may examine the record or copy, receive evidence orally or by affidavit, including evidence as to the circumstances in which the information contained in the record or copy was written, recorded, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy.
- 39.** A thing and any affidavit, certificate or other statement pertaining to the thing made by a person in a foreign state as to the identity and possession of the thing from the time it was obtained until its sending to the Attorney-General in Zambia by the foreign state in accordance with a Zambian request, are not inadmissible in evidence in a proceeding with respect to which the court has jurisdiction by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion. Foreign things

40. An affidavit, certificate or other statement mentioned in section *thirty-eight* or *thirty-nine* shall be, in the absence of evidence to the contrary, proof of the statements contained without proof of the signature or official character of the person appearing to have signed the affidavit certificate or other statement.

Status of certificate

(2) Unless the court decides otherwise, no record or copy thereof, no thing and no affidavit, certificate or other statement mentioned in section *thirty-eight* or *thirty-nine* shall be received in evidence in a proceeding with respect to which the court has jurisdiction unless the party intending to produce it has given to the party against whom it is intended to be produced seven days notice, excluding holidays, of that intention, accompanied by a copy of the record, copy, of the affidavit, certificate or other statement and unless, in the case of a thing, the party intending to produce it has made it available for inspection by the party against whom it is intended to be produced during the five days following a request by that party that it be made so available.

41. The service of a document in a foreign state may be proved by affidavit of the person who served it.

Service abroad

42. Notwithstanding the Immigration and Deportation Act the Minister responsible for home affairs may, in order to give effect to a request of the Attorney-General, authorise a person in a foreign state, who is a member of an inadmissible class of persons under the Immigration and Deportation Act, to come into Zambia at a place designated by the Minister responsible for home affairs and to go to and remain in a place in Zambia so designated for the period of time specified by the Minister responsible for home affairs, and the Minister may subject the authorisation to any terms and conditions that the Minister considers desirable.

Special authorisation
to come to Zambia
Cap. 123

(2) The Minister responsible for home affairs may vary the terms of an authorisation granted under subsection (1) and; in particular, may extend the period of time during which the person is authorised to remain in a place in Zambia.

(3) A person to whom an authorisation is granted under subsection (1) who is found in a place in Zambia other than the place designated in the authorisation or in any place in Zambia after the expiration of the period of time specified in the authorisation or who fails to comply with some other condition of the authorisation shall, for the purpose of the Immigration and Deportation Act, be deemed to be a person who entered Zambia as a visitor and remains therein after he has ceased to be a visitor.

Cap. 123

43. Where the Attorney-General authorises a person who is detained in a foreign state to be transferred to Zambia for a period of time specified by the Attorney-General, a magistrate may make an order for the detention of the person anywhere in Zambia and for the return of the person to the foreign state.

Detention of
transferred person and
paramourty of order

(2) An order made under subsection (1) shall be paramount to any order made by a Zambian court, a Zambian police officer or any other person who has power in Zambia to compel the appearance of another person in respect of anything that occurred before the person was transferred to Zambia.

(3) A magistrate who made the detention order or another magistrate of the same court may vary its terms and conditions and, in particular, may extend the duration of the detention.

44. (1) Subject to subsection (2) where a person is in Zambia pursuant to a request made by the Attorney-General the person shall not- Immunities

- (a) be detained, prosecuted or punished in Zambia for any offence that is alleged to have been committed, or that was committed, before the person's departure from the foreign state pursuant to the request;
- (b) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, before the person's departure from the foreign state pursuant to the request; or
- (c) be required to give evidence in any proceeding in Zambia other than the proceeding to which the request relates if any.

(2) Subsection (1) shall cease to apply to a person if-

- (a) the person has left Zambia; or
- (b) the person has had the opportunity of leaving Zambia and has remained in Zambia otherwise than for-
 - (i) the purpose to which the request relates;
 - (ii) the purpose of giving evidence in a proceeding in Zambia certified by the Attorney-General, in writing, to be a proceeding in which it is desirable that the person give evidence; or
 - (iii) the purpose of giving assistance in relation to an investigation in Zambia certified by the Attorney-General, in writing, to be an investigation in relation to which it is desirable that the person give assistance.

(3) A certificate given by the Attorney-General for the purposes of subparagraph (2) (b) (ii) or (iii) has effect from the day specified in the certificate (which may be a day before the day on which the certificate is given).

45. Where a Zambian request is presented to a foreign state and a person in the foreign state refuses to answer any question or to give up certain records or things by reason of a law in force in Zambia, a magistrate may determine the validity of the refusal on application, made on reasonable notice to the person, by the Attorney-General.

Determination of the validity of refusals

The Laws of Zambia

46. (1) Subject to subsection (2) of section *forty*, a foreign record sent to the Attorney-General by a foreign state in accordance with a Zambian request shall be privileged and no person shall disclose to anyone the record or its purport or the contents of the record, in compliance with the conditions on which it was so sent, it being made public or disclosed for the purpose of giving evidence. Privilege for foreign records

(2) No person in possession of a record referred to in subsection (1) shall be required, in connection with any legal proceedings, to give evidence relating to any information that is contained in the record or to produce the record.

47. The Minister may make regulations prescribing matters necessary or convenient for the better carrying out, or giving effect to, this Act. Regulations

SUBSIDIARY LEGISLATION

SECTION 5-THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (SPECIFIED STATES) ORDER *Statutory Instrument 95 of 1996*

1. This order may be cited as the Mutual Legal Assistance in Criminal Matters (Specified States) Order. Title

2. The Mutual Legal Assistance in Criminal Matters Act, 1993, shall apply to the states specified in the Schedule to this Order. Specified States

The Laws of Zambia

SCHEDULE

(Paragraph 2)

STATES

- | | |
|---------------------------|------------------------------------|
| 1. Antigua and barbuda | 34. The Maldives |
| 2. Australia | 35. Malta |
| 3. Bahamas | 36. Mautitius |
| 4. Bangladesh | 37. Montserrat |
| 5. Barbados | 38. Mozambique |
| 6. Belize | 39. Namibia |
| 7. Bermuda | 40. Nauru |
| 8. Botswana | 41. New Zealand |
| 9. British Virgin Islands | 42. Nigeria |
| 10. Brunei Darussalam | 43. Niue |
| 11. Canada | 44. Pakistan |
| 12. Cayman Islands | 45. Papua New Guinea |
| 13. Cook Islands | 46. St. Christopher and Nevis |
| 14. Cyprus | 47. St. Helena |
| 15. Dominica | 48. St. Lucia |
| 16. Fiji | 49. St. Vincent and the Grenadines |
| 17. Falkland Islands | 50. Seychelles |
| 18. The Gambia | 51. Sierra Leone |
| 19. Ghana | 52. Singapore |
| 20. Gibraltar | 53. Solomon Islands |
| 21. Grenada | 54. South Africa |
| 22. Guernsey | 55. Sri Lanka |
| 23. Guyana | 56. Swaziland |
| 24. Hong Kong | 57. Tanzania |
| 25. India | 58. Tonga |
| 26. Isle of Man | 59. Trinidad and Tobago |
| 27. Jamaica | 60. Turks and Caicos |
| 28. Jersey | 61. Tuvalu |
| 29. Kenya | 62. Uganda |
| 30. Kirabati | 63. United Kingdom |
| 31. Lesotho | 64. Vanuatu |
| 32. Malawi | 65. Western Somoa |
| 33. Malaysia | 66. Zimbabwe |